

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****NOTICE OF MOTION NO. 700 OF 2018****IN****SUIT NO. 95 OF 2014**

Ashwamedh Co-operative Housing	)	
Society Ltd.	)	
a co-operative housing society formed	)	
under The Maharashtra Co-operative	)	
Societies Act, 1960 having its address	)	
1/7, 110 Municipal Tenaments,	)	
D.G.Mahajani Path, Sewree (West),	)	
Mumbai 400 015	)	 Applicants
		(Org.Plaintiffs)

AND

Ashwamedh Co-operative Housing	)	
Society Ltd.	)	
a co-operative housing society formed	)	
under The Maharashtra Co-operative	)	
Societies Act, 1960 having its address	)	
1/7, 110 Municipal Tenaments,	)	
D.G.Mahajani Path, Sewree (West),	)	
Mumbai 400 015	)	 Plaintiffs

VERSUS

1. Municipal Corporation of Greater	)
Mumbai,	)
a body constituted under the provisions of)	
The Mumbai Municipal Corporation Act,)	
1888, having its address at Mahapalika	)
Marg, Mumbai – 400 001	)
 2. M/s. Om Sahil Solitaire,	)
a partnership firm having its address at	)
142, Atlanta Building, 1st Floor, Nariman	)

- Point, Mumbai – 400 021)**
- 3. Mr.Mukesh Bahadur of)**
M/s. Consultant Combined having his)
office at B-101, Manek Kunj Meghwadi,)
Dr.S.S.Rao Road, Lalbug, Parel,)
Mumbai 400 012)
- 4. Mr.Sunil R.Gawade,)**
Adult of Mumbai Indian Inhabitant,)
Occ Business, residing at 4/10, 110,)
Tenament New Municipal Vasahat,)
D.G.Mahajani Path, Sewree,)
Mumbai 400 015)
- 5. Mr.Kishore Kirkise,)**
Adult of Mumbai, Occ Service,)
residing at 4/8, 110,)
Tenament New Municipal Vasahat,)
D.G.Mahajani Path, Sewree,)
Mumbai 400 015)
- 6. The Collector of Mumbai City,)**
having its office at Old Custom House,)
Shahid Bhagat Singh Road, Fort,)
Mumbai 400 023)
- 7. State of Maharashtra,)**
through Under Secretary,)
Urban Development Department having)
its office at New Administrative Building,)
Mantralaya, Mumbai 400 031) **..... Defendants**

Mr. Birendrakumar Singh, Member of the Society and Mr.Sharadchandra Rane, Chairman for the Plaintiffs/Applicants in Notice of Motion appearing in person.

Mr.A.Y.Sakhare, Senior Advocate, a/w. Mr.Joel Carlos, Mr.Dadasaheb Shingade for the Defendant no.1.

Mr.G.R.Joshi, Senior Advocate, a/w. Mr.Aniruddha Joshi, Mr.Vishal Kanade, Mr.Atul Kshatriya, Mr.Ankur Kalal, Mr.Sushil Mishra, i/b. M/s.Markand Gandhi & CO. for the Defendant no.2.

Mr.Piyush Raheja, i/b. Mr.Yogendra Kanchan for the Defendant nos. 4 and 5.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 4th DECEMBER, 2018

PRONOUNCED ON : 15th JANUARY, 2019

JUDGMENT :

By this notice of motion, the plaintiff prays for an order of injunction against the defendant no.1 i.e. Municipal Corporation of Greater Mumbai and defendant no.2. i.e. M/s.Om Sahil Solitaire, their servants and agents or any of them from acting in furtherance with letter dated 23rd October,2015 and/or holding with any meting as contemplated in the letter dated 23rd October, 2015 and also seeking stay of the operation of the letter dated 23rd October,2015 or any letter which may have been issued by the defendant no.1 to the member of the plaintiff society for allotment of flat and handover the keys.

2. The plaintiff has filed this suit *inter alia* praying for a declaration that MOU dated 31st January,2006 in favour of the developer is validly terminated and is invalid, inoperative and/or not binding upon the plaintiffs, for declaration that the Standing Committee Resolution dated 8th August,2007, Improvement Committee Resolution dated 29th August,2007 and Municipal Corporation

Resolution dated 10th September, 2007 passed by the Standing Committee, Improvement Committee and by Municipal Corporation in respect of plot bearing C.S. No.444 (Part) (adjoining land) and not C.S. No.442(Part) (collector's land) in favour of the plaintiffs and appointing defendant no.2 as proposer/developer is invalid, illegal and inoperative and shall be quashed and set aside. The plaintiffs have also prayed for various other reliefs. Some of the relevant facts for the purpose of deciding this notice of motion are as under :-

3. On 19th November, 1919, the Government issued a notification for acquisition of 1868915 sq.yards Land for Bombay Improvement Trust including Sewri Wadala Scheme No.57 admeasuring 15862 sq.yards from C.S. No.441 and 6000 sq.yards from C.S. No.442. On 13th February, 1922, the Government Revenue Department passed a resolution to proceed with the blasting work in consultation with the Bombay Veterinary College.

4. On 20th March, 1922, the Bombay Improvement Trust requested the land acquisition officer to make an award and informed that the amount would be deposited. On 24th March, 1922, the land acquisition officer made an award. On 28th March, 1922, the possession of various plots including subject plot handed over to the Bombay Improvement Trust. On 10th December, 1943 the mutation entries were made in the name of the Bombay Improvement Trust.

5. It is the case of the plaintiffs that the said award was published for 21,862 sq.yards. The land acquisition officer made an award for

Rs.3,09,300/-. Sometime in the year 1943, the Superintendent of Land Record transferred the land bearing C.S. No.441 in the name of the defendant no.1. According to the plaintiffs, the area of C.S. No.441 and C.S. No.442 was admeasuring 16815 sq.yards plus 5752 sq.yards would be 22,567 sq.yards. The acquired land according to the land acquisition officer was 21862 sq.yards only. It is the case of the plaintiffs that the C.S. No.441 stood in the name of the defendant no.1 whereas C.S. No.442 stood in the name of the Collector of Mumbai City and thus both the lands i.e. land bearing C.S. No.441 and C.S. No.442 did not belong to the defendant no.1.

6. Sometime in the year 1950, the defendant no.1 constructed 110 tenaments at D.G.Mahajani Path, Sewree consisting 11 ground floor structures including 10 tenaments each for residential purpose and one structure with 10 tenaments for commercial purpose.

7. In the year 1975, the defendant no.1 constructed a multi storey structure consisting of ground floor plus four floors with 40 residential tenaments. 34 tenants residing at the said property shifted to the new building. The defendant no.1 also accommodated employees in the remaining structure in the year 1975. On or about 5th June, 1985, around 27 Municipal employees applied to the defendant no.1 for grant of land which was lying vacant then for the purposes of construction of residential accommodation under a redevelopment scheme.

8. On 5th July, 1985, the defendant no.1 allotted the plot of land to the said employees to implement redevelopment scheme and to

construct residential accommodation. It was one of the condition that if more tenaments were constructed, then the employees/tenants of the defendant no.1 ought to be accepted as members of the proposed society on priority basis.

9. On 18th April, 1986, the said employees formed a co-operative housing society known as 'Yuvak Co-operative Housing Society' and was registered on 18th April, 1986. The said allotment of land however was cancelled by the defendant no.1 on 3rd March,1992. On 28th January,1994, 64 residents of the 110 tenaments called a meeting for redevelopment on 30th January,1994 and formed another co-operative housing society named 'Ashwamedh Co-operative Housing Society' (proposed) and authorized the managing committee to take further steps in respect of the redevelopment.

10. On 25th April, 1994, the managing committee of the said proposed society entered into a MOU with Royal Developers. On 19th September, 1998 a proposal for redevelopment was forwarded to the defendant no.1 under regulation 33(9) of the Development Control Regulation. On 7th October,1999, the Annexure II came to be issued by the defendant no.1. On 25th October,2001, the defendant no.1 revoked the Annexure II dated 26th September, 2000 in view of the decision of the defendant no.1 to invite tenders.

11. It is the case of the plaintiffs that their members have been regularly paying the rent to the defendant no.1 in respect of their tenaments. On 1979, the tenants were given new flats admeasuring

450 sq.ft. carpet area in the building constructed on existing garden plot. 34 tenants have occupied the new flats.

12. On 29th October, 1999, the erstwhile managing committee of the plaintiff entered into an MOU with another developer Ashford Housing Pvt. Ltd. On 26th September, 2000, the defendant no.1 issued an amended NOC certificate to the plaintiffs. On 18th May, 2004, the developer Ashford Housing Pvt. Ltd. requested the defendant no.1 to reconsider its decision and allowed the plaintiffs to reconsider the proposal under regulation 33(9) of the Development Control Regulation. On 7th March, 2005, the developer Ashford Housing Pvt. Ltd. cancelled the second MOU and granted 'No objection' to the plaintiffs to appoint another developer.

13. On 9th December, 2005, the defendant no.1 issued modified Annexure II. On 22nd March, 2005, the defendant no.2 was appointed as the developer by the plaintiffs society to undertake to redevelop the scheme on the said property. On 5th October, 2005, the Yuvak Society signed an MOU with the defendant no.2 who was also appointed as a developer by the plaintiffs society for the purpose of redevelopment.

14. On 9th December, 2005 the defendant no.1 issued modified Annexure II. On 12th December, 2005, in a Special General Body meeting of the plaintiffs, it was agreed to execute MOU with the defendant no.2. It is the case of the plaintiffs that most of the members of the plaintiffs had signed the said MOU.

15. On 31st January, 2006, the plaintiffs and the defendant no.2 executed an MOU. It is the case of the defendant no.1 that in the said MOU an error had crept in relating to the land bearing CTS No.C.S. No.444 (Part) as the plaintiffs did not claim that they have any rights over C.S. No.444(Part) and therefore the inclusion in the said MOU clearly showed an error and the said land was inadvertently decided as land bearing of C.S. No.442(Part). On 7th December, 2006 an approval was granted by the Technical Scrutiny Committee.

16. On 12th December, 2006, in the draft letter signed by the Municipal Commissioner of the defendant no.1, on the first page, land bearing C.S. No.442(Part) was mentioned however in the tabulation, land bearing C.S. No.444(Part) was mentioned. The plan was put up before the Municipal Commissioner which clearly mentioned the land bearing C.S. No.442 (Part) however the note circulated thereafter erroneously included the land bearing C.S. No.444 (Part) with the erroneous number in the plan at S/213.

17. It is the case of the defendant no.1 that on 14th/15th February, 2007, the physical survey for demarcation by the Superintendent of Land Record for C.S. No.442 (Part) and 441(Part) was carried out which itself shows that inspite of the typographical error the demarcation plan clearly included C.S. No. 442 and not C.S. No.444. It is the case of the plaintiffs that on 5th July, 2007, about 20 members of the plaintiffs raised their objections before various authorities including the defendant no.1 with regard to the sanction granted on the basis of the alleged misleading statements and false representations.

18. On 26th August, 2007, the plaintiffs by their letter to the defendant no.4 requested him to consider the appointment of a lawyer to obtain his views and suggestions on the documents and ongoing progress of the redevelopment. It is the case of the plaintiffs that by letter dated 14th September,2007, the plaintiffs placed on record before the defendant no.1 various discrepancies in the process of redevelopment.

19. On 8th August,2007, the Standing Committee of the defendant no.1 accepted the proposal submitted by the plaintiffs to redevelop the property under consideration vide resolution no.625. The Improvement Committee approved the said proposal on 29th August,2007. The defendant no.1 approved the proposal vide resolution dated 10th September, 2007. On 14th September, 2007, few members of the plaintiffs made a suggestion that the scheme should not be developed under regulation no.33(9) of the Development Control Regulation.

20. On 21st September, 2007, the defendant no.1 issued a Letter of Intent to the plaintiffs upon various terms and conditions mentioned therein. In the said Letter of Intent, the defendant no.1 mentioned the plot bearing C.S. No.442(Part) and not C.S. No.444 (Part). On 1st March,2008, the Building and Proposal Department granted permission for construction of transit camp. On 30th March,2008, the earlier committee of the plaintiffs came to be dissolved. On 1st April, 2008, the plaintiffs society was registered. It is the case of the plaintiffs that

on 7th April,2008, the plaintiffs issued a termination notice to the defendant no.2 as the developer. The said notice was signed by 33 members of the plaintiffs. The services of the defendant no.2 as a developer and defendant no.3 as an architect came to be terminated by the said notice.

21. On 7th April, 2008, the plaintiffs through its advocates' informed the defendant no.1 and the other authorities about their resolutions and decisions taken at the General Body Meeting held on 30th March,2008 *inter alia* terminating the services of the defendant nos. 2 and 3. The defendant no.2 by letter dated 15th April,2008 opposed the termination of the agreement by the plaintiffs and contended that the said agreement as well as the power of attorney were valid and subsisting.

22. It is the case of the plaintiffs that on 2nd November, 2008, the previous managing committee of the plaintiffs called for a meeting wherein 44 members attended the said meeting and resolved to enhance the area from 483 sq.ft. carpet to 632 sq.ft. carpet. Based on the said resolution, on 26th November,2008, the plaintiffs addressed a letter to the defendant no.2 requesting to increase the carpet area of 150 sq.ft. and also to increase corpus fund. The defendant no.2 however refused to increase the area and to consider the increase in corpus fund by letter dated 4th December,2008. Two members of the plaintiffs filed the criminal complaint against the defendant nos. 4 and 5 (erstwhile managing committee members of the plaintiffs) and also against Mr.Jaywant Mahadew Kale.

23. On 17th April, 2008, the members of the plaintiffs filed a suit challenging the Letter of Intent and the permission granted by the defendant no.1 in respect of the transit camp (LC Suit No.878 of 2008). The interim reliefs prayed by the plaintiffs however were rejected. On 8th October,2008, the Superintendent of Land Record issued a demarcation plan.

24. It is the case of the plaintiffs that on 21st February, 2009, the defendant no.4 took complete control of the plaintiffs society and passed a resolution in a committee meeting approving the plan on land occupied by chawl nos. 4 and 5 (i.e. C.S. No.441(Part) and C.S. No.442(Part) and agreed to shift the tenants into the vacant rooms in Chawl nos. 6, 7, 8 and 9 (i.e. C.S. No.450(Part) and C.S. No.446 (Part)).

25. On 13th March,2009 the Estate Department of the defendant no.1 re-worked the area to be handed over to the defendant no.1 in view of the DILR survey and increased the area from 6921.89 sq.mt. to 7614.54 sq.mt. which DILR survey clearly showed that the same was the land bearing C.S. No.442(Part).

26. On 21st October,2009, the building proposal report layout stated that the DILR plan was used as the basis. On 5th November,2009, the Municipal Commissioner approved the layout on the basis of the demarcation of the plot done by the Superintendent Survey and Land Records. On 19th November, 2009, the layout came to be issued by the Building and Proposal Department and plans came to be sanctioned on

the same date. On 23rd November,2009, the IOD in respect of building no.1 i.e. for rehab building and building no.2 i.e. Municipal Staff Quarters came to be issued by the Building and Proposal Department.

27. On 25th November, 2009, the Building and Proposal Department issued IOD in respect of building no.3 (rehab) and building no.4 i.e. Municipal Staff Quarters. On 1st January,2010, the NOC to issue commencement certificate came to be issued. On 6th March,2010, the High Power Committee dismissed the challenge to the scheme under regulation 33(9) of the Development Control Regulation.

28. On 7th August,2011, the Suit No.878 of 2008 came to be dismissed as infructuous. On 16th October,2011, the elections of the managing committee of the plaintiffs came to be held. On 20th November, 2011, writ petition bearing no.505 of 2011 challenging the order passed by the High Power Committee came to be withdrawn by the plaintiffs. The said order passed by the High Power Committee attained finality.

29. On 8th November, 2011, the amended plans for rehab building no.1 came to be approved. On 6th January, 2012, the phase programme for construction of the building came to be approved. On 12th January,2012 the Deputy Chief Engineer Roads City demarcated the property bearing C.S. No.442 (Part) and not bearing C.S. No.444 (Part). On 16th January,2012, the plaintiffs terminated the development agreement with the defendant no.2. On 20th January,2012, the commencement certificate came to be issued by the defendant no.1

upto the plinth level of the rehab building. On 6th February, 2012, the plaintiffs admitted that it was not opposed to the redevelopment as long as the same was transparent and legal.

30. On 2nd March,2012, the Collector of Mumbai instructed the defendant no.1 and the defendant no.2 to pay the penalty for digging and to explain as to how the plot bearing C.S. No. 444 (Part) could be redeveloped. On 3rd March,2012, the defendant no.2 sought permission from the Collector to continue the digging activity on the plot. On 7th March,2012, the learned Collector granted permission to the defendant no.2 to continue the digging activity. On 15th March,2012 the defendant no.1 rejected the termination of MOU by the plaintiffs. The collector directed the defendant no.1 not to give any permission by letter dated 21st March,2012.

31. On 3rd April, 2012, the plaintiffs applied to the defendant no.1 to terminate the appointment of defendant no.3 architect and requested for appointment of a new architect. On 18th September, 2012, the further commencement certificate of the entire work of rehab building came to be issued by the defendant no.1. On 21st September, 2012, the defendant no.1 rejected the tendering process which was likely to be initiated by the plaintiffs and directed the plaintiffs to execute the tripartite agreement.

32. On 25th September, 2012, the defendant no.2 addressed a letter to the defendant no.1 to carry out rectification of error with regard to C.S. No.442(Part) which occurred in various approvals wherein wrong C.S.

No.444(Part) was mentioned instead of correct C.S. No.442(Part). On 5th October,2012, the Assistant Commissioner (Estate) addressed a letter to the Superintendent of Land Records requesting to register the name of the defendant no.1 in the property card of the plot bearing C.S. No.442 (Part) which was in the name of the Collector of Bombay though the said plot was in possession of the defendant no.1 since then and was acquired by the defendant no.1 in the year 1922 itself. On 18th December, 2012, the Superintendent of Land Records transferred the name of the defendant no.1 in the property card of the plot bearing C.S. No.442 (Part).

33. On 11th January,2013, the Assistant Commissioner (Estates) requested for preparation of draft letter to the Municipal Secretary to be presented to the Standing Committee of the defendant no.1 for carrying out rectification of the plot bearing C.S. No.442(Part) from C.S. No.444 (Part). On 19th March,2013, the Municipal Commissioner of the defendant no.1 addressed a letter to the Municipal Secretary seeking approval of the rectification of typographical error with regard to C.S. No.442 (Part) in place of C.S. No.444 (Part).

34. On 6th April, 2013 the Standing Committee of the defendant no.1 passed a resolution thereby approving the rectification of typographical error with regard to the C.S. No.442 (Part) in place of C.S. No.444 (Part). On 13th May, 2013, the Improvement Committee of the defendant no.1 passed a resolution thereby approving the rectification of typographical error with regard to the C.S. No.442 (Part) as against the wrong C.S. No. 444 (Part).

35. The defendant no.1 passed a resolution on 24th June, 2013 approving the resolution correcting the typographical error with C.S. No.442 (Part) as against the incorrect mentioned as C.S. No.444 (Part). On 5th July, 2013, the Assistant Commissioner (Estates) informed regarding rectification carried out in C.S. No.444 (Part) and corrected the said C.S. No.442 (Part). On 17th July, 2013, the petitioner withdrew the writ petition bearing no. 396 of 2013 challenging the redevelopment of the property in question.

36. On 3rd September, 2013, the Assistant Commissioner (Estates) addressed a letter to the Chairman of the plaintiffs giving clarification to various queries raised by the plaintiffs with reference to C.S. No. 442 (Part) and C.S. No.444 (Part). On 26th September, 2013, the Executing Engineer (BP) City – III informed that all the documents/permissions/approvals/plans/amendments/correspondence etc. relating to the project shall be read as C.S. No.442 (Part) instead of C.S. No.444 (Part).

37. On 24th December,2013, the plaintiffs society filed this suit. On 10th February, 2014, the learned Collector confirmed the ownership of the defendant no.1 in respect of the owner of the plot bearing C.S. No.442 (Part). On 7th March,2014 this court refused to grant any *ad-interim* relief in favour of the plaintiffs in Notice of Motion (L) No.302 of 2014. On 5th June, 2014, the Maharashtra Revenue Tribunal dismissed the appeal filed by the plaintiffs and confirmed the name of the defendant no.1 in the records. On 12th February, 2015, the

defendant no.3 applied for occupation certificate in respect of the rehab building no.1.

38. On 2nd March,2015, this court disposed of the Writ Petition No.10730 of 2014 filed by Mr.Birendra Jiledar Singh, a member of the plaintiffs society challenging the order dated 5th June, 2014 passed by the Maharashtra Revenue Tribunal rejecting the appeal filed by the said Mr.Birendra Jiledar Singh. In the said order, this court clarified that none of the orders made by the Revenue Authority, in the matter of mutation would either govern or influence the decision in the civil suit instituted by the plaintiffs and the said suit will be decided on its own merits and in accordance with law. This court observed that there was no case made out to interfere with the findings of fact rendered in the order passed by the Maharashtra Revenue Tribunal on the ground of either perversity or non-application of mind.

39. On 14th October,2015, the defendant no.1 issued occupation certificate for rehab building no.1. On 26th October,2015, the plaintiffs filed Notice of Motion (L) No.3027 of 2015 with the same averments as in the plaint. On 28th October,2015, this court refused to grant *ad-interim* relief in the said notice of motion. On 31st October,2015, the lottery was drawn by F/South Ward for all the 64 residential tenants. 38 tenants have already taken possession of their allotted flats in the newly constructed rehab building no.1, out of the 64 members who claimed to be the members of the plaintiffs society.

40. On 4th November, 2015, the Assistant Commissioner (F/South) addressed a letter to the remaining 26 tenants who had not taken possession of the tenements in the rehab building no.1 and called upon them to take possession of their respective allotted flats in the newly constructed rehab building no.1.

41. on 11th December, 2015, the defendant no.1 filed a detailed affidavit in reply in the notice of motion. On 12th January, 2016, the learned Collector filed a detailed affidavit in reply confirming that the collector or the State Government was not the owner of the land bearing C.S. No.442(Part) or C.S. No.444(Part). The said plot was acquired by the defendant no.1 and the possession was delivered to Bombay Improvement Trust and that the payment was already made.

42. Mr.Birendra Jiledar Singh appeared in person on behalf of the plaintiffs society relied upon the resolution passed by the plaintiffs society authorizing him to appear on behalf of the plaintiffs. He invited my attention to some of the documents referred to aforesaid and also tendered the written arguments.

43. It is submitted that land bearing C.S. No.442(Part) on which the redevelopment of the buildings is being carried out by the defendant no.2 did not belong to the defendant no.1 Corporation but belongs to the Collector of Bombay. He submits that the plan no. 56 dated 12th December, 2006 was submitted in respect of the land bearing C.S. No.444 which was presented with the draft letter to the Municipal

Secretary dated 13th July, 2007. The number 442 was over written as 444 in the said draft letter to the Municipal Secretary. On the plan no.56, garden was mentioned as godown. He submits that there was a mis-representation by the defendant no.1 and defendant no.2.

44. All three statutory committee resolutions indicates that the draft letters to the Municipal Secretary by the Municipal Commissioner mentioned plot bearing C.S. No.444 (Part) and not C.S. No.442 (Part) whereas the construction carried out by the defendant no.2 on behalf of the defendant no.1 was on plot bearing C.S. No.442 (Part). He submits that the Collector of Bombay rightly raised the objection against the Municipal Corporation for carrying out unauthorized construction of the plot bearing C.S. No.442 (Part).

45. It is submitted by Mr.Birendra Jiledar Singh that the mentioning of C.S. No.444 in place of C.S. No.442 in IOD and commencement certificate cannot be termed as an error. The defendant nos. 1, 2, 3 and 6 were fully aware and had prior knowledge of the property land bearing C.S. No.442 (Part) standing in the name of the Collector of Bombay. The entire construction thus carried out by the defendant no.2 on behalf of the defendant no.1 on the said plot bearing C.S. No.442 (Part) is totally unauthorized and illegal.

46. It is submitted that the defendant no.1 thereafter could not have carried out any corrections in the various records and the permission granted for carrying out the construction of plot bearing C.S. No.444 (Part) by correcting it to C.S. No.442 (Part). It is submitted that inspite

of the order passed by the Collector of Bombay in the month of September 2012, the defendant no.1 authorizedly issued commencement certificate beyond plinth level in gross violation of the order passed by the Collector of Bombay. He submits that the defendants have thus committed illegality and fraud upon the plaintiffs society and its members relating to plot bearing C.S. No.442 (Part).

47. It is submitted that admittedly the plot bearing C.S. No.442 was standing in the name of the Collector of Bombay till December 2012 and the mutation entry no.426 was undertaken by the Collector's Office which was the subject matter of the Writ Petition No.10730 of 2014. This court had already clarified in the order dated 2nd March, 2015 that the said mutation entry no. 426 of 2012 in favour of the defendant no.1 in respect of land bearing C.S. No.442 was not determinative of title to the suit properties and the suit would be decided on its own merits and in accordance with law.

48. It is submitted that the defendant nos. 1 and 2 cannot rely upon the said mutation entry illegally entered in the name of the defendant no.1 in respect of C.S. No. 442 (Part).

49. It is submitted by the plaintiffs that the defendant no.1 could not have implemented the scheme under regulation 33(9) of the Development Control Regulation, 1991 instead of regulation 33(7) of the Development Control Regulation. He submits that the structures were constructed in the year 1950 and under regulation 33(7) of the Development Control Regulation are classified as 'B' Category Cessed

building under section 84 of the MHADA Act. The implementation of the scheme under regulation 33(9) by the defendant nos. 1 and 2 is thus *ex-facie* illegal and contrary to the provisions of Development Control Regulations. If the development would have been carried out under regulation 33(7) of the Development Control Regulation, the plaintiffs as well as defendant no.1 would have been benefited largely under various notifications issued by the State Government.

50. It is submitted that the members of the plaintiffs society would have been benefited of the larger FSI available under the provisions of regulation 33(7) of the Development Control Regulation. He submits that the scheme of the defendant no.1 in getting 52% of the FSI is not viable. He submits that the additional FSI sanctioned under regulation 33(9) is approximately worth Rs.650 crores. The claim of the defendant no.1 that it is getting FSI 55% is an afterthought. The defendant no.2 was required to pay approximately Rs.9.73 crores for 67% surplus area of 7155 sq.mtrs. to the defendant no.1 under regulation 33(7).

51. It is submitted that the defendant no.1 has suppressed various crucial facts from the Urban Development Department, from State of Maharashtra and more particularly to the effect that the plot bearing C.S. No.442 belong to the Collector of Bombay and not the defendant no.1 and fraudulently obtained concession for buildable reserve plot for calculation of FSI under Development Control Regulation 33(9) which otherwise was feasible under Development Control Regulation 33(7). He submits that prior to July 2011, the plaintiffs were

deregistered during the period 2009 and 2011. During the said period, the plaintiff society was managed by the defendant nos. 4 and 5 as ex-chief promoter and ex secretary. The defendant nos. 4 and 5 entered into MOU dated 21st January, 2006 on behalf of the tenants/members with the defendant no.2 under regulation 33(9) which was being implemented illegally.

52. It is submitted that the defendant no.3 architect along with defendant no.4 i.e. ex-chief promoter played fraud upon the tenants/members by fraudulently submitting the scheme under regulation 33(9) instead of regulation 33(7) on behalf of the tenants/members. The defendant no.2 admittedly paid the requisite amount of penalty to the Collector of Bombay on 3rd March, 2012. He submits that defendant no.2 illegally continued the construction on the plot bearing C.S. No.442 (Part) inspite of the order passed by the Collector of Bombay. The commencement certificate issued by the defendant no.1 continued to be extended illegally inspite of the objection raised by the Collector of Bombay.

53. Mr. Birendra Singh on behalf of the plaintiffs submits that there is no post of I/C. of Collector Mumbai City and thus the affidavit filed by Mr. Ashok Nagurao Karanjkar strongly relied upon by the defendants cannot be considered which is purportedly filed by the Collector of Mumbai City. He submits that in the said affidavit purportedly filed, there are several contradictions.

54. Mr.Sakhare, learned senior counsel for the defendant no.1 Corporation placed reliance on a circular issued by the defendant no.1 and would submit that in view of the remaining members of the plaintiffs society not having shifted to the rehab building no.1 illegally, they being not co-operating with the defendant no.1 in carrying out construction of the balance portion of the land have lost their right of the rehabilitation in the rehab building and thus will have to be shifted to some other tenaments other than the rehab building. He invited my attention to several documents annexed to the plaint, various affidavits filed by the parties and also the compilation of documents and would submit that Mr.Birendra Singh who illegally represented the plaintiffs society have filed several frivolous proceedings in this court relating to the subject matter of the dispute.

55. Insofar as the so called ownership of the Collector of Mumbai City in respect of C.S. No.442(Part) is concerned, learned senior counsel invited my attention to the order passed by this court from time to time and submits that pursuant to the order passed by this court, the Collector of Mumbai City has already filed an affidavit dated 12th January,2016 admitting that the plot bearing C.S. No.442 (Part) is in possession of the defendant no.1 previously known as Bombay Improvement Trust since year 1922 and has been collecting rent from the tenants since the year 1950. He submits that the learned Collector has admitted that the property card was showing the name of the Collector of Bombay as the owner and at the same time in column no.11 of the property card clearly showed that the said plot was under

acquisition by the defendant no.1 under the City Improvement Trust Act IV of 1898. An award was made on 24th March,1922 whereas the compensation was payable to the Collector of Bombay. The possession of the property was taken over on 28th March,1922 by the Land Acquisition Officer. The property has been already transferred in the name of the defendant no.1.

56. It is submitted by the learned senior counsel that in the said affidavit filed by the Collector of Mumbai City, it is clearly admitted that the cadestral survey no.442 of the Parel Sewri Division is not owned by the Collector/State Government and the same is owned and possessed by the defendant no.1. It is admitted in the said affidavit that the title and possession of the said land was duly handed over to the Mumbai Improvement Trust pursuant to the acquisition award under the relevant provisions of the said Land Acquisition Act. The record also reflects that there was an endorsement of payment of the entire consideration amount of Rs.3,09,300/- paid to the Collector by two cheques. The said property has vested in the defendant no.1.

57. Insofar as the complaint made by the plaintiffs to the Collector of Mumbai City is concerned, it is stated in the said affidavit in reply that the letters dated 2nd March 2012, 3rd March 2012 and 7th March 2012 relating to the digging on the property for the purpose of carrying on the construction not relating to the ownership of the land bearing C.S. No.442 of Parel Sewri Division. The said issue is already closed by the office of the Collector of Mumbai City. Learned senior counsel invited my attention to paragraph (13) of the said affidavit and would

submit that the learned Collector has categorically admitted that the Collector, Mumbai City is not the owner of the land bearing C.S. No.442 and has further admitted that the mutation entry has been rightly entered in the name of the defendant no.1.

58. It is submitted that the objection raised by the plaintiffs that the defendant no.1 is not the owner of the C.S. No.442 is *ex-facie* false and without any basis. The members of the plaintiffs are claiming to be the tenants of the defendant no.1 in respect of the said building constructed on the said plot bearing C.S. No.442(Part) and at the same time contrary thereto are disputing the ownership of the defendant no.1 in respect of the said land on which the said building is constructed. The suit itself is likely to be dismissed on this ground. The plaintiffs cannot be allowed to challenge the title of the lessor and at the same time claiming tenancy in respect thereof.

59. Learned senior counsel invited my attention to the affidavit in reply filed by the defendant no.1 in this notice of motion and in earlier proceedings and would submit that the rehabilitation building is constructed on the plot bearing C.S. No.442 (Part). The land bearing 3893 sq.mt. is used for the construction of the rehab building comprising of residential and commercial premises. The occupation certificate has been already granted by the defendant no.1 in respect of the said building. 64 flats are constructed to rehabilitate the members of the plaintiffs. Out of those 64 members/occupants, 38 members/occupants have already occupied respective tenaments in the rehab building no.1 and the remaining 26 tenaments are under lock and

key. He submits that though the members of the plaintiffs were occupying the tenaments admeasuring about 220 sq.ft., each of the member/occupant has been allotted the tenament admeasuring 483 sq.ft. carpet area.

60. It is submitted by the learned senior counsel that the defendant no.1 will get about 15918 sq.mtr. for the construction of 144 staff quarters. The defendant no.2 would get 10584.76 sq.mtrs. towards the sale component. He submits that the existing building which is occupied by about 26 members/occupants of the plaintiff no.1 not having been vacated, the defendant no.1 is not able to construct the building and to allot the flat for the staff quarters. The rights of the staff members of the defendant no.1 are seriously prejudiced in view of the unreasonable and non co-operative attitude of the remaining 26 members/occupants of the building.

61. Insofar as the issue as to whether the proposal for redevelopment could be considered only under regulation 33(7) of the Development Control Regulation and not regulation 33(9) is concerned, learned senior counsel submits that on 8th January, 1999, the proposal for regulation 33(7) submitted by the earlier managing committee of the plaintiffs was already rejected. The defendant no.1 was asked to submit a proposal under regulation 33(9). The plaintiffs did not challenge the said decision on the proposal under regulation 33(7) of the Development Control Regulation at any point of time. He submits that more than 70% of the occupiers have applied for redevelopment of the regulation 33(9) of the Development Control Regulations. During

the period between 2006 and 2012, none of the members of the plaintiffs raised any objection. The resolutions passed by the plaintiffs society to submit a proposal under regulation 33(9) and for carrying out redevelopment of the building has not been challenged by any of the member of the plaintiffs society under section 91 of the Maharashtra Co-operative Societies Act, 1960 or otherwise. He submits that the building on plot bearing no.442 was constructed by the defendant no.1 in the year 1950.

62. It is submitted that the said building was partly given on tenancy basis by the defendant no.1. The dispute in respect of the ownership has been illegally raised by the plaintiffs for the first time in the year 2013. The rent in respect of some of the tenaments occupied by the members/occupants of the plaintiffs have been paid to the defendant no.1. He submits that since the defendant no.1 noticed the mistake in mentioning plot no.444 (Part) instead of 442 (Part) in various letters addressed by the Municipal Commissioner to the Municipal Secretary for seeking approval of the Standing Committee, those mistakes were corrected by passing fresh resolution in the Standing Committee meeting. The plans were also accordingly corrected. The defendant no.1 has already granted sanction in respect of the sanction plan by incorporating the C.S. No.442 (Part) in place of 444 (Part).

63. It is submitted that the construction has been already carried out by the defendant no.2 on behalf of the defendant no.1 as per the revised sanction plan. The name of the defendant no.1 is already recorded in the property card in respect of land bearing C.S. No.442 (Part). The

Collector of Bombay City has not challenged the mutation entry and on the other hand has admitted the ownership of the defendant no.1 in respect of the said plot bearing C.S. No.442 (Part). The defendant no.1 is not at all concerned with the plot bearing C.S. No.444 (Part). He submits that the plaintiffs are dishonestly taking advantage of the inadvertent error in various proposals submitted by the Municipal Commissioner for obtaining permission from the Standing Committee and in the plan submitted by the defendant no.2.

64. It is not the case of the plaintiffs that the defendant no.1 has carried out the construction of plot bearing C.S. No.444 (Part). He submits that on 28th January,2012, the commencement certificate was already issued. On 14th October,2015, the occupation certificate in respect of the rehab building no.1 is already granted. 38 members of the plaintiffs participated in the lottery drawn by the defendant no.1 on 31st October,2015 and have already shifted to the rehab building.

65. Mr.Joshi, learned senior counsel for the defendant no.2 submits that 26 members of the plaintiffs society who claims to be the tenants of the defendant no.1 cannot be allowed to challenge the title of the defendant no.1 landlord. The condition of the various tenements of the chawl is very dilapidated. He strongly placed reliance on some of the photographs produced before this court. He submits that Mr.Birendra Singh who claims to have an authority to represent the plaintiffs society has no locus to represent the plaintiffs society. There are about 20 litigations filed either by Mr.Birendra Singh or by the plaintiffs most of which are already dismissed.

66. Learned senior counsel also placed reliance on the affidavit in reply filed by the Collector of Mumbai City clarifying that the ownership in respect of the land of C.S. No.442 (Part) vest in the defendant no.1 and not the Collector. Learned senior counsel strongly placed reliance on section 116 of the Evidence Act in support of the submission that the plaintiffs are estopped from challenging the ownership of the landlord. He submits that the plaintiffs have filed a suit and not a public interest litigation. Learned senior counsel also placed reliance on section 111(9) of the Transfer of Property Act, 1882 which provides for forfeiture of lease if the tenant challenges the title of the landlord.

67. Learned senior counsel invited my attention to prayer clause (c) of the plaint and would submit that there is no prayer sought by the plaintiffs for a declaration that the Collector of Mumbai City is the owner of the land bearing C.S. No.442 (Part). During the period between 1922 to 2012, merely because the defendant no.1 did not take steps to change the mutation entry, the defendant no.1 does not cease to be the owner of the land. The notices issued by the learned Collector of Mumbai were for payment of royalty. He strongly placed reliance on section 48(7) of the Maharashtra Land Revenue Code. He submits that the plot bearing C.S. No.444 is a separate plot of land which is already developed and there is no scope of carrying out any construction on the said land. The plea raised by the plaintiffs that the defendant no.1 had submitted a proposal of plot bearing C.S. No.444 (Part) and not 442 (Part) is totally dishonest and without application of

mind.

68. Learned senior counsel for the defendant no.2 filed a compilation of documents and submits that the defendant no.1 has already rectified its mistake. There was misdescription of the properties in various permissions sought for by the defendant no.1 and the plan sanctioned by the defendant no.1.

69. It is submitted by the learned senior counsel that the provisions of regulation 33(7) of the Development Control Regulation did not apply to the buildings in question. He submits that the buildings were constructed much prior to 1940. The defendant no.1 being the owner of the land chose to seek the benefit of the provisions of the Development Control Regulations which are more beneficial to the defendant no.1 being the owner. Since 1999, the defendant no.1 had chosen to carry out redevelopment under regulation 33(9). On 15th April, 1997, the proposal of the plaintiffs society under regulation 33(7) was already rejected. Almost all the members of the plaintiffs had proposed re-development under regulation 33(9) and not 33(7).

70. Learned senior counsel placed reliance on the area statement showing the area available to the defendant no.2. This court had passed a detailed order rejecting the *ad-interim* relief claimed by the plaintiffs. Before the Division Bench of this court, the defendant no.1 however made a statement not to carry out redevelopment during the pendency of this notice of motion. He submits that Mr.Birendra Singh is a shop keeper and has vested interest in obstructing the

redevelopment of the building for the benefit of not only the staff members of the defendant no.1 but also for the benefit of the members of the plaintiffs society.

71. Mr.Piyush Raheja, learned counsel for the defendant no.4 submits that all the members of the plaintiffs society have been paying rent to the defendant no.1 since the defendant no.1 is the landlord and the owner of the land and the building. He invited my attention to the prayer clauses (b) and (c) of the plaint and various averments filed by the affidavits filed by the defendant no.4 denying the allegations made by the plaintiffs.

72. Mr.Singh representing the plaintiffs in rejoinder submits that for carrying out construction under regulation 33(9), all the terms and conditions of the said provisions have to be complied with by the parties seeking the benefit of the said provisions and there is no question of defendant no.1 having any choice to avail of the said scheme. He submits that the affidavit of the defendant no.4 in Notice of Motion (L) No.302 of 2014 has been suppressed from the plaintiffs by the defendant no.4. He invited my attention to the Appendix 3 of the Development Control Regulations and would submit that w.e.f. 25th January, 1999, the provisions of regulation 33(7) of the Development Control Regulations became applicable to the plaintiffs. He placed reliance on the Memorandum of Understanding annexed at Ex.F to the plaint.

73. It is submitted by Mr.Birendra Singh that the defendant no.1 has been threatening the plaintiffs of shifting the remaining members of the plaintiffs to some other premises if the members of the plaintiffs pursue their proceedings filed against the defendant no.1 and defendant no.2. He submits that this court thus shall grant the reliefs as prayed in the notice of motion and shall not permit the defendant nos. 1 and 2 to remove the remaining members of the plaintiffs from their tenaments which are in their possession either to the rehab building no.1 or to any other building.

REASONS AND CONCLUSIONS

74. During the course of the arguments, the plaintiffs society led a great emphasis on the issue that all the permissions granted by the defendant no.1 for carrying out construction were in respect of the land bearing C.S. No. 444 (Part) and not 442 (Part) and thus the entire construction carried out by the defendant no.1 through defendant no.2 was totally illegal and unauthorized. This court thus shall first deal with this crucial submission made by the plaintiffs.

75. It is not in dispute that pursuant to the order passed by this court, the Collector of Mumbai City through an authorized representative has filed an affidavit in reply before this court on 12th January,2016 in this notice of motion. The representatives of the plaintiffs as well as the learned counsel appearing for the defendants invited my attention to a large number of documents annexed to the plaint, affidavit in reply and

also the compilation of documents on this issue in support of their rival contentions.

76. A perusal of the record clearly indicates that on 19th November, 1919, the State Government issued a notification for acquisition of 1868915 sq.yards Land for Bombay Improvement Trust including Sewri Wadala Scheme No.57 i.e. 15862 sq.yards from C.S. No.441 and 6000 sq.yards from C.S. No.442. It is not in dispute that on 24th March, 1922, the land acquisition officer made an award pursuant to the said acquisition proceedings initiated by the State Government. On 28th March, 1922, the possession of various plots including the subject plot handed over to the Bombay Improvement Trust. The land acquisition officer made an award for Rs.3,09,300/-. The record further indicates that the said compensation amount was duly paid by the Bombay Improvement Trust for acquiring the said plot of land. However, the name of the Collector of Bombay continued in the property card in respect of both the lands i.e. C.S. No.441 and C.S. No.442 though the land bearing C.S. No.442 (Part) was already acquired by the Bombay Improvement Trust and the possession thereof was already handed over to the defendant no.1, previously known as Bombay Improvement Trust.

77. It is also not in dispute that the defendant no.1 thereafter constructed various tenaments for the residential and commercial purposes. In the year 1975, the defendant no.1 had constructed a structure consisting of ground floor plus four floors with 40 residential tenaments. The defendant no.1 had also accommodated some of its

employees in the said building.

78. The employees of the defendant no.1 formed a co-operative housing society which was registered on 18th April, 1986. The plaintiffs society was subsequently formed which authorized the managing committee to take further steps in respect of the redevelopment. The erstwhile managing committee of the plaintiffs also entered into a MOU with a developer. The defendant no.1 issued an modified Annexure II on 9th December, 2005. In the MOU dated 31st January, 2006 between the plaintiffs and the defendant no.2, inadvertently the land bearing C.S. No.444(Part) was described instead of 442 (Part) on which various tenaments constructed in the said building were occupied.

79. The said inadvertent error continued in various documents such as draft letter signed by the Municipal Commissioner of the defendant no.1 to the Municipal Secretary for seeking approval of the Standing Committee of the defendant no.1 on the said proposal for redevelopment of plot no. 442 (Part) and also in the then plan submitted by the defendant no.2 for redevelopment. The said inadvertent error continued in the permission granted by the defendant no.1 for carrying out construction, commencement certificate and also Letter of Intent. Based on the complaint filed by the plaintiffs to the Collector of Mumbai, the Collector of Mumbai also initiated an action against the defendant no.1 and defendant no.2 according to the plaintiffs.

80. On 19th November, 2009, a layout came to be issued by the Building and Proposal Department and also the sanctioned plans for carrying out redevelopment. The IOD in respect of building no.1 i.e. for rehab building and building no.2 i.e. Municipal Staff Quarters came to be issued by the Building and Proposal Department of the defendant no.1. On 1st January,2010, the NOC came to be issued for issuance of the commencement certificate.

81. On 8th November, 2011, the amended plans for rehab building no.1 came to be approved. On 6th January, 2012, the phase programme for construction of the building came to be approved. On 12th January,2012 the Deputy Chief Engineer Roads City demarcated the property in respect of the property bearing C.S. No.442 (Part) and not bearing C.S. No.444 (Part). On 6th February, 2012, the plaintiffs admitted that it was not opposed to the redevelopment as long as the same is transparent and legal.

82. A perusal of the record further indicates that when this inadvertent error came to the notice of the defendant no.2, the defendant no.2 addressed a letter dated 25th September, 2012 to the defendant no.1 to carry out rectification of error with regard to C.S. No.442(Part) occurred in various approvals and inadvertently mentioned as C.S. No.444(Part). The Assistant Commissioner (Estate) accordingly addressed a letter dated 5th October,2012 to the Superintendent of Land Records requesting to register the name of the defendant no.1 in the property card of the plot bearing C.S. No.442

(Part) which was continued in the name of the Collector of Bombay though the said plot was acquired by the defendant no.1 since then and was in its possession. On 18th December, 2012, the Superintendent Survey and Land Records transferred the name of the defendant no.1 in the property card of the plot bearing C.S. No.442 (Part).

83. A perusal of the record further indicates that the Assistant Commissioner (Estate) thereafter requested the Municipal Commissioner to sent a draft letter to the Municipal Secretary for seeking approval of the Standing Committee of the defendant no.1 for carrying out rectification of the plot bearing C.S. No.442 (Part) from C.S. No.444 (Part) in all the records and approvals. Accordingly, the Municipal Commissioner submitted a fresh draft letter to the Municipal Secretary on 19th March,2013 for seeking approval of the Standing Committee of the defendant no.1. It is not in dispute that the Standing Committee of the defendant no.1 thereafter passed a resolution on 6th April, 2013 approving the rectification of typographical error with regard to the C.S. No.442 (Part) in place of C.S. No.444 (Part). The Improvement Committee of the defendant no.1 passed a separate resolution on 13th May, 2013 in this regard. The defendant no.1 also passed a separate resolution on 24th June, 2013 approving the resolution correcting the typographical error with respect to C.S. No.442 (Part). On 26th September, 2013, the the Executing Engineer (BP) City – III informed that all the documents/permissions/approvals/plans/amendments/correspondence etc. relating to the project shall be read as C.S. No.442 (Part) instead of C.S. No.444 (Part).

84. It is not in dispute that the said description of the land bearing C.S. No. 444 (Part) mentioned in all the permission and approval for carrying out construction of 442 (Part) came to be corrected in all the records and the rehab building no.1 is already constructed on Part of C.S. No.442 (Part).

85. The plaintiffs while arguing this notice of motion through Mr.Birendra Singh has admitted before this court that the land bearing no. 444 (Part) was independent plot and was fully developed. There was no scope of the redevelopment on the said plot when the sanction was granted by the defendant no.1 for carrying out redevelopment. As far as the submission of the plaintiffs that the said plot bearing C.S. No.442 (Part) did not belong to the defendant no.1 but belong to the Collector of Mumbai is concerned, pursuant to an order passed by this court, the Collector of Mumbai filed an affidavit before this court on 12th January,2016.

86. A perusal of the said affidavit filed by Mr.Ashok Nagurao Karanjkar, I/C. Of Collector of Mumbai City dated 12th January,2016 clearly indicates the following admitted position :-

- (a) The plot bearing C.S. No.442 (Part) is in possession of the defendant no.1 since 1922 previously known as Bombay Improvement Trust. The defendant no.1 has been collecting the rent from the tenants since the year 1950. The property card was however showing the name

of the Collector of Mumbai City as the owner of the plot. However, in column no.11 of the property card, it was clearly shown that the said plot was under acquisition by the defendant no.1 under the City Improvement Trust Act IV of 1898 for Wadala Sewree Scheme no.57. The land acquisition award came to be made on 24th March,1922 declaring that the compensation was payable to the Collector of Bombay for acquisition of the said land in question. The property has been now transferred in the name of the defendant no.1.

(b) The land bearing C.S. No.442 of Parel Sewri Division is not owned by the Collector but is owned and possessed by the defendant no.1. A copy of the land acquisition award has been annexed to the affidavit filed on behalf of the Collector of Mumbai.

(c) The title vests in the defendant no.1 pursuant to the acquisition award. There is an endorsement of receipt of payment of entire consideration of amount of Rs.3,09,300/- to the Collector vide two cheques on the record. A proof of such payment is also annexed to the said affidavit.

(d) Though initially the property card did not reflect the name of the defendant no.1, the name of the defendant no.1 is mutated in the property card on 5th October,2012

pursuant to the application made by the defendant no.1. The Collector of Bombay re-verified the relevant record after receiving the complaint from Mr.Birendra Singh on 14th November,2013 and by an order dated 10th February, 2014 has re-affirmed that the said property is rightly mutated in the name of the defendant no.1. The Collector has no claim over the said property bearing no. C.S.No.442 of Parel Sewri Division.

(e) The letters dated 2nd March, 2012 and 3rd March,2012 issued by the Collector of Mumbai and the order dated 7th March,2012 relating to the digging on the property for the purpose of carrying on the construction were not related to the ownership of the land bearing C.S. No.442 of Parel Sewri Division. The permission from the office of the Collector was required for carrying out any excavation/digging. The said notice was issued to the Collector based on the complaint received from the plaintiffs, for payment of royalty and penalty. The said issue is already closed insofar as the office of the Collector is concerned. The said order passed by the learned Collector did not relate to the title of the land bearing C.S. No.442.

(f) The plaintiffs were informed by the Collector by order dated 10th February, 2014 that the mutation was correctly done on the basis of the documents in the name

of the defendant no.1.

(g) The Collector is not the owner of the land bearing C.S. No.442. The mutation entries are rightly entered by the concerned officer.

87. In view of the affidavit filed by the Collector of Mumbai and on perusing the documents annexed to the said affidavit and the other documents placed on record by the parties, it is clear that the submission of the plaintiffs that the land bearing C.S. No.442 (Part) belongs to the Collector of Mumbai and not the defendant no.1 is totally frivolous and is also dishonest.

88. The plaintiffs have admitted before this court during the course of the arguments that the plot bearing C.S.No. 444 (Part) is already developed and there is no scope of any further redevelopment on the said plot. The plaintiffs have also admitted that a large number of members of the plaintiffs society have already shifted to the rehab building no.1 constructed by the defendant no.1 through defendant no.2. The plaintiffs have also not disputed that the members of the plaintiffs were claiming to be tenants of the defendant no.1 in respect of various tenements and have paid rent to the defendant no.1 in respect of those tenements occupied by them.

89. The plaintiffs have also not disputed that the contents of the affidavit dated 12th January,2016 filed by the Collector of Mumbai or the documents annexed to the said affidavit and thus it does not lie in

the mouth of the plaintiffs to allege that the permission to carry out construction was granted by the defendant no.1 was granted in respect of the plot bearing C.S. No.444 (Part) and not C.S. No.442 (Part). The plaintiffs have not challenged the action of the defendant no.1 in carrying out rectification of the order and permission granted correcting the said inadvertent error in respect of the mis-description of the land. The stand taken by the plaintiffs that the permission was granted in respect of the land bearing C.S. No.444 (Part) and thus the entire construction plot bearing C.S. No.442 (Part) is thoroughly misconceived and dishonest.

90. Be that as it may, in view of section 116 of the Indian Evidence Act, 1872, the members of the plaintiffs society claiming tenancy in respect of the tenements occupied by them and having accepted the defendant no.1 as their landlord cannot challenge the title of the landlord in respect of the said tenement. The consequence of such challenge of the title of the defendant no.1 by the members of the plaintiffs would also clearly attract section 111 (9) of the Transfer of Property Act, 1882.

91. A perusal of the plaint clearly indicates that the plaintiffs have not applied for a declaration that the Collector of Mumbai is the owner of the land bearing C.S. No. 442 (Part) and not the defendant no.1. In my view, merely because the name of the Collector of Mumbai continued in the property card inspite of the said land bearing C.S. No.442 (Part) having acquired by the defendant no.1, the defendant no.1 does not cease to be the owner of the land in question.

92. I am thus not inclined to accept the submission made by the plaintiffs that the Collector of Mumbai had initiated an action against the defendant no.1 or defendant no.2 for carrying out any alleged unauthorized construction of the land allegedly belonging to the Collector of Mumbai. The Collector of Mumbai has clarified this position in great detail in the affidavit filed before this court that the said action was initiated not in respect of any title dispute but was initiated for not seeking permission of the Collector for carrying out any excavation/digging activities on the plot.

93. Insofar as the submission of the plaintiffs that the redevelopment on the plot was not permissible under regulation 33(9) of the Development Control Regulation and could be carried out, if any, only under regulation 33(7) is concerned, the plaintiffs could not dispute before this court that the proposal for carrying out redevelopment under regulation 33(7) submitted by the earlier managing committee of the plaintiffs was already rejected as far back as on 8th January, 1999. The plaintiffs did not challenge the said decision on the proposal under regulation 33(7) of the Development Control Regulation at any point of time. The plaintiffs have also not disputed that more than 70% of the occupants of the building in question had applied for redevelopment of the building under regulation 33(9) of the Development Control Regulation. During the period between 2000 and 2012, none of the plaintiffs raised any objection in this regard. The plaintiffs society itself has submitted a proposal subsequently under regulation 33(9) for carrying out redevelopment of the building.

The said resolution has not been challenged by any of the member of the plaintiffs society under section 91 of the Maharashtra Co-operative Societies Act, 1960.

94. I am not inclined to accept the submission of the plaintiffs that the Appendix 3 of the Development Control Regulation was applicable to the defendant no.1 or that w.e.f.25th January, 1999, the provisions of regulation 33(7) of the Development Control Regulation became applicable to the plaintiffs. I am inclined to accept the submission made by Mr.Sakhare, learned senior counsel for the defendant no.1, Mr.G. R.Joshi, learned senior counsel for the defendant no.2 and Mr.Raheja, learned counsel appearing for the defendant nos. 4 and 5 that the regulation 33(7) was not attracted to the facts of this case. The defendant no.1 has already explained in great detail the benefit occurred to the defendant no.1 and the members of the plaintiffs society due to the defendant no.1 carrying out the construction under regulation 33(9) of the Development Control Regulation.

95. The plaintiffs have not disputed before this court that out of 64 members/occupants who were the members of the plaintiffs society, 38 members/occupants have already occupied their respective tenaments in the rehab building no.1. The remaining 26 tenaments are under lock and key of the remaining members/occupants who have not vacated those tenaments and have not shifted to the rehab building inspite of the notices issued by the defendant no.1. The defendant no.1 is required to demolish the existing building in which the remaining 26 members/occupants have not vacated the tenaments so far. A separate

building is required to be constructed by the defendant no.1 for the employees of the defendant no.1 and for other purposes. The remaining members of the plaintiffs have deliberately not handed over the vacant possession of their respective tenaments to the defendant no.1 on one or the other frivolous grounds.

96. Insofar as the circular issued by the defendant no.1 relied upon by Mr.Sakhare, learned senior counsel for the defendant no.1 in support of his submission that the non co-operative members are required to be shifted to some other accommodation and not in the rehab building is concerned, it is for the defendant no.1 to decide and take proper steps if it proposes against the non co-operating members of the plaintiffs society under the said circular or under any provisions of law. In my view, the other members/occupants of the building construction of land bearing C.S. No.442 (Part) cannot be allowed to continue to occupy the said building any more.

97. It is not in dispute that the members of the plaintiffs who occupied the tenaments admeasuring about 220 sq.ft., each of the member/occupant has been allotted the tenament admeasuring 483 sq.ft. carpet area. The representative of the plaintiffs who argued this matter did not dispute that even today, most of the members of the plaintiffs have been paying rent in respect of the tenaments in their occupation to the defendant no.1 only.

98. In my view there is no substance in the submission of the plaintiffs that the defendant no.1 has been threatening the plaintiffs of

shifting the remaining members of the plaintiffs to some other premises on the ground that the members of the plaintiffs are pursuing these proceedings against the defendant nos.1 and 2. As already directed aforesaid, it is for the defendant no.1 to decide to take any appropriate steps against the non co-operating members of the plaintiffs under the said circular referred to and relied upon by the defendant no.1 or under any other provisions of law or not. There is no bar against the defendant no.1 from initiating any such action if such circular is applicable. In my view the reliance placed by the defendant no.1 on such circular during the course of the arguments cannot be considered as any threat allegedly issued by the defendant no.1 against the non co-operating members of the plaintiffs society.

99. Insofar as the submission of Mr.Birendra Singh that the affidavit in reply dated 12th January,2016 filed by Mr.Ashok Nagurao Karanjkar cannot be considered by this court as the said affidavit is not filed by the Collector of Mumbai is concerned, in my view this contention of the plaintiffs is totally baseless. The Collector of Mumbai is impleaded as one of the defendants to the proceedings. The said affidavit is filed by the In-charge of Collector of Mumbai City who was empowered to file such affidavit through the Assistant Government Pleader on behalf of the Collector of Mumbai. Even otherwise the documents annexed to the said affidavit clearly demonstrates what is stated in the affidavit.

100. A perusal of the record further indicates that the plaintiffs have been in habit of filing frivolous proceedings in respect of the subject matter of the land on one or the other ground which tactics is strongly

deprecated by this court.

101. In my view, the plaintiffs have not made out any *prima facie* case for grant of any relief. The balance of convenience is in favour of the defendant no.1 and defendant no.2 and not in favour of the plaintiffs. If the non co-operating members of the plaintiffs are granted any relief as prayed in the notice of motion, there would be great hardship and serious prejudice to the defendant nos.1 and 2 and other allottees who are allotted the flats in the proposed building to be constructed on the plot bearing C.S. No.442 (Part).

102. In my view, Notice of Motion No.700 of 2018 filed by the plaintiffs is thoroughly misconceived and is a gross abuse of law. I, therefore, pass the following order :-

- (a) Notice of Motion No.700 of 2018 is dismissed.
- (b) There shall be no order as to costs.

(R.D.DHANUKA, J.)

At this stage, the representative of the plaintiffs seek continuation of protection granted by the Division Bench of this court for larger period. In view of the protection granted by the Division Bench of this court for a period of 15 days, I am not inclined to exceed this request of the plaintiffs.

(R.D.DHANUKA, J.)