

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

WRIT PETITION NO. 341 OF 2019

Prabhakar Vitthal Parab and Anr.	}	Petitioners
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.V.P.Patil with Ms.Archana Gaikwad
i/b.Mr.Dhairyasheel Sutar for the petitioners.

Ms.Jyoti Chavan-AGP for State.

Mr.Girish Uttangale with Mr.Kunal Chheda and
Mr.Pushkar Mishra i/b. M/s.Utangale and Co. for
respondent no.2 (MHADA).

Mr.Anoop Patil for respondent nos. 3 and 5 (SRA).

Ms.K.H.Mastakar for respondent no.4 (MCGM).

Mr.Prasad Dhakephalkar-Senior Advocate with
Mr.Simil Purohit, Mr.Hemang Raithatta and
Mr.Shrikant Seergarla i/b. M/s.RMG Law Associates
for respondent no.7.

Mr.E.K.Sasidharan for respondent no.8.

Mr.Rohan Kharat-Supdt. Engineer (SRA), Mr.Anis
Khan-Assistant Engineer (SRA), Mr.Sujendra V.
Arvikar-AE (DP) and Mr.Suyash C. Balip-SE (DP) from
'K' Ward present in court.

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

DATED :- JANUARY 29, 2020

P.C. :-

1. We have heard both sides.

2. This writ petition under Article 226 of the Constitution of India challenges the Letter of Intent (LOI) dated 20th May, 2013, copy of which is at Exhibit 'C', the revised LOI dated 25th May, 2016, copy of which is at Exhibit 'M' and all permissions granted in pursuance thereto. The second prayer is to direct respondent no.3 to hold an inquiry in the complaint made by the petitioners and take appropriate action in accordance with law against respondent nos. 6 and 7.

3. A similar prayer is made (prayer clause 'c') so as to hold an inquiry in terms of the Maharashtra Co-operative Societies Act, 1960 against respondent no.6. Prayer clauses (d) and (e) are interim prayers.

4. The writ petition is filed on 3rd July, 2018. The petitioners before this court are Indian citizens. They are declared to be eligible slum dwellers as far as plots bearing City Survey Nos. 160/A/1 (Pt.) of village Majas and 368/3 (Pt.) of village Mogra at Andheri (East) Mumbai 400 093.

5. The case of the petitioners is that the plot admeasures 3762.3 square meters. The plot/ property is owned by respondent

nos. 2 and 4. The first respondent is the State, through the Secretary, Department of Housing and the third respondent is the Slum Rehabilitation Authority (SRA). The second respondent is the Chief Executive Officer, Maharashtra Housing and Area Development Authority (MHADA) and the fourth respondent is the Municipal Corporation of Greater Mumbai (MCGM). The fifth respondent is the Assistant Registrar (SRA) empowered by the Maharashtra Co-operative Societies Act, 1960 and the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The sixth respondent is Co-operative Housing Society of the slum dwellers, whereas, the seventh respondent is the Builder and Developer, who has been engaged by the sixth respondent to develop the property and construct housing accommodation free of cost for eligible slum dwellers. The SRA has issued the subject LOI in favour of this Builder and Developer.

6. It is stated that two persons, namely, Pradeep Narayan Gavas and Chandrakant Shankar Killedar proclaimed themselves to be Promoters and took initiative for development of the property along with respondent no.7. The petitioners complains that without any valid consent and procedure in accordance with law being followed, the managing committee of respondent no. 6

(proposed society) was formed. The Promoters have not obtained valid consent from the members, no meetings were conducted, but such a committee was formed in the year 2009. The illegalities committed by these Promoters led to a complaint to the fifth respondent on 25th September, 2012. The slum dwellers alleged that the property is being developed so as to induct ineligible persons. However, the LOI was issued on 20th May, 2013 by the concerned authority (respondent no.3). This LOI is obtained by fraud and misrepresentation.

7. The petitioners were directed to approach the High Power Committee with regard to their complaint and grievance. However, the fifth respondent informed the slum dwellers that since they have not approached the High Power Committee, the stay granted to further meetings of the Society was vacated.

8. It is alleged that the committee members, taking advantage of illiteracy of the slum dwellers, obtained their signatures on blank papers and used them as consent letters. Thus, fabricated and bogus consent letters enabled respondent nos. 6 and 7 to obtain the LOI. The allegation is that all documents in relation to the project should have been meticulously and carefully scrutinised. However, the list of eligible slum dwellers have been prepared on the basis of fabricated documents.

9. The petitioners then point out as to how the ineligible persons have been introduced in the scheme and rely upon the letters dated 17th and 18th April, 2013. However, they say that even after the LOIs were issued, complaints were made to the SRA, no cognizance has been taken. Therefore, there is a collusion and finally, what is alleged is that the competent authority undertook the process of determining the eligibility, but the relevant and germane documents have not been referred to in that regard. It is stated that the basic and fundamental papers and documents are not available, still, some other persons have been declared as eligible and those eligible are excluded. Therefore, Annexure-II was questioned by the petitioners.

10. It is in these circumstances that in the petition the allegation is that the complaint was only partially redressed. However, those who are excluded filed appeals before the Additional Collector and did not make the petitioners party thereto. The 44 ineligible persons have been excluded and once they are found to be ineligible, the consent will not be to the extent or tune of 70%. Therefore, the LOI is also questioned and later on, it is alleged that there were representations made against the proposal to include the ineligible persons. It is alleged that the LOI, instead of being cancelled, was revised in the meanwhile.

11. Now, the petitioners project the other grievance and that is in relation to non-obtaining of No Objection Certificate (NOC) from respondent nos. 2 and 4. They also say that the property falls within the restricted zone. It is in close proximity of the airport. Therefore, the NOC from the Airport Authority of India is necessary. Further, the NOC issued by this authority restricts the height. In these circumstances, compliance will have to be made with the conditions of this NOC.

12. The petitioners also point out that the Builder and Developer has not obtained NOC from the Fire Brigade. The main contention revolves around the allegation that the City Survey Officer, Andheri informed the petitioners on 22nd August, 2017 that in the Development Plan, the property is reserved for welfare centre, school and playground. Hence, it will not be possible to construct residential building, particularly high rise structure on such a plot. Once this reservation is taken into consideration, then, according to the petitioners, no construction activity, other than developing the property for setting up a welfare centre, school and playground, is permitted. The reservation of playground means the plot will have to be kept open to sky. However, there is a collusion and connivance between the respondents resulting in a permission or approval for construction being granted. It is,

therefore, prayed that the property and the reservation thereon should be protected. More so, bearing in mind the serious allegations.

13. This petition was placed before a Division Bench of this court. The Division Bench of this court has, on 2nd August, 2018, passed the following order:-

“1. On perusal of the original record, produced by the learned AGP from the office of City Survey, Andheri, it appears that there is reservation prescribed in CTS No.368/3 for the purposes of Welfare Centre, Secondary School and a Play Ground for an area to the extent 2897.4 sq. mt. The scheme approved by the SRA is inclusive of the aforesaid property. Learned counsel appearing for the SRA as well as Respondent No. 7-Builder contends that the reservation prescribed is not in respect of whole of CTS No. 368/3. However, part of the property is being used for development of the scheme. The fact, however, remains that there is no provision of Secondary School, Welfare Centre and a Play Ground in the scheme proposed by the SRA. In view of this, we direct the Respondents not to proceed further with the development until further orders.

2. Learned AGP appearing for Respondent No. 1 State assures to file reply within two weeks. Issue notice to Respondents R/o. 23rd August, 2018. Learned AGP waives notice for Respondent No. 1. Learned counsel Mr. Chetan Mhatre waives notice for Respondent No. 2; learned counsel Mr. Anoop Patil waives notice for Respondent Nos. 3 and 5; learned advocate Ms. Tupti Puranik waives notice for Respondent No. 4 MCGM; learned counsel Mr. Jayesh Vyas waives notice for Respondent No. 7.

3. The Respondent No. 4 Corporation as well as Respondent Nos. 3 and 5 (SRA) to file their reply within two weeks and serve copies thereof on the otherside well in advance.

S. O. to 23rd August, 2018.”

14. This order has continued till date. The learned Assistant Government Pleader filed an affidavit in reply, which was taken on

record on 6th December, 2018. The petition was also amended so as to add applicant to the chamber summons as respondent no. 8 to the petition. After the matter was mentioned before us, on account of the ad-interim order dated 2nd August, 2018, we listed it on board.

15. We have heard Mr.V.P.Patil appearing for the petitioners and the learned advocates appearing for the respective respondents, including Mr.Dhakephalkar learned senior counsel appearing for respondent no.7. We have also heard the learned advocate appearing for respondent no.6.

16. Mr.Patil would submit that the petitioners have made serious allegation of fraud and misrepresentation. The petitioners have also alleged collusion and connivance between the statutory authorities and the Builder and Developer. The argument of Mr.Patil is that if the entire plot is reserved in the Development Plan for a public purpose, then, consistent with the reservation, the property could not have been allowed to be developed for rehabilitating the slum dwellers. Even if slum pockets have been created, ultimately, these are illegal occupants. For their benefit and alleged protection the public at large should not suffer. The public at large would be deprived of the amenities such as welfare centre, school and playground. Merely because the plot is

encroached by slum dwellers and they cannot be removed therefrom, the owners of the plot could not have allowed the same to be developed by a Builder and Developer. The Builder and Developer is developing the plot for commercial gains. The complaints of petitioners were entertained for some time, they were also investigated, but, ultimately, all prohibitory orders have been vacated. The poor petitioners had nowhere to go and that is why the order passed on 2nd August, 2018 should be continued.

17. Our attention is invited by Mr.Patil to the other aspect of the matter, namely, lack of NOCs. Mr.Patil submits that assuming without admitting that the Slum Rehabilitation Scheme is legal and valid, there is a LOI (initial and revised), the same contains terms and conditions. All the terms and conditions have to be complied with. The conditions have been accepted by the Builder and Developer and the Co-operative Housing Society. They have to comply with these terms and conditions and if the NOCs are not obtained from the Airport Authority of India so as to abide by the height restriction and the Fire Brigade, all the developments thereon would be contrary to law. A NOC from MHADA also has not been obtained. Our attention has been invited to the terms and conditions in this regard.

18. On the other hand, the learned AGP, the advocates appearing on behalf of the Society as also the Builder and Developer and the SRA would submit that the Slum Rehabilitation Scheme has been sanctioned and approved taking into consideration all aspects of the matter, including subserving larger public interest. The property, if reserved for a public purpose in the Development Plan, it would be allowed to be developed consistent therewith. The reservation, if any, in the Development Plan would not be defeated and frustrated. However, there is a dispute as to whether the plot of land is reserved to the fullest extent for the purposes such as a welfare centre, school and playground. That is not an accurate position. The factual position is that there is a designation or reservation for a welfare centre. Surely, in every Slum Rehabilitation Scheme, there is a specific condition to construct a welfare centre. The requirement of open space would also have to be complied with. For these reasons, the argument is that there is nothing illegal or unauthorised about the development.

19. There are affidavits placed on record by the MCGM. The affidavit dated 29th August, 2018 filed by the MCGM says that the sanctioned Development Plan of 1991 of K/East Ward depicts that the land bearing CTS No. 368/3 of village Mogra is entirely reserved for welfare centre. The plot under reference is situated in

a residential zone and is accessible from 13.40 meters wide proposed DP road. Thereafter, the revised Draft Development Plan 2034 shows that the property is entirely reserved for multi purpose community centre. The plot under reference is situated in residential zone and accessible from 13.40 meters wide proposed DP road. The Government of Maharashtra has accorded sanction to the Draft Development Plan of Greater Mumbai with modification as shown in Schedule 'A' appended thereto. Thereafter, there is a corrigendum issued to Part 'D' of Notification dated 8th May, 2018, which states that the sanctioned Development Plan 2034 shall come into force from 1st September, 2018. The above mentioned land is part of the Revised Development Plan 2034.

20. The plot under reference is taken over by the MCGM in lieu of Floor Space Index (FSI). Reliance is placed on a copy of the possession letter dated 5th December, 1991.

21. Thereafter, we have an affidavit in reply of respondent no.3. The SRA says in categorical terms that the Development Plan and the Development control Regulations, 1991 have been carefully perused. The proposed Slum Rehabilitation Scheme is on a plot bearing CTS No. 368/3 (P) of village Mogra Sher-E-Punjab, Mahakali Road, Andheri (2897.40 square meters) and on CTS

No.168/A/1 (P) of village Majas (863.90 square meters) as per the certified Annexure-II. Para 3 of this affidavit at running page 214 so also para 4 at page 215 read thus:-

“3. I say that this answering respondent is filing the present affidavit to that limited extent in order to illustrate that whatever steps that have been taken by the office of the answering respondent have only been taken in consonance with the Slum Act and the Development Control Regulations, 1991. I say and submit that, proposed Slum Rehabilitation Scheme is on plot bearing CTS No.368/3 (Pt.) of Village Mogra Sher-E-Punjab, Mahakali Road, Andheri (2897.40 Sq.Mtrs) and on CTS No.160/A/1 (Pt.) of Village Majas (863.90 Sq.Mtrs) as per the certified Annexure II. I say that the Developer executing the scheme is M/s Aarc Real Estate Developers Pvt. Ltd. I say and submit that the plot bearing CTS No.368/3 (Pt.) of Village Mogra Sher-E-Punjab, Mahakali Road, Andheri is owned by the MCGM and on CTS No.160/A/1 (Pt.) of Village Majas is owned by MHADA. I say and submit that, the Developer in furtherance to the implementation of the scheme had got the Annexure-II issued from the Competent Authority wherein there are in all 235 hutments of which 147 are eligible. I say that the, S.R.Scheme was approved by the office of the answering respondent and the LOI was issued by the SRA on 20.05.2013 under reference no.SRA/ENG/2257/KE/MHL & ML/LOI for an area of 3761.30 Sq.Mtrs. I say that, thereafter due to the change in the planning, the Revised LOI was issued by SRA on 25.02.2016. Annexed hereto and marked as **Exhibit-R1** is a copy of the LOI dated 20.05.2013 and Revised LOI dated 25.02.2016.

4. I say that, the MCGM is the authority that prepares Development Plans for the City of Mumbai and as per the Development Plan of the year 1991 the said Slum Plot is situated in residential zone and is reserved for welfare centre. Further, the said Slum Plot is also affected by the setback admeasuring 665.94 Sq. Mtrs due to the 13.40 wide D.P.Road. I say that the said setback area falls under CTS No.160/A/1 (Pt.) of village Majas. I say and submit that as per the Development Plan remarks of the MCGM the said scheme is also accessible via 13.40 Mtrs wide Development Plan Road. I say that upon the Developer having submitted the proposal for the S.R.Scheme along with all the relevant documents

pertaining to the proposed plot of land to be rehabilitated under the Slum Scheme, the office of the answering respondent had prepared a detailed LOI Report before issuance of the first LOI on 20th May, 2013 and the revised LOI on 25th February, 2016 where in an area of 3095.36 Sq. Mtrs (3761.30 Sq. Mtrs-Net Plot Area (-) 665.94 Sq. Mtrs Slum plot affected by the setback) was shown under buildable reservation of Welfare Centre.”

22. In para 5 of this affidavit, reliance is placed on clause 7 of the Appendix IV to the DC Regulation 33(10), which refers to the Slum Rehabilitation Scheme. It is stated that if there is an encroachment on land/ slum plots, which have been reserved for a particular purpose and the same have been proposed to be redeveloped for the purpose of rehabilitating the slum dwellers who have been residing therein and are eligible for rehabilitation, then, the DCRs specify that the buildable reservation has to be provided. There are buildable reservations, in the sense, reservations of the kind, namely, welfare centre, contemplating and envisaging construction of a centre or a building to be used as a welfare centre. Here, the calculation has been made of the buildable reservation and that has been arrived at consistent with the two DCRs and the Appendix thereto. Area of 464.30 square meters of buildable reservation of welfare centre on the ground floor of rehab Wings ‘A’ and ‘B’ of the composite building comprising of further ‘C’ and ‘D’ Wings of sale component is to be constructed by the Developer under the Slum Rehabilitation Scheme. Thereafter, in para 6, the deponent says as under:-

“6. I say that, the office of the answering respondent has thus before sanctioning the plan for the S.R.Scheme ensured that the LOI so issued by the office of the answering respondent took due care of the said buildable reservation as per D.P. Plan and included the condition therein to provide Welfare Centre admeasuring 464.30 Sq.Mtrs in the said Composite Building. Further, the office of the answering respondent has also incorporated a condition in the revised LOI dated 25.02.2016 being condition no.27 to submit concurrence from the D.P. Department of the MCGM regarding buildable reservation of Welfare Centre before granting plinth CC to the Rehabilitation Wing of the composite building of the S.R.Scheme.”

23. The affidavit, therefore, says that respondent no. 3 has duly followed the procedure as provided in the DCRs in respect of slum plots, which have been reserved for public purpose in the Development Plan. The documents relied upon by the petitioner, depicting the reservation for Secondary School and Playground, are in fact on a larger portion of the land, which does not form part of the scheme which the SRA is implementing in this case. For all these reasons, in this affidavit filed on 19th October, 2018, the prayer is to reject the petition and vacate the ad-interim order.

24. There is also an affidavit filed by one Nitin Maruti Salunkhe on behalf of the State Government. He is working in the City Survey Office. He says that the property card shows that CTS No.368/3 of village Mogra, Taluka Andheri is entirely reserved for Secondary School, Welfare Centre and playground and the owner is MCGM. Thereafter, he says that CTS No.160/A/1 of village

Majas, Taluka Andheri belongs to MHADA. It admeasures about 53620.7 square meters. The same is the remaining area. Thereafter, reference is made to an application dated 8th March, 2007 of the MCGM. The deponent further says that this application was allowed and the name of the MCGM was entered as owner in respect of CTS No.368/3. This CTS number was reserved for public purpose such as secondary school, welfare centre and playground. That reservation was indicated on the property card. The SRA made an application on 7th June, 2013 to demarcate and measure the property, namely, CTS No.368/3 village Mogra and CTS No.160/A/1 of village Majas, Taluka Andheri. Similar application was made by the Developer (respondent no.7) on 13th June, 2014. Thereafter, the deponent says that the measurement was objected by slum dwellers/ members of Jijamata Rahivasi Sangh. The deponent says that since there were objections and technical problems, the Developer was called upon to furnish documents. None of the parties furnished documents. Still, there were inquiries made by respondent no.3. Thereafter, a detailed report was prepared on 22nd August, 2017 indicating the reservations. Since the measurements were objected to, the same could not be carried out. This is an affidavit of 5th December, 2018.

25. Respondent no.7-Developer has filed an affidavit and has specifically denied the fact that the property is affected by reservation. It is clarified in para 6 of this affidavit that the MCGM has acquired various properties of Sher-E-Punjab Co-operative Housing Society Limited as per the possession receipt dated 5th December, 1991. If that is carefully perused, the property CTS No.368/3 admeasuring 2675.60 square meters is shown reserved only for welfare centre. That is why an application was made by the MCGM and it did not desire to continue the confusion allegedly caused. Thus, the land bearing CTS No.368/3 is not acquired for the three reservations, but the plot is shown as reserved for multi purpose welfare centre. It is in these circumstances that the Developer prays that the recreation ground and school reservation falls on different plots. The plot shown in red coloured wash in Exhibit '4' to this affidavit is reserved for a municipal school, the plot bearing CTS Nos. 368/3 and 160/A/1 are shown with pink coloured wash on the plan. The petition may have been filed to cause confusion, but the request is that the slum scheme has progressed to a considerable extent. Several steps have been taken in furtherance of the LOI. It is stated that the welfare centre will be provided in tune with the conditions imposed on the Developer. It is clarified that respondent no. 3 has calculated buildable reservation at an area of 3095.36 square meters at the

rate of 15% of the entire plot, thereby arriving at an area of 464.30 square meters of buildable reservation of welfare centre. The total land belonging to MCGM is 2675 square meters, which is being developed under the slum scheme. 420 square meters or thereabouts forming part of CTS No.368/A (P) belongs to Sher-E-Punjab Co-operative Housing Society, which is leased to respondent no.7-Developer.

26. Thus, all allegations to the contrary are denied and in para 14 of this reply, at page 302, the deponent says as under:-

“14. I further say and submit that Respondent no.3 has duly followed the extant procedure as provided under the D.C.Regulation in respect of said Slum Scheme Plots which have been reserved for public purposes in the Development Plan in the form of “**Welfare Centre**”. I deny that the society is not managed properly or that the same is not constituted properly. The society is formed in 2008/09 and no steps are taken by the Petitioners. In fact, the Petitioners have attended the general body meetings from time to time and have voted in favour of these Respondents. Even the consent affidavits and consent letter has been signed by the Petitioners. Slum dwellers who are part of the slum scheme have voted in favour of these Respondents. Without prejudice, if there is anything wrong or the society is not maintaining properly records, which the respondent deny, does not mean that the appointment of the Developer is illegal. The Respondent is not concerned with the internal working of the society. It is presumed that the working of the society is properly done and the resolutions passed are properly done. Section 13(2) application has been filed Mangesh Mungekar in the year 2018, which is pending. The applicant Mangesh Mungekar has not moved before CEO. The said Mangesh Mungekar had preferred an appeal being Appeal Nos.777 and 778 of 2018 inter alia challenging the order dated 23rd April 2018 passed by the Additional Collector which allowed the eligibility of 39 slum dwellers, which was dismissed.

This itself shows that the Petitioners along with Mangesh Mungekar are trying to stall the entire slum scheme which is against the public interest. Hereto annexed and marked **Exhibit "7"** is a copy of the said order dated 6th September 2018."

27. On the date on which the affidavit was affirmed, namely, in March, 2019, 98 slum dwellers out of 235 have already vacated and handed over the respective slum structures. The transit rent has been paid and by incurring an expenditure of Rs.2,30,79,977/-. There are 235 slum dwellers, out of which, 146 are held as eligible and there are about 49 appeals pending for declaration of eligibility with the competent authority. It is claimed that Annexure II has been issued on 24th September, 2010. The LOI is issued in 2013 and Intimation of Approval has been issued on 4th March, 2016. 60 slums are already demolished and therefore, this petition, which is filed after an enormous delay, should not be entertained. All the more, when the Airport Authority of India has granted NOC on 19th June, 2014 and revised NOC on 23rd July, 2016, which is valid up to 18th June, 2026.

28. The counsel appearing for respective parties concede that the stand in the affidavits indicates that the reservation has been taken care of. The reservation has not been in any manner frustrated or defeated nor is there any inconsistency in the stand of the State Government, the MCGM, the SRA, the Society and the Developer. It is not as if the Co-operative Housing Society is

challenging the LOI. It is not stated that the entire plot cannot be developed for implementing the Slum Rehabilitation Scheme for the MCGM is aware that the Slum Rehabilitation Scheme can be implemented at site after taking care of and providing for the reservation. This is a buildable reservation and does not require the plot to be kept open to sky. There is no reason to presume that the plot of land is reserved also for a playground and secondary school.

29. After having perused the petition, the annexures thereto and all the affidavits, we had called upon the learned advocate appearing for the MCGM to produce the Development Plan Sheet. Meaning thereby, the Development Plan in force from 1981 to 2001 and thereafter, the revised plans are necessary to be perused by us. When we perused these with the assistance of Ms.Mastakar appearing for the MCGM, we note that there is a reservation only of welfare centre. It is conceded that the plot is not reserved for secondary school or playground. It is also conceded that this reservation need not be implemented by keeping the plot of land open to sky. In other words, the reservation can be accomplished even by permitting construction on the plot. The reservation can be secured and obtained by ensuring that the Builder and Developer develops a welfare centre in the premises to be handed

over to slum dwellers and such a welfare centre can be used by the members of the public, if otherwise permissible. In other words, this welfare centre would be handed over to the MCGM and the SRA and that buildable reservation will be maintained throughout. The welfare centre will not be vesting either in the Society or the Builder. In these circumstances, we do not think that the order passed on 2nd August, 2018 by this court can be continued. That was passed on the assumption that the entire plot, on which the scheme is being implemented, is reserved for welfare centre, secondary school and a play ground. That is not the extent of the reservation. Further, the plot of land covered by the Slum Rehabilitation Scheme has admittedly been referred in the writ petition. The portions of the two plots of land, namely, CTS No. 368/3 as also 160/A/1 are in different villages. The Slum Rehabilitation Scheme takes within its import both these plots of different villages. It is apparent from a reading of the DCR, 1991, which are stated to be applicable, that the provisions in Appendix IV will apply in redevelopment/ construction of accommodation for hutment/ pavement-dwellers through owners/ developers/ co-operative housing societies of hutment/ pavement-dwellers/ public authorities such as MHADA, MIDC, MMRDA etc./ Non Governmental Organisations anywhere within the limits of Brihanmumbai. However, NGO should be registered under the

Maharashtra Public Charitable Trusts Act, 1950 and the Societies Registration Act, 1860. The rights of hutment dwellers are set out in Clause 1.1 to 1.17. Clause 1.18 provides for restriction on transfer of tenements. Clause 2 deals with building permission for slum rehabilitation projects. Rehabilitation and free sale component is envisaged by Clause 3 and by Clause 4, temporary transit camps are to be provided pending redevelopment. By Clause 5, commercial/ office/ shop/ economic activity free of cost is permissible, whereas, by clause 6, relaxations in building and other requirements are granted. Now, clause 7 deals with slums and Development Plan reservations. Thereunder, in Clause 7.1 onwards, all aspects so as to preserve and protect the reservation have been inserted and the relevant clause is 7.5. That reads as under:-

“7.5 For other buildable reservations on lands under slum where guidelines approved by Government under section 31 of the Maharashtra Regional and Town Planning Act are not available, built-up area equal to not more than 15 per cent area of the entire plot or 25 per cent of the area under that reservation in that plot, whichever is less, shall be demanded free of cost by the Slum Rehabilitation Authority for the Municipal Corporation or for any other appropriate Authority.”

30. A bare perusal of the same would indicate that there are buildable reservations as also the deduction of non-buildable reservation permissible. The Clause 7.5 takes care of buildable reservations. Therefore, what we have to note is that not only in

terms of Clause 7.5, but in terms of the substantive clause 8, which ensures that a welfare hall, balwadi, society office and religious structure has to be provided for the rehabilitation component, the instant reservation is protected and preserved. That is not defeated or frustrated as alleged.

31. Further, a perusal of the relevant terms and conditions of the LOI would denote that the LOI is not absolute in terms. It also contains salient features, which oblige the Builder and Developer to submit various NOCs, including that from the Ministry of Environment and Forest as applicable. These NOCs have to be submitted in the office of the SRA from time to time during the execution of the Slum Rehabilitation Scheme. Thereafter, the petitioner may allege that on 8th May, 2018 the information provided to him shows that these NOCs have not been obtained, but we are not concerned with that aspect of the matter. The NOCs have to be obtained if this scheme has to be implemented in accordance with the LOI. The LOI as also the terms and conditions have not been challenged. In fact, Mr.Purohit appearing for respondent no.7-Developer fairly brought to our notice the revised LOI. The revised LOI would take care of everything, including the amenities and the reservation so also the NOCs. It is expressly stated in Condition No.24 that if the land under this scheme is

belonging to Government/ MHADA/ MCGM, the public authority is requested to grant NOC for the Slum Rehabilitation Scheme within a period of 30 days from the date of intimation of this approval, else, the provision of Clause No.2.8 of Appendix-IV of Regulation 33(1) of DCR, 1991 are applicable. By Condition No.28, the Developer is obliged to submit the Civil Aviation NOC for proposed height of building before asking further Commencement Certificate to composite building. The Developer is also obliged to comply with the terms and conditions which take care of the NOC from the Fire Brigade.

32. To our mind, the petitioners cannot presume that all these NOCs will not be obtained by the Builder and Developer. In fact, the terms and conditions are so comprehensive that compliance with the applicable laws will have to be made before the enforcement and execution is complete. To our mind, therefore, there is no substance in any of the allegations in the writ petition.

33. Once we have taken care of the fact that the reservation of welfare centre is not defeated and frustrated, the terms and conditions of the LOI would have to be necessarily complied with, all the more this is not a fit case for interference under Article 226 of the Constitution of India with the Slum Rehabilitation Scheme. That is being enforced in accordance with law. There is no

substance in other allegations and which have never been substantiated. Once the petitioners are aware that they are beneficiaries of the scheme, then and at their instance, we are not inclined to entertain this petition. It is, therefore, disposed of. The ad-interim order dated 2nd August, 2018 is vacated forthwith. There would be no order as to costs.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)