

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 28 OF 2016**

**BHAVYA HEIGHT CO-OPERATIVE
HOUSING SOCIETY LTD.,**

A Housing Society duly registered under
the provisions of Maharashtra Co-
operative Societies Act, 1960

Having address at CTS No. 298 (pt), 299
to 305 & 306 (pt) of Wadala South Scheme
No. 57, Bhavya Height Building, Katrak
Road, Mumbai 400 031

... **PETITIONER**

versus

**1. MUMBAI METROPOLITAN
REGION DEVELOPMENT
AUTHORITY,** Having address at
Bandra-Kurla Complex, Bandra
West, Mumbai 400 051.

**2. SLUM REHABILITATION
AUTHORITY,**
Anant Kanekar Marg, Bandra (East),
Mumbai 400 051

3. DEPUTY CHIEF FIRE OFFICER**(REGION-2) MUMBAI FIRE**

BRIGADE, Wadala Command
centre Building, 1st Floor, Shaikh
Mistri Dargah Road, Antop Hill,
Mumbai 400 037

4. M/s. NEWLOOK

CONSTRUCTIONS PVT LTD., A
company registered under the
Companies Act, 1956 having its
registered office at 3, Siddharth
Nagar, Ground Floor, MMGS Marg,
Dadar, Mumbai 400 014.

5. BOMBAY MUNICIPAL**CORPORATION,**

Executive Engineer Building
Proposal, F-North, Bhandaji Marg,
Near Maheshwari Circle, Matunga
(East), Mumbai 400 019.

... **RESPONDENTS****APPEARANCES****FOR THE PETITIONER**

Mr PK Dhakephalkar, Senior
Advocate, with BN Vaishnawa,
i/b M/s. Bharat Vaishnawa & Co.

FOR RESPONDENT NO. 1

Ms Kiran Bhagalia, i/b Chitra Phadke.

FOR RESPONDENT NO. 2

Ms Aditi Yadav, i/b Ashok Purohit &
Co.

**FOR RESPONDENT NO. 3 Mr SS Pakale, with Ms Vandana
Mahadik**

FOR RESPONDENT NO. 4 Mr Harish R Pawar

**CORAM : S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED 19th June 2019

JUDGMENT: (*Per S.C. Dharmadhikari, J.*)

1. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner Cooperative Housing Society seeks diverse reliefs, one of which is that the Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature thereof directing Respondent No. 1, its officers and servants to remove or demolish a staircase in front of the Petitioner's building Bhavya Height and to leave open space of nine metres in front of that building for access to fire engines, ambulances etc in accordance with Regulation Nos. 29 and 43 of the Development Control Regulations for Greater Mumbai 1991. The Petitioner also seeks a mandamus to the 1st Respondent to strictly comply with the provisions of Clauses 8 and 9 of the No Objection Certificate ("NOC") dated 17th October 2008, and to keep open the

mandatory open space as required under law. The third relief in furtherance of the above is sought during the pendency of the writ petition.

2. **Rule.** Respondents waive service. With the consent of all parties and since all affidavits are on record, we have by this order disposed of this writ petition finally.

3. The Cooperative Housing Society before us claims that the 1st Respondent, Mumbai Metropolitan Regional Development Authority (“**MMRDA**” for short) is a statutory body or authority functioning under the Mumbai Metropolitan Regional Development Act 1974. Then there are other authorities including the Mumbai Municipal Corporation (“**MMC**”) impleaded as Respondents.

4. The petition proceeds to state that the Petitioners are a Cooperative Housing Society, the members of which are the occupants of two high-rise buildings, namely Bhavya Height Wing “A” and Wing “B”. It is a building of 22 floors.

5. An Occupation Certificate is granted to these buildings (both wings) on 4th April 2012. The Cooperative Society has been registered by a firm of builders, New Look Constructions Pvt Ltd, which constructed the building.

6. It is claimed that the members of the Petitioners found that the Developer commenced construction of a rehabilitation building without leaving the mandatory open space as required under law between the Petitioner's building and the under construction high-rise building No. 5 of 14 floors. That the gap between Bhavya Height building (which is more than 60 metres in Height) and the under-construction rehab building No. 5 was approximately two metres only. It was, therefore, less than what is stipulated in Regulation 49(1)(e) of the DC Rules.

7. Then there are various other illegalities alleged. What is projected before us is that there is now staircase going through an under-construction Monorail Station. The Petitioners noticed that the construction of Monorail Station was adjacent to the front gate of their building. They feel that the staircase in particular poses an

enormous security risk and threatens their life and property. The gap between their building, Bhavya Height, and the under-construction Monorail staircase at the fourth level, a parking podium floor numbered P4, is less than two feet. The Petitioner's members obtained documents. They resolved to contest this construction, as they believed that due to the construction of such staircase it will not be possible for fire engines to move in the building compound, and the fire tenders' ladders, snorkels and booms would not reach the Bhavya Height refuge areas on the eighth and fifteenth floors. In an emergency, and especially a fire emergency, the Petitioner's members believed they would be at the receiving end and would pay with their lives.

8. The petition has been amended and what is brought on record by paragraph Nos. 7(a) to 7(d) needs reproduction:

“7(a) The Petitioner states that one of the members of the Petitioner Mr Vinod Chhajed had applied to the Respondent No. 1 to know whether they have obtained No Objection from the office of Mumbai Fire Brigade to construct Staircase so close to Bhavya Height Building without leaving mandatory open space between two

Buildings/Structures. That by their Reply letter dated 5.11.2015 the Respondent No. 1 informed that the Fire Brigade will give permission before the monorail system will be commissioned. That from their Reply it is clear that the Respondent No. 1 has not obtained permission for construction of Monorail Station near Bhavya Height Building and in the absence of such permission, the construction of monorail near Bhavya Height building is illegal. Therefore it is must and necessary in the interest of justice that this Hon'ble Court be pleased to direct the Mumbai Fire Brigade not to issue its permission in view of their objection raised in their complaint letter dated 1.10.2015. Copy of Letter dated 5.11.2015 of Respondent No. 1 is annexed hereto and marked as **Exhibit "C-1"**.

7(b) That even one of the members of the Petitioner Mr Vinod Chhajed has applied to the office of the Respondent No. 1 for getting the certified copy of Sanctioned Plan of Monorail Rail Station near Bhavya Height Building. That the office of Respondent No. 1 has supplied the copy of Plan, a copy whereof is annexed hereto and marked as **Exhibit C-2**. That the Secretary of the Petitioner has taken photographs of the construction of Monorail Station Staircase. Photographs of under construction Monorail Station Staircase are annexed hereto and marked as **Exhibit C-3 to C-9**.

7(c) The Petitioner states that on 28.01.2016 there was a fire took place in Rehab Building No. 1 of Bhavya Height Compound and there was no open space available for Fire Engines to come inside the Building Compound. That the Fire Officers were unable to come inside the Building and the neighbouring people have taken the Fire Extinguishers installed at Bhavya Height Building and ceased the fire. That due to very narrow open space around all the four sides of the Bhavya Height Building, the Fire Officers used to raise their hands to save the people in case of any untoward incident. Copy of Photograph taken by the Secretary of Petitioner is annexed hereto and marked as **Exhibit C-10.**

7(d) The Petitioner states that the Builder of the Petitioner has obtained NOC of Fire Officer for constructing the Bhavya Height Building in the year 2005. Thereafter the Respondent No. 1 has declared their intention to start construction of Monorail Project after the year 2007. That the actual construction of Monorail started in the year 2013 when the Chief Fire Officer was duty bound to object the construction of Monorail Station near Bhavya Height Building without leaving mandatory open space but no such objection raised hence the Petitioner is before this Hon'ble Court."

9. Attempts were made to approach MMRDA to request it to either stop the construction of the Monorail Station altogether or to shift the staircase at least to prevent any untoward incident. The allegedly dangerous nature of this construction has also been referred in the writ petition.

10. Pertinently, as paragraph 10 clearly shows, the Petitioners do not dispute that the developer, New Look Constructions Pvt Ltd, obtained a commencement certificate for construction of fourth podium level plus 10 upper floors of “C” wing of Bhavya Height building, but constructed more floors than the commencement certificate allowed. We will have something more to say on this aspect of the matter a little later. For the present, this illegality is why both MMRDA and the MMC had issued stop work notices to the developer. Though the Developer stopped *further* construction of “C” wing, it has not demolished the unauthorized construction of additional floors of “C” wing till date. Thus the issuance of the stop work notice has been admitted. The Developer has not denied

the receipt of these notices nor has it ever initiated any proceedings to challenge the same.

11. Mr Dhakephalkar and Mr Vaishnawa argue that it is not the Petitioners who have constructed the building nor is it the Petitioners who have obtained the requisite approvals and certificates of the statutory authority. The Petitioners are also not involved in the process of resisting this stop work notice. In our view, that is wholly irrelevant. It is the Petitioners who requested the statutory authority to take action in regard to the unauthorized construction. It is the Petitioners who approached the MMRDA. The Petitioners have also stated in the petition itself that this construction of additional floors beyond the Commencement Certificate is completely illegal.

12. However, the Petitioners claim that their building is a high-rise building of 22 floors surrounded by various buildings on all three sides and front side of the building is obstructed by the construction of the Monorail Station and its staircase. They allege that this is also constructed without following the law of mandatory

open space requirements between two huge buildings/structures. They say that more than 100 families presently residing in these buildings may suffer in the event of any emergency or accident.

13. The writ petition, therefore, contains several grounds including asserting that the Right to Life as guaranteed by Article 21 of the Constitution of India includes a right to survive and live in safe surroundings with all precautions and due care being taken to avoid accidents. The statutory obligation includes, according to the Petitioners, to construct even a public project in a way as would not endanger the life and safety of the occupants.

14. The Petition of this nature was presented to this Court on 15th October 2015. It was later amended, and then listed on various dates. Division Benches of this Court found a sufficient urgency requiring a response from the MMRDA. There were interventions as well. On 10th August 2016, a statement of the Petitioners' Senior Advocate to the effect that the Petitioners may be allowed to file an additional affidavit was recorded, and liberty was given to the

MMRDA to respond. The Mumbai Municipal Corporation also sought time to file its affidavits.

15. With the material that was placed on the file of this petition, it was heard on 29th August 2016 and the following order came to be passed:

“Heard learned counsel for the petitioner and the MMRDA as well as the applicant – intervener.

2. On perusal of the record, it is noted that the construction of the station in question commenced way back in 2012. Now the apprehension of the petitioner with regard to fire accident etc. not possible to be attended in case the proposed staircase is put up as shown in the photographs, is to be dealt with in the writ petition. As on today, the entire construction of the Monorail Station is completed and the structural construction of the staircase is completed. Unless the staircase is completed, the Monorail Station cannot be made functional. The matter has to be heard on merits.

3. According to the petitioner, there is alternative space where the staircase could be constructed. Since the matter has to be heard and disposed of on merits, having regard to the urgency to use the Monorail Station, we are of the opinion that the MMRDA has to be allowed to complete the

staircase, however the issue raised by the petitioner regarding exposure to danger to be faced by the petitioner in case of fire accident occurs on account of staircase, would be decided on merits and if the writ petition has to be allowed, MMRDA shall not claim any equity. The completion of the staircase and making it functional would be subject to the result of the writ petition.

4. So far as the intervener's application is concerned, it is noted that the petitioner is a cooperative society, the building of which was put up by the intervener. According to the submissions of the intervener, the petitioner's allotment was much prior to the very construction of the Monorail Station. The allegation seems to be that the mere permission to put up the building in which the members of the petitioner society are residing now is beyond the scope of the bye-laws of the Municipal Corporation/Building Rules. If submission were to be true, in light of the fact that if the building of the petitioner is put up beyond the procedure contemplated, by giving a sanction, ultimately Monorail Station and its staircase, which is very much within the bye-laws of the sanctioned plans, cannot be faulted with. If at all the building plan of the petitioner's building was beyond the scope of floor area ratio etc., then the builder is a proper and necessary party so as to appreciate the stand of the petitioner and MMRDA, and the legality of the building in which the members of the petitioner are residing at present.

5. In view of the above, we are of the opinion that the chamber summons taken out by the intervener deserves to be allowed. Accordingly the chamber summons is allowed. The petitioner shall carry out the amendment and serve copy of the amended writ petition to the respondents and the added respondent who shall file detailed affidavit within 2 weeks answering the allegations made by the additional respondent with an advance copy to the petitioner who shall file rejoinder, if any, within 2 weeks thereafter.

6. List the petition on 26th September 2016.”

16. We have reproduced this order because heavy reliance was placed on it on subsequent occasions. On 28th November 2016, the petition was allowed to be amended further. After this amendment, on 5th February 2018, the MMC was added as a Respondent. The Division Bench order of that date ordered a joint inspection, and this included the representatives of the Petitioners.

17. After this, further affidavits were directed to be filed.

18. The MMRDA was also expected to convene a meeting of its officials and experts in the field on the issue of a possible alternate location for the staircase.

19. On 9th March 2018, this Court was assured that the MMRDA is looking into this aspect. That order of 9th March 2018 also requires reproduction:

“The learned Counsel appearing for MMRDA submits that joint inspection was conducted earlier. The MMRDA is looking into possibility of alternative fire fighting measures to deal with the fire safety issues of petitioner society- Bhavya Height Coop. Hsg. Society Ltd.

2. The MMRDA is also ready to explore possibility of alternate solution. Learned Counsel appearing for petitioner submits that without getting fire safety survey, monorail station was erected. Learned Counsel appearing for MMRDA submitted that general NOC covering the subject site was obtained before the station was constructed for mono rail.

3. Learned Counsel appearing for petitioner then pray for staying the further project and commissioning of monorail. Learned Counsel appearing for MMRDA submits that on 12th March 2018 the MMRDA officials would visit by prior intimation notice to other stakeholders.

4. Stand over for two weeks.”

20. Throughout 2018, MMRDA, the builder and the Petitioners were involved in exchanging proposals for alternatives in terms of the orders of this Court.

21. On 9th July 2018, this Court was informed that a mock drill failed because the builder and developer and the Slum Rehabilitation Authority (“SRA”) did not cooperate. Then several possibilities were explored in order to provide space for fire engines to enter in the event of a fire. This Court was informed of such measures by filing affidavits and placing photographs. It has been recorded by this Court that a communication was also addressed by the MMRDA to the Chief Fire Officer dated 21st August 2018 for a mock drill. His suggestions thereafter were also noted. The matter was adjourned from time to time. When the same came to be listed before a Bench presided over by one of us (SC Dharmadhikari J) on 18th March 2019, it was stated that there was a No Objection Certificate issued by the Chief Fire Officer based on which an affidavit would be filed by the MMRDA to outline its measures. The Bench was told that

MMRDA is willing to assist the Petitioners in the event of an unforeseen or untoward incident or emergency in future.

22. With the above materials and the affidavit being filed of the MMRDA, the writ petition was posted today.

23. Mr Dhakephalkar, learned Senior Advocate, and Mr Vaishnawa appearing for the Petitioners would contend that the Petitioners have never objected to a public transport system such as the Monorail. They have not objected to the construction of the Monorail Station either. The Petitioners have never approved or much less connived and colluded with the developer in the various illegal and irregular activities at site. The Petitioners are not responsible if stop-work notices have been issued and it will be erroneous to assume that as beneficiaries of the illegal acts of the developer, the Petitioners have now turned around to blame the MMRDA and the MMC for their plight. The Petitioners have invited this situation, according to the Respondents, but Mr Dhakephalkar would argue that the Petitioners have never objected to the public bodies performing their statutory duties far from

obstructing them. All that they were suggesting is that if the staircase providing access to the station is located at a distance from the Bhavya Height building and which would provide access to the fire engines and emergency vehicles easily to that building, the interest of justice would be served. In other words, the public transport system and, specifically, this particular Monorail Station in place can be made fully functional without any hindrance from the Petitioners with just this limited staircase relocation. The present location of the Bhavya Height building and other similarly situate structures relative to the Monorail Station is such that in the event there is any fire or untoward incident, the distance between the Monorail Station and the buildings is so restricted that emergency services will be unable to assist or save residents. Some will pay with their lives. Therefore, a last-ditch effort is being made by the Petitioners so that the authorities can ensure the free access of emergency vehicles. The Petitioners seek nothing except the relocation of the staircase. The writ petition should not be viewed, therefore, as an attempt to protect the developer or cover up any of the illegalities at site.

24. There are affidavits which have been filed. We shall now firstly refer to an affidavit of the MMRDA. The first affidavit affirmed by Mr Madhukar R Kharat, Superintending Engineer of MMRDA, says that the writ petition of the Petitioners is not their remedy. If they are aggrieved by the illegal acts of the developer or they have suffered at the hands of the developer on account of his not taking the requisite steps in terms of the building regulations or DCRs then the developer can be sued in a competent Civil Court. Further, there being no cause of action against the 1st Respondent, the petition should be dismissed.

25. The question of mandatory open space being encroached by the construction of the Monorail Station staircase is an aspect dealt with in great detail in this affidavit. It is stated that the illegal construction by the developer and illegal use of recreation ground space is the principal cause for the narrowing of the space. On the other hand, the Monorail Project is an important public utility project undertaken after detail studies and substantial expense. It is stated that illegal construction on plot Nos. 298 and 299 to 306 was

carried out by New Look Constructions Pvt Ltd. On 19th July 2012, MMRDA instructed the developer to stop work. The Slum Rehabilitation Authority also issued a notice to the surveyor of the said developer to stop construction. Thus, the MMRDA, MMC and SRA objected to this construction activity. Only the SRA notice was responded to and it was pointed out that there is no mandatory open space left between the rehabilitation building and sale building. This was creating fire safety issues.

26. Then it is claimed that the construction of the Monorail Station staircase near the Petitioner society was commenced in January 2015 and completed in October 2015, that is prior to the filing of the petition. The matter was heard on 14th March 2016 and even thereafter but this Court was incorrectly informed that construction of the staircase was in progress. The Monorail alignment is along municipal roads. The MCGM has given its no-objection for this alignment. The alignment and location of Monorail is determined after studies and it was also made known to the public. It was finalized after objections and suggestions were

invited. The staircase to the stations are also on footpaths. Dadar (East) Monorail Station is on Katrak road with a 90-ft sanctioned road line. A Slum Rehabilitation Scheme is abutting the road and the staircase. The staircase is not blocking access. It is also stated that the fire brigade granted its No Objection Certificate to this project on 30th June 2011. Thus the project complies with all the legal formalities and requirements. The Petitioners have also blamed the SRA and the developer for having violated the mandatory requirement of open space. Thus, this affidavit projects that it is not the MMRDA which is responsible for the plight of the Petitioners or the situation in which they have landed themselves.

27. There is a further affidavit by this very officer and it says that the contract for construction of Monorail Project was awarded to Larsen & Toubro Limited and a consortium on 7th November 2008. The construction work for Dadar (East) Station commenced in March 2011 and the RCC work for construction of a link work, i.e., the staircase in question, commenced in January 2015. It is complete. It has cost Rs. 5.16 crores. Escalators have also been

placed at site. These escalators involve enormous expenditure in their laying and installation. A water tank is also in place. A full-fledged Monorail Station has thus been constructed after crores of rupees have been spent.

28. It is stated that the land required for the staircase is within the road widening line as per the plan submitted by MCGM to MMRDA. There were occupants within the road line. Newlook Constructions Pvt Ltd was carrying out an SRA project for rehabilitation of the occupants consisting of rehabilitation buildings and a free sale building. The construction of the building of the Petitioner is such that the staircase is located very close to it. That is how the developer on 23rd November 2011 communicated with the Monorail officials proposing a barrier between the staircase and the staircase construction. Further, the developer also did not hand over the setback area. A joint meeting was held on 16th December 2014 in which it is mentioned that the work of link-way (staircase) was under way. The construction of the staircase was thus a known fact to all concerned from 2011. That is complete. The prejudice, if any,

is not on account of the existence of this staircase but because of gross illegalities in the construction of the buildings by the developer. The whole theme in this affidavit is, therefore, that none of the provisions and particularly of the DCR have been violated by the MMRDA. On the other hand, there are written permissions and approvals in place.

29. We have also an affidavit which is filed by the 4th Respondent, the developer of Bhavya Height building. It says that it has constructed the building, sold flats in Wings “A” and “B” and obtained an Occupation Certificate. The 4th Respondent has also stated as to how the cooperative society came into existence. The Petitioner Society is represented by its Secretary. He and his wife purchased two flats in Bhavya Height on 18th November 2015, i.e. well after the filing of the petition. If the Secretary was concerned about the safety measures (or absence thereof), he would not have ventured to invest his hard-earned monies in these two flats. The developer denies of having made any construction contrary to the sanctioned and approved plans, DCRs or making such a

construction which has endangered allegedly the life and property of the occupants of these buildings. The entire affidavit provides a justification for the activity at site.

30. We have an affidavit of the Petitioners in Rejoinder. Pertinently in this affidavit there is no denial of the fact that stop work notices were issued and that the MMRDA had brought to the notice of other authorities that it has already commenced and completed the construction of the Monorail Station and its staircase. In fact, in paragraph 13 of this affidavit there are only denials. Pertinently the documents relied upon by the MMRDA so as to justify the construction made by it are not dealt with at all. It is reiterated that the construction at site violates mandatory open space requirements on all sides of the Petitioner building. No NOC of Fire Brigade is applied or obtained for the construction of Monorail staircase. The construction of the Monorail Station staircase does not leave mandatory open space between two constructions, and finally it is alleged that the construction on open

spaces is not in consonance with the provisions of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006.

31. We must at this stage itself comment that the Petitioners are mixing up issues. The violations of law committed by the developer are also projected, though we are not concerned with these. We must at once clarify that a writ cannot go to a developer from this Court to rectify or set right the alleged defects or deficiencies in the construction or to initiate and complete measures so as to fulfil the pre-requisites and pre-conditions stipulated in the Development Control Regulations. The Petitioners have distinct remedies open to them to address or remedy the illegalities in the construction activity or any acts of omission or commission on the part of the developer.

32. The writ petition essentially alleges that the MMRDA went ahead and not only erected a station but also constructed an access staircase in violation of the Development Control Regulations as also the planning laws, and in doing so, it made the surroundings highly unsafe for the occupants of the Bhavya Height building.

33. The fire protection measures have also been highlighted in this affidavit. The emphatic assertion is that the fire officers have not granted No Objection Certificate to the MMRDA for construction of Monorail Station staircase so close to the Petitioner's building and that is why this construction deserves to be shifted or should be directed to be shifted. However, we find that if there was a No Objection Certificate granted or there was even a prior written permission from the fire brigade to commence and carry out the construction of the Monorail Station staircase, when these certificates are never questioned in the pleadings nor is there anything which would enable us to reopen matters covered by these certificates, then, we fail to see what purpose is being served by filing such affidavits.

34. At the same time it is claimed that if the staircase is shifted to building No. 5, then the same situation will not arise since building No. 5 is not a high-rise building and it is only a seven floor building with no podium. We do not know what a high-rise building means or how it can legitimately be said that if a staircase is shifted away from

the Petitioner's construction and though it may then abut touch another building, that may not endanger human life at all. This perception is difficult to digest. For all we know, this rehab building construction by SRA to house eligible slum dwellers is the real stumbling block and perhaps what the Petitioners really seek in the garb of all this is a removal of the rehab building. That is why every possible statutory authority including MMRDA have been roped in.

35. This is how the relevant portions of the Affidavit of 27th September 2016 of the Petitioners read:

“I, Shri Ramakant Ramchandra Ghanate, the Hon. Secretary of the Petitioner above named do hereby state on solemn affirmation as under:

I say that I have been read over and explained to me the contents of the Affidavit in Reply dated 30.06.2016 served upon the Advocate for Petitioner on 20.07.2016 as well as Additional Affidavit in Reply dated 02.08.2016 served upon the Advocate for Petitioner on 02.08.2016 filed by Mr Madhukar R Kharat, Superintending Engineer of Respondent No. 1 and in rejoinder thereto I state as under:

1. I say that I have already affirmed an Affidavit in Rejoinder dated 01.08.2016 and served a copy thereof upon

the Respondent No. 1, however before I could file the said Rejoinder in the Registry of this Hon'ble Court on 02.08.2016 my Advocate was served with Additional Affidavit in Reply of the Respondent No. 1. Therefore I am filing this combined Affidavit in Rejoinder to deal with aforesaid two Replies filed by the Respondent No. 1.

3. "I say that it needs to be emphasized that the building wherein the members of Petitioner society are residing is a legally constructed building, constructed after receiving requisite permissions/sanctions from the Planning Authority. On the date of completion of the said building, the construction of Monorail station had not even begun. In fact it is pertinent to point out that the Occupation Certificate has been granted on 04.04.2012 and that on the said date also, no plans for construction of any monorail station was put up. Hereto annexed and marked as **Exhibit "A"** is a copy of the said O.C granted to the Petitioners building Bhavya Height. It was therefore incumbent upon the Respondents to construct the Monorail station having regard to the open spaces pertaining to the Petitioners building. There is an attempt in the Affidavit to confuse the challenge in the above Petition to Monorail station. The Petitioner does not oppose construction of Monorail station but only the staircase on one side of the Monorail station which obstructs Petitioners open space and exposes its members to many risks. The Petitioner states that the staircase can be shifted to another location in the same

direction and it will be possible to reuse the materials used for staircase in such an event. The Respondents have committed an illegality and it is their bounden duty to remove the same. The Respondents ought not to expect demolition of a legally constructed 22 floored building, which is fully occupied even before the commencement of construction of Monorail station.”

“4. I say that in order to demonstrate the situation at the site of the Petitioners’ building. I crave leave to refer to and rely upon the Photographs taken from the East, West, North and South side of the Petitioner’s building. Hereto annexed and marked as **Exhibits “B” to “F”** are the Photographs taken from all the sides of the petitioner’s building. I say that in the Photograph at Exhibit “B” taken from the West side of the Building i.e. the front side of the building, there is hardly any distance of about 5 to 6 feet from the Monorail Staircase and the podium of the Petitioner’s building. Hereto annexed and marked as **Exhibit “G” and “H”** are the Photographs suggesting alternate sites on the side, where the Staircase in question can be relocated. I say that if the Staircase is shifted to the place as shown in the Photographs, the same will be equally convenient to all for approaching the Monorail Station, and also as regards the safety of residents and accessibility to the fire Brigade in the event of a fire or a likely incident. It is further pertinent to note that, in the event of fire or any other like incident occurring in the building, the same will

have a cascading effect on the adjoining Monorail station and staircase and the commuters thereon, if the fire brigade is not able to access the Petitioners Building.”

“6. I say that after filing of the Petition, the Petitioner has engaged the services of a BMC Licensed Architect to prepare a Report about the threats of fire hazards at Petitioner’s Building due to construction of monorail station staircase and to understand the violation/s by the Respondents. Accordingly, the Licensed Architect has prepared a Report. That in the said Architect’s Report, it is opined that the Respondent No. 1 was bound to leave at least 6 meters open space as required by the Fire Department which is not maintained by the Respondent No. 1. That the Licensed Architect has thus opined that the Petitioners’ building is not safe in case of fire. Copy of Architect’s Report dated 1.8.2016 is annexed hereto and marked as **Exhibit “I”**.”

7. “That the present place of staircase i.e. towards the East of the monorail station in question is restricting the access of fire engines to the Petitioner’s society and the same can be critical to its members in case of emergency situations. I say that the only open space available outside the Petitioner’s building is towards its front and now construction of Monorail station staircase has blocked the said mandatory open space obstructing access of fire engines and in such an event it is impossible

for the Fire Engines to move into the compound of Petitioner's building. It is pertinent to note that **no other possible access is available on the remaining 3 sides of the Petitioners building, to reach the refuge floor thus, warranting immediate attention."**

"9. With reference to para 2 of the Reply, I say that very limited issue is involved in the present Petition which is whether the Respondents have violated the provisions of Development Control Regulations by not leaving mandatory open space while constructing the Monorail Station particularly the staircase near the building Bhavya Height. Therefore issue of law can be entertained by this Hon'ble Court under writ jurisdiction therefore there is need file suit for the said relief, hence I deny that there is alternative and efficacious remedy available with the Petitioner to file the suit against the Respondents. I deny that the Petitioner is guilty of laches and delay in not seeking relief when the construction was going on in front of their eyes. I say that the Petitioner's Society is registered on 26.5.2014 against which the concerned Developer M/s. Newlook Constitutions Pvt Ltd filed Appeal No. 75 of 2014 before the Ld. Divisional Joint Registrar, Co-operative Societies and by an order dated 21.8.2014 the registration of the Society was stayed. I say that the said Appeal was finally rejected on 4.9.2015 and stay on registration of the Society was vacated. I say that the active members of the Petitioner society were tied up dealing with various issues with the

Developer and once the society registration came through, immediately steps were taken to seek details under the Right to information Act, pertaining to the NOC (if any) given by the fire department. Thereafter immediately in October 2015 the present Petition came to be filed.”

“10. Therefore there is no delay on the part of the Petitioner to file the above Petition. I say that as stated above, till September 2015 the management of Bhavya Height Building was in the hands of the Developer, therefore the Petitioner could not take any steps against the upcoming staircase of Monorail station near the building Bhavya Height. I deny that the above Petition is liable to be rejected on any ground mentioned in the para reference. It is evident that the construction of the staircase in question commenced only in the year 2015 however, the plans for the Petitioners’ building were not put up the Petitioner society, though the same are approved and sanctioned by the authorities prior in time.”

“11. With reference to para 3 of the Reply, I say that the West side/front side of the Building is totally covered by the Monorail Station Staircase has encroached upon the only open space in front of the Petitioners building which is required to be shifted for the safety of residents of building Bhavya Height. I say that unless the Monorail Station Staircase is not removed, the Fire Engines can’t move in and move freely in the Building compound even to reach

the evacuees on the refuge which is hazardous to the safety of residents of Bhavya Height Building. The Petitioner's building has open space only on the front side and on the other three sides there is construction approved by Planning Authority, leaving no access to the fire brigades and the same is opined by the Fire Department by its letter dated 01/10/2015 annexed at page 53 of the Petition."

"16. With reference to para 9 of the Reply, I say that the Petitioner's building is a legally constructed building, built prior in time with proper permissions and sanctions and the whole building is occupied by the members of the Petitioner, who are not objecting any Public Utility Project however, encroachment upon the mandatory open space cannot be over looked putting at risk the lives of the residents of the Petitioner. Therefore priority ought to be given to the residents of the Building more so, when other there is an alternative available to the Respondent No. 1 to shift the staircase as suggested by the Petitioner."

"21. With reference to para 5 of the Additional Affidavit in Reply of the Respondent No. 1, I say that the Petitioner is diligently prosecuting the above Petition. I say that the Petitioner is only seeking its mandatory open space and access to the fire brigade to its satisfaction as and when and is therefore praying to shift the staircase from its current place to another location as suggested hereinabove."

"22. With reference to para 6 of the Additional Affidavit

in Reply of the Respondent No. 1, I say that so far as the meeting dated 16.12.2014 between MCGM, Respondent No. 1 and the Developer this concerned, the Petitioner is not aware of the same and even otherwise the Respondent cannot validly rely on the same to claim that the setback area of the building that was handed over by the Developer (was pursuant to the grant of Occupation Certificate dated 04.04.2012) after handing over possession of respective flats to all its members.”

“23. With reference to para 7 of the Additional Affidavit in Reply of the Respondent No. 1, I deny that the construction of staircase is with due NOC from MCGM especially from the fire point of view and the Respondent is put to strict proof thereof. I deny that the construction of staircase satisfies the requirements of Fire Authority. I say that the consent of the Developer which is otherwise illegal cannot be legalized now at the cost of risk of life to the residents of Petitioner’s building. I deny that it is not possible to alter the position of staircase. I say that while shifting the staircase, the Respondent No. 1 can reuse the materials from the under construction staircase.”

“24. I say that the Petitioner has filed the above Petition pointing out various violations of the provisions of DCR viz.

a) Not leaving mandatory open space on all the sides of Petitioner’s buildings.

b) No NOC from Fire Brigade is obtained for constructing Monorail Staircase.

c) The Construction of Staircase of Monorail Station does not leave mandatory open space between two constructions.

d) Construction and Open Spaces not in consonance with the provisions of the Maharashtra Fire Prevention and Life Safety Measure Act, 2006.

It is pertinent to point out the Regulation 43 of the Development Control Regulations for Greater Mumbai, which is as under:

“43. Fire Protection Requirements

(1) General – The planning design and construction of any building shall be such as to ensure safety from fire. For this purpose, unless otherwise specified in these Regulations, the provisions of part IV Fire Protection Chapter, National Building Code, shall apply. For multi-storied, high rise and special building, additional provisions relating to fire protection contained in Appendix VIII shall apply,-

(B)

(a) Building having height more than 24 m. upto 70 m., at least one side, accessible from road side, shall have clear open space of 9 m. at ground level.

Provided, however, if podium is proposed it shall not extend 3m. Beyond building line so as to have clear open space of 6m. Beyond podium.

Provided, further, where podium is accessible, to fire appliances by a ramp, then above restriction shall not apply.””

“25. I say that there is no mandatory open space left around Petitioner’s buildings as per the sanctioned Plan. I say that as per sanctioned plan, it was mandatory to leave open space of 6 meters on four sides of Petitioner’s Building. However, the mandatory open space on three sides of the Petitioner’s building was condoned keeping in view the open space left at front side of the Petitioner’s building, but now due to construction of Monorail staircase, the mandatory open space in front of Petitioner’s Building is consumed leaving no free open space left even for Fire Engines to come into the building compound in case of emergency. I say that I have taken photographs of open space left on the four sides of the Petitioner’s building to demonstrate the actual position at site. Copy of MMRDA’s Sanctioned Plan of the Monorail Station obtained under RTI is annexed hereto and marked as **Exhibit “J”**. I say that upon perusal of the Photographs annexed herewith and the said Plan at Exhibit – J, it is very clear that there is no mandatory open space left on any side of the Petitioners’ building.”

“26. With reference to para 8 & 9 of Affidavit dated

09.08.2016 of Respondent No. 1, I say that the concerned Fire Officers have visited the Building of the Petitioner and verified all the available accesses as claimed by the Respondent No. 1 in the para under reference and thereafter issued their Complaint Report dated 1.10.2015 which is annexed at Exhibit "C" to the Petition at Page No. 53. I say that the access and open space to the Bhavya Height Building is not sufficient to make free movement of Fire Engines around the Petitioners' building in case of emergency like fire etc. I say that Access 1 & Access 3 are directed towards the extreme of the podium and not near the main residential structures and those access are for ground level stilt Car parking area and not towards the residential structure and the same are very narrow for the fire engines to enter into the Petitioner's building. I say that from these accesses, it is not possible to reach to the refugee floors which are in the center of the building. I say that Fire Engines requires to move and turn while performing their rescue operations and this is not at all possible from the access points suggested by the Respondent No. 1. Therefore after inspecting this side of the Petitioner's building the Fire officers have made observation in their Report that it is highly objectionable to construct any structure in the compulsory open space which obstructs the access for the Fire Engines. I deny that any access as suggested by the Respondent No. 1 can be used for passing Fire Engines. I say that so far as access No. 4 is concerned, I say that access

is in the form of ramp which can be used for light motor vehicles only and use of such ramp by the Fire Engines as suggested by the Respondent No. 1 can lead to further danger to Fire Officers themselves as this ramp cannot tolerate the heavy weight of Fire Engines and the same is not built to carry weight beyond 48 tonnes. I say that the open to sky space between the Petitioners' building and the Monorail staircase is only about 1.5 meters as shown in the Photograph annexed hereto at Exhibit – B. I further say and submit that the original layout relied upon by the Respondent No. 1, is itself incorrect and violating the DCR.”

“28. With reference to para 12 & 13 of Affidavit dated 09.08.2016 of Respondent No. 1, I say that the Petitioner was not at all aware that the Monorail staircase will be constructed to such extent encroaching upon open space in front of the Petitioners' building thereby blocking the very access available to the Petitioner's building for the Fire Engines. I say that in case of fire hazard, there is no open space available for the Fire Engines to enter into the Petitioner's building to carry out rescue operations. I say that the Petitioner has practically realized the danger of monorail staircase once the fire took place abutting the Petitioner's building compound on 28.1.2016 when the Fire Officers raised their hands to carry out rescue operations due to non-availability of enough space to enter the Fire Engines into the Petitioners' Building. I say that not

providing a minimum space which makes room for the fire engine to access the Petitioners' building amounts to violation of the right to life and equality of the residents of the building, by not providing the same standard of safety to them which is available to residents of all other buildings.”

“29. With reference to para 14 of Affidavit dated 09.08.2016 of Respondent No. 1, I say that it appears that the Respondent NO. 2 SRA has condoned the requirements of mandatory open space on the assumption that at the front side of Petitioner's building, the Fire Engines can enter into the Petitioner's building, however after construction of Monorail staircase, the front side open space is completely blocked which will definitely threatens the life of residents of the Petitioner. I say that at one place the Developer has not left required open space and another place the Respondent No. 1 is going to block the only available open space/access to the Building by front side of the Building by constructing the Monorail Staircase.”

“30. With reference to para 15 of Affidavit dated 09.08.2016 of Respondent No. 1, I say that the Fire Brigade Officers have not granted NOC to the Respondent No. 1 for constructing Monorail Staircase so such close to the Petitioner's building and it is must and necessary in the interest of justice that this Hon'ble Court be pleased to direct the Respondent No. 3 i.e. Fire Brigade not issue such NOC to the Respondent No. 1 for commission of Monorail

Staircase at the present place unless the same is shifted to some other place. I say that the Exhibit : and M annexed to the Reply are not the final NOC therefore it is clear that the Respondent No.1 has not obtained NOC from the Fire Brigade for construction of Monorail Staircase near the Petitioner's building.”

“31. With reference to para 16 & 17 of Affidavit dated 09.08.2016 of Respondent No. 1, I say that Staircase is shifted to Building No. 5 then the same situation will not arise as the Building No. 5 is not a high rise building and only a 7 floor building with no podium. Therefore the present Staircase can be easily shifted to the suggested location. I therefore deny that the Staircase cannot be shifted. I say that after careful perusal of the Plan annexed to the Reply of Respondent No. 1 (Exhibit – J hereto), the Petitioner finds the Plan itself faulty which is not approved as per the Development Control regulations. Therefore such Plan is illegal and against the provisions of law. I deny that the position of staircase was known the occupants of the petitioner since from 2011 and the Respondent is put to strict proof thereof. I say that in fact the possession of respective flats was handed over to the residents only after May 2012 after obtaining the Occupation Certificate and the registration of the Society was confirmed only in September 2015. Therefore there is no delay in approaching this Hon'ble Court. I deny that the present Petition is time barred. I deny that the Petitioner has sufficient access for

fire engines.”

36. Annexed to this affidavit, at Exhibits “D”, “E” and “F”, are photographs of the neighbouring slum rehab buildings. They are said to be in very close proximity. We have not heard the Petitioners to make this fire-safety hazard complaint about these buildings or their proximity. The reason suggests itself. Under the SRA scheme, it is the construction of these rehab buildings, planned in such close proximity, that permitted the erection of Bhavya Height in the first place. In paragraphs 11 and 13 of an additional Affidavit dated 20th October 2018, the Petitioner alleges that ‘the only way’ to resolve the fire-safety hazard issue is to shift the staircase to the south. To this affidavit there are sketch plans annexed prepared by the Petitioner’s architects. These propose that the Monorail Station staircase be shifted to a point to the south, *directly in front of Rehab Building No.5*. In other words, it would prima facie seem that this is the classic NIMBY principle — Not In My Back Yard. For what the Petitioner seems to be suggesting is that it is perfectly all right if the lives of the residents of the seven-storey slum rehab building (all previously slum dwellers) are endangered by the same staircase, but

the Petitioner's members' interest must remain paramount. We cannot and do not countenance any such submission.

37. In the affidavit filed by the Municipal Corporation, it is asserted that the Katrak Road is a 90-ft sanctioned regular line road. An area of 681.80 sq mtr is affected in the sanctioned regular line of Katrak Road. At the request of MMRDA, the MMC has taken over part setback land on an as-is-where-is basis without recovering pro-rata charges from New Look Constructions and handed this land over to MMRDA for the Monorail Project. It has also highlighted the fact that the construction work of the SRA project was commenced by the developer in 2005 and completed in 2012. As per the sanction by the Chief Executive Officer of the SRA, the project's compulsory open space on North, South and West sides building was condoned and that on the East side i.e. Katrak road was changed from 1.06 to 1.5 mtrs. As per the demarcation by the Assistant Engineer (Survey) City, compulsory open space of 1.20 mtrs only was available on East side of the building. However, on the other three sides there is no open space for movement of fire

vehicle. The entry from the east side of building is obstructed due to construction of the staircase for the Monorail Station. The Deputy Chief Fire Officer, Mumbai Inspection Board has mentioned that the work of Mono Rail station is in progress in front of Bhavya Height building and hence can block access of the fire engines to the building in case of emergency. He has recommended that the open spaces around the building shall be checked by the Executive Engineers, SRA (City) and whether they are included in the plans sanctioned and whether the requirement of the Fire Brigade Department are complied. It is stated that it is highly objectionable to construct any structure in the compulsory open space which obstructs the access of the fire engine. At the same time, he has stated that the MMRDA has obtained a 'blanket' No Objection Certificate from the Chief Fire Officer, Mumbai for 17 Monorail Stations without submitting structural plans for individual station, which is issued in codified format. The MMRDA should have obtained a specific No Objection Certificate from the Chief Fire Officer for each individual station by submitting duly approved structural drawings. It is stated that the construction has been

carried out without sanction of the MCGM. The MMRDA has constructed Monorail stations at Shaikh Mistri Road, Kokadi Agar, Bhakti Park and Rafi Ahmed Kidwai Marg without sanction of MCGM.

38. We have perused this Affidavit carefully because it is on the strength of this Affidavit that the Petitioner bases its essential prayer for a direction to MMRDA to shift the staircase.

39. It is clear from the provisions of the law and particularly this Affidavit that the MCGM is not in a position to assert its status as the Planning Authority concerned. The MCGM concedes that though it is a planning authority, so is the Slum Rehabilitation Authority within the remit of its governing statute. The MCGM also concedes that MMRDA is a special planning authority under the Maharashtra Regional and Town Planning Act 1966. However, the expectation is that all these all planning authorities should work in tandem. But it seems that in this case they have acted in isolation.

40. To our mind, this itself clarifies that even if the MCGM feels that it has been sidelined, it will not be possible for us on the statements made in this Affidavit to issue the direction as prayed.

41. We have in fact on record a statement of the MMC that a provisional No Objection Certificate for the construction of wing 'A' and wing 'B' of Petitioner society was issued by Fire Department dated 13th August 2005 after receipt of plans from the Architect. The amended No Objection Certificate was issued on 10th August 2010 for construction of Wing 'A' 'B' and 'C'. Pertinently, the No Objection Certificate for part occupancy of Wing 'A' and 'B' was issued on 21st December 2011. Some complaints have been received by the MMC.

42. We do not think that all this would enable even the MMC to question the Monorail Project. If it was so clear in its mind about this project and its role as the planning authority, it ought to have also provided an explanation and a reasonable one as to why it has permitted construction activities in close proximity to the Monorail and Monorail Stations and staircases and took no action after it

noticed a construction of this magnitude. The construction activities throughout these areas was to the knowledge of the Municipal officials. The MCGM could not have been unaware of the Monorail Project. They did not have to wait for any complaints of the residents. They did not have to allow construction activities lock, stock and barrel across both sides of the station. They could have as a planning authority stop this building construction, for all such construction activities require approval and permission of the Municipal Corporation. Once one notices a public project and transportation measure of this magnitude, then, the expectation from the Fire Officer and the MMC is that it will take all precautions and care not to congest the area further. More buildings on both sides of the Monorail Stations or existing buildings being demolished and reconstructed on a larger scale, huge redevelopment projects being sanctioned are matters that the MCGM ought to have noticed and acted against. The MCGM cannot abdicate its duty as a planning authority. Therefore, no benefit can be derived from such a stand of the MMC.

43. Indeed, we strongly deprecate this approach of the MCGM's Fire Officer. His entire affidavit seems to us to be unacceptably partisan and one-sided. It does not take into account the very many illegalities alleged against the developer. It seems to assume that now that there is a structure, though perhaps illegal, the public project should be compromised. Further, as noted above, if the Fire Officer believed something was amiss or lacking in MMRDA's functioning or execution of the Monorail Project, we do not know what prevented him for taking action. His silence at the relevant time cannot be papered over by an abundance of eloquence in a private party's writ petition to which his body is a respondent.

44. On the other hand, in its Affidavits, the Petitioners claim that they are only setting out the 'true and correct facts'. We do not know what an untrue and incorrect fact might be. Either something is a fact, in which case it is true, or it is not a fact. But if the truth is that for years, people in this city have suffered from fire tragedies, and have had nobody to rescue them, and if the Petitioners claim to have known of this truth, then, we do not know why the representatives

of the Petitioner and its members purchased flats in this fire-hazard building in the first place. We are aware that occupancy certificate was obtained and we are aware that part occupation certificate was given to building No. 4 which is the subject building on 4th April 2012 but the only assertion is that the Monorail Project started after this, i.e. its staircase drawings are dated 25th April 2012. There is a confusion here. The Monorail Project was conceived much earlier. That the Monorail project was approved, cleared, sanctioned and the contractors and persons in charge of implementing and laying the project came on the scene later on is no ground to justify a construction activity at the instance of a private developer and sanctioned by a distinct authority, namely, the Slum Rehabilitation Authority. The construction activity was completed by MMRDA in 2015 and we do not see why, when the society was registered and the society office-bearers elected, they did not take any steps to prevail on either the authorities or the developer to comply with all the requirements and particularly with regard to the mandatory open space of 6 mtrs to be maintained. It is not correct to say that MMRDA violated the DC regulations by not providing open space.

There appears to be a clear confusion as to who has not left the mandatory open space at site or failed to maintain it. The allegations in that regard even in this Affidavit are overlapping.

45. It is in these circumstances that we do not think we should accede to the request made by the Petitioners before us.

46. In the final Affidavit that is filed by MMRDA it has stated that it has demarcated the open space area in front of this building as no parking zone for making space for fire trucks to enter. In fact, it has strengthened and paved the open spaces. It has also deployed security guards of Mumbai Monorail Project for monitoring the no parking zone below the Dadar (East) Monorail Station. It is proposing to install a CCTV camera for alerting the fire brigade and other authorities in the event of any untoward incident. It has made arrangements for monitoring illegal parking or setting up of pandals adjacent to or in the no-parking zones. It is continuously following up with the MCGM so that there is equipment in place in the event of any untoward incident.

47. We do not think that we can monitor the implementation of the safety measures conceived by MMRDA, and which are also provided in law. That the Monorail Station staircase alone endangers lives or the Petitioner's property is not a conclusion we think it is possible to reach. There are several other factors and reasons that have placed the Petitioners in the present position. It is not just because of the statutory authorities that they are facing the problems. It is not because of the statutory authority alone that there is a threat to their life and property. In fact such issues and disputes could never have been resolved in our limited jurisdiction. A genuine and bona fide endeavour was made by this Court throughout by seeking intervention of statutory authorities to put an end to this really private dispute, but it was not possible. In reality, it is the Cooperative Housing Society, registered at the request of the Builder and Developer, and the latter which are at loggerheads. It is they who are locked in the battle. The Petitioner is really seeking an adjudication of disputes with the Builder/Developer by means of this Petition.

48. After having perused the material on record in its entirety, we do not think that in writ jurisdiction we can grant the relief sought in the writ Petition. In writ jurisdiction we cannot demolish the contents of all statutory permissions, approvals and no objection certificates. We cannot go behind them either. This writ petition is not the remedy for the Petitioner's grievances. We do not think that in our limited jurisdiction mandatory orders and directions can be issued for there appears to be no pre-established or pre-existing legal right of the Petitioners and a corresponding public duty which can be enforced by a writ of mandamus. Further, a writ of mandamus is never issued for the asking. A writ of mandamus to be issued by a Court must take into consideration not just the alleged hardship or the grievance projected before it by one party. An overall view will have to be taken and public interest cannot be compromised and sacrificed while exercising the power to issue prerogative writs. We are aware of the limitations and restrictions on our power to issue prerogative writs.

49. In conclusion, we would only observe that there can be no question of any party claiming any form of equity if his or her case is rooted in illegality. If the developer violated plans, then the society is the beneficiary of that violation and illegality. It cannot turn that into a virtue. Public projects, public utilities and the needs of the city will always prevail over narrow individual rights. The city is not meant only for residents of high-rise buildings. The fire risk is at least in part of the developers' making, and the Petitioner and its members cannot benefit from that wrongdoing. If marginal open spaces were not maintained, if setbacks were not ceded, and if sanctioned plans were violated, then, the Petitioner must be held to have assumed all associated consequences and risks. We do not agree with Mr Dhakephalkar's submission that a later 'regularisation' provides an answer. That is a much larger debate, best left for another day, but we will state only briefly that the law is settled that an illegality is incurable. An illegality cannot be regularised. An illegality is not an irregularity.

50. In any case, the only remaining suggestion, viz., that the staircase must be shifted, is, in our view, facile, ill-informed, and without the slightest shred of legal basis. In saying this, the Petitioners forget that every aspect of a massive public transportation project, especially one as sophisticated as a monorail, is a highly technical and complex engineering exercise. The access staircase is not some step-ladder than can be rolled from this end to that end. The width, height and dimensions of the staircase are carefully computed and built to exacting specifications factoring, among other things, anticipated crowds. This is essential to prevent stampedes and other disasters — which, too, we have seen in this city precisely for want of such planning, and of which the Petitioners are careful to make no mention at all. Escalators, too, are far more than just rolling steps. Their width, length and height are carefully calibrated. Their dimensions affect the size of the receiving or alighting platforms, for as people alight from an escalator they are required to disperse at the end, and the number of persons on the escalator therefore dictates the platform width required for this dispersal. These are complex matters that do not lend themselves to

simplistic, superficial and perhaps even downright inane suggestions like this. This is apart from our questioning very seriously the bonafides of the suggestion that the staircase be moved south to a location where it will block fire tender access to the slum rehab buildings.

51. In the above circumstances, we find that no directions can be issued to the MMRDA over and above those already issued.

52. We would, by accepting the statements made in the Affidavit of 8th April 2019 of one Anurag R Kolte, Planner, MMRDA as undertakings given to this Court, dispose of this Writ Petition. No costs.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)