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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION NO.3 OF 2022
IN
WRIT PETITION NO.2482 OF 2012**

Chembur Siddharth Colony Pravartan ... Petitioners
Co-op Housing Society (regd) & Ors.
V/s.

Siddharth Colony Vikas Seva Sangh Sahakari ... Respondents
Grihnirman Sanstha & Ors.

**WITH
INTERIM APPLICATION NO.2276 OF 2021
IN
REVIEW PETITION NO.3 OF 2022**

Eknath Nivrutti Mokul and Ors. ... Applicants
V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2278 OF 2021
IN
REVIEW PETITION NO.3 OF 2022**

Vijay Nana Adsule and Ors. ... Applicants
V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2284 OF 2021
IN
REVISION PETITION NO.3 OF 2022**

Ajagganath Bhole and Ors. ... Applicants
V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2286 OF 2021
IN
REVISION PETITION NO.3 OF 2022**

Sunil Manohar Bansude Chief Promoter of ... Applicants
Siddharth Co-op. Hsg. Soc. (Prop.) and Ors.

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2282 OF 2021
IN
REVISION PETITION NO.3 OF 2022**

Suresh Ganapat Kadam and Ors. ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2317 OF 2021
IN
REVISION PETITION NO.3 OF 2022**

Suman Ranjit Jeth ... Applicant

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2275 OF 2021
IN
REVISION PETITION NO.3 OF 2022**

Sunil Manohar Ahire and Ors. ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2280 OF 2021
IN
REVISION PETITION NO.3 OF 2022**

Anil Eknath Bhujbal and Ors. ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2283 OF 2021
IN
REVIEW PETITION NO.3 OF 2022**

Chandrakant Sukhdev Katamavre and Anr. ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2281 OF 2021
IN
REVIEW PETITION NO.3 OF 2022**

Bhaskar Khushaba Katamavre and Anr. ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2274 OF 2021
IN
REVIEW PETITION NO.3 OF 2022**

Anand Pandurang Kale and Ors. ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2279 OF 2021
IN
REVIEW PETITION NO.3 OF 2022**

Ramakant Chavan and Ors. ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION NO.2277 OF 2021
IN
REVIEW PETITION NO.3 OF 2022**

Priyatam Bhaskar Mokal ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

**WITH
INTERIM APPLICATION (L) NO.26789 OF 2022
IN
REVIEW PETITION NO.3 OF 2022**

Aaryaratna Vikram Kamble ... Applicants

V/s.

Chembur Siddharth Colony Pravartan ... Respondents
Co-op Housing Society (regd) & Ors.

Mr. Sanjay Singhvi, Senior Advocate a/w Mr. Ghanshyam Thombre,
Ms. Manali Kadam i/b Mr. Raj L. Kamble, Advocate for the Applicants/
Petitioners.

Mr. Milind More, Addl. G.P a/w Mr. Amit Shastri, AGP for the State.

Mr. Rohaan Cama i/b Mr. Rushabh Parekh, Advocate for Intervenors in
IA/2274/2021 in IA/2286/2021.

Mr. Shashikant Surana a/w Mr. Madhur Surana, Advocate for Respondent Nos.5 to 8.

Mr. Vijay D. Patil a/w Mr. Abhijit Patil, Advocate for the Respondent Nos.3 and 4 – SRA.

Mr. Aspi Chinoy, Senior Advocate with Mr. Chetan Kapadia, Hrushi Narvekar, Mr. Samit Shukla with Ms. Anjali Shah, Ms. Aneesa Cheema i/b DSK Legal for Respondent No.13.

Mr. Pravin Samdani, learned Senior Counsel with Mr. Shrikant Seegarla, Mr. Swapnil Shikhare i/b RMG Law for the Applicant in IA No.2317/2021 in WP/2482/2012 for Intervener/Applicant.

Mr. Mayur Khandeparkar a/w Ms. Dimple Merchant, Mr. Akshay Sawant, Haripriya Parvatha i/b I.V. Merchant & Co. for Respondent No.1 in RPW/3/2022 in WP/2482/2012.

Mr. Simil Purohit a/w Mr. Bhushan Deshmukh i/b Lokesh Zade for Applicant in IAL/26789/2022.

**CORAM : S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

JUDGMENT RESERVED ON : 29th AUGUST 2022

JUDGMENT PRONOUNCED ON : 14th SEPTEMBER 2022

JUDGMENT : (Per Madhav J. Jamdar, J.)

1. By the present Review Petition, the Review Petitioners are seeking review of the order dated 1st March 2021 passed in Writ Petition No.2482 of 2012 (Coram: S.J. Kathawalla and Vinay Joshi, JJ.). The relevant part of said order is reproduced hereinbelow for ready reference:

“2. The learned Advocates appearing for the parties have tendered consent terms. The consent terms are taken

on record and marked “Y” for identification. Save and except the State of Maharashtra, Slum Rehabilitation Authority and the High Power Committee, the consent terms are signed by the parties and their respective advocates. Undertakings given in the consent terms are accepted. The above three writ petitions are disposed off in terms of consent terms.”

By the said order dated 1st March 2021, Consent Terms signed by the parties except State of Maharashtra, Slum Rehabilitation Authority and High Power Committee were taken on record and three Writ Petitions bearing Writ Petition No.1716 of 2011, Writ Petition No.2482 of 2012 and Writ Petition No.678 of 2012 were disposed of in terms of Consent Terms.

2. Before setting out the rival contentions and consideration of the same it is necessary to set out relevant factual aspects.

3. The Respondent No.1 in the present Review Petition i.e. Siddharth Colony Vikas Seva Sangh Sahakari Grihnirman Sanstha (Proposed) (hereinafter referred to as “the Federation”) was the Petitioner in Writ Petition No.2482 of 2012, Respondent No.10 in Writ Petition No.1716 of 2011 and Respondent No.2 in Writ Petition No.678 of 2012. The said Federation is not a registered body. It is the claim of

the Respondent No.1 that it represents all the slum dwellers dwelling on the land bearing CTS No.470 (part) and 471 (part) and 366/6 (part) of Village Chembur, Taluka-Kurla, Mumbai aggregately admeasuring about 60,000 sq. meters (hereinafter referred to as the said “Slum Property”) where the slum rehabilitation scheme (for short “Slum Scheme”) is being implemented. To substantiate the contention that the Respondent No.1 represents all the slum dwellers on the said property, reliance is placed on meeting which was held on 23rd July 2006 where all the slum dwellers agreed to appoint Respondent No.1 to propound the slum rehabilitation scheme and appoint Respondent Nos.11 and 12 as its developers.

4. The said Federation filed Writ Petition No.2482 of 2012 challenging the order of High Power Committee dated 20th July 2011 passed in Application No.348 of 2010. By the said order, High Power Committee directed the Chief Executive Officer/ SRA to complete the exercise for ascertaining whether 70% eligible slum dwellers accept a particular developer i.e. either the Applicant No.1 – K.K.B. Developers or Respondent No.3 – Deepak S. Nikalje of M/s. Adishakti Developers to said Application No.348 of 2010. In the said Writ Petition the order

of the High Power Committee dated 20th July 2011 was stayed by this Court and all the parties were directed to maintain the status-quo. Thereafter, the said Writ Petition No.2482 of 2012 and other Writ Petitions were disposed of in terms of the Consent Terms as set out earlier.

5. The Review Petitioner Nos.1 to 15 are Co-operative Societies and claim that they are representing the slum dwellers. The Review Petitioner Nos. 1 and 8 are the registered societies and others are proposed societies. Review Petitioner Nos.16 to 18 are members of the Chembur Siddharth Colony Shatabdi Co-operative Housing Society Ltd., Pranali Co-operative Housing Society Ltd. and Siddharth Nagar Samjhota Co-operative Housing Society Ltd. respectively. These three societies are registered societies. However administrators were appointed on the said societies by orders dated 30.03.2017, 09.08.2016 and 22.03.2018 respectively. The said three Co-operative Housing Societies are not impleaded as Petitioners to the Review Petition as the respective Administrators refused to conduct General Body Meeting of the said Societies.

6. It is the contention of the Review Petitioners that all these Co-operative Housing Societies were not impleaded as parties to the aforesaid three Writ Petitions and they were not parties to the said Consent Terms in terms of which the order dated 1st March, 2021 was passed. It is the contention of the Petitioners that the order sought to be reviewed affects large number of members of the Review Petitioners – Co-operative Housing Societies.

7. We have heard the learned Senior Counsel and the learned counsel appearing for the respective parties.

8. Mr. Sanjay Singhvi, learned Senior Counsel appearing for the Review Petitioners submitted that Consent Terms were filed by the Federation without taking consent of the Review Petitioners i.e. the Societies. The Respondent No.1 - Federation has admitted in the affidavit-in-reply that a General Body Meeting was not convened and one or two members from each Society had signed the resolution dated 30th October 2020. The Consent Terms specifically refers to the Resolutions of the Review Petitioners – Societies and further mentions that resolutions dated 30th October, 2020 of Review Petitioners -

Societies are annexed as Annexure-9 to the Consent Terms. Admittedly, the said resolutions dated 30th October, 2020 passed by the respective Societies were not annexed to the Consent Terms. The said alleged resolutions of the Societies were annexed to the affidavit-in-reply filed in this Review Petition by the Respondent No.1 and 13. All these resolutions are identical and inscribed on the letterheads of the Review Petitioners' Societies signed by one or two members from each Society. The said resolutions are not passed by the General Body of the respective Societies but purportedly by the Managing Committees of such Societies. According to said resolutions, meetings of all the managing committees of all these Societies were held on same date and same location. He submitted that no such meeting took place and all these resolutions are fraudulent. Resolutions dated 30th October 2020 were inscribed on the letterhead of the registered Society i.e. Siddharth Nagar Samjhota Co-operative Housing Society Ltd, Chembur Siddharth Colony Shatabdi Co-operative Housing Society Ltd., Pranali Co-operative Housing Society Ltd., on which Administrators were appointed and therefore, the persons signing the said alleged resolutions on the letterhead of said three Societies have no authority to sign the said resolutions and to pass such resolutions and therefore,

the said resolutions are fraudulent resolutions. He further submitted that Consent Terms contain some clauses which imposes obligations upon Review Petitioners – Societies including financial obligations. He submitted that even assuming that such resolutions are validly passed still the Consent Terms filed in this Court are not approved by said resolutions.

9. Mr. Aspi Chinoy, the learned Senior Counsel appearing for the Respondent No.13 submitted that rehabilitation of the slum dwellers had remained enmeshed in litigation before High Power Committee and this Court between the rival developers from 2006 to 2021. By the Consent Terms, the claims of the two rival builders were settled and it was agreed that Respondent No.13 would make a requisite application before SRA to secure LOI. He submitted that subsequently SRA has issued LOI dated 6th August 2021 to Respondent No.13 based on verification/acceptance of 51% individual agreements and consents of the eligible slum dwellers. He submitted that independently of the Consent Terms/ consent order, 51% individual slum dwellers have consented for the redevelopment of the Slum Scheme by Respondent No.13 and accordingly, LOI has been issued.

Pursuant to the LOI, Respondent No.13 has incurred substantial expenditure on making payments to the erstwhile developers. Respondent No.4 – SRA has approved building plans of rehab building Nos.1 to 8 comprising of 3153 rehab and 96 amenity tenements. By oversight, the individual Societies' Managing Committee Resolutions dated 30th October 2020 were remained to be annexed as Exh.9 and the same have been produced by the Respondent No.1 - Federation along with the affidavit-in-reply. He submitted that the individual Societies (either proposed or registered) had not played any role in the matter of the Proposed Rehabilitation Scheme after 2006. It is the Federation i.e. the Respondent No.1 who has all along represented all the slum dwellers. He submitted that the liability of payment is only of Respondent No.13 and no liability is cast on the slum dwellers or the Proposed Societies. He submitted that in any case, the said Consent Terms will only bind the Federation and will not be binding on the Societies i.e. Review Petitioners.

10. Mr. Pravin Samdani, learned Senior Counsel appearing for the interveners submitted that as a result of the dispute between the developers, the redevelopment scheme is delayed for several years. He

submitted that after disposal of the Writ Petition in terms of the Consent Terms, 51% of the slum dwellers have given consent in favour of Respondent No.13 and therefore, Slum Rehabilitation Scheme supported by 51% of the slum dwellers cannot be put to peril on the ground that certain procedures were not strictly followed or some steps were taken contrary to the procedures prescribed in the guidelines. To substantiate his contention, he relied on the judgment of the Supreme Court in the case of *Balasaheb Arjun Torbole and Ors. Vs. Administrator and Divisional Commissioner and Ors.*¹ and, particularly, on paragraphs 21 and 29 of the said judgment. He also relied upon the judgment of Co-ordinate Bench of this Court passed in **Writ Petition No.3983 of 2021** decided on 31st August 2021 (*Abdul Majid Vakil Ahmad Patvekari and Ors. Vs. The Slum Rehabilitation Authority and Ors.*), wherein it has been held that any encroachment on public land ought not to be tolerated and prompt action is required to be taken to remove such encroachment. He, therefore, submitted that these slum dwellers have got only the right to get rehab tenements and no further right. He submitted that therefore, Review Petition be not entertained. He also submitted that there is nothing in the Scheme of Regulation

1 (2015) 6 SC 534

33(10) of DC Regulations to indicate that an individual slum dweller gets right to decide which Society or which developer should implement the Scheme. He relied on the judgment of this Court in the case of *Awdesh Vasistha Tiwari and Ors. Vs. Chief Executive Officer, Slum Rehabilitation Authority and Ors.*² and, particularly, on paragraph 13 of the said judgment.

11. He submitted that grant of relief in Writ Petition filed under Article 226 of the Constitution of India is a discretionary relief and the same can be refused where granting relief would result in defeat of the interest of justice. He submitted that the Court always has a power to refuse the relief where the Petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. He relied on the judgment of the Supreme Court in the case of *M.P. Mittal Vs. State of Haryana and Ors.*³ and, particularly, on paragraph 5 of the said judgment. He submitted that the same principle will apply while considering the Review Petition. He submitted that determination of eligibility of hutment dweller one way or the other has nothing to do with the physical continuance of the

² (2006) 4 Mh.L.J. 282

³ (1984) 4 SCC 371

structure. He relied on the order of this Court in **Writ Petition (L) No.2650 of 2022 with Writ Petition (L) No.26363 of 2021** (*Mohanish Mohan Chikhalkar and Anr. Vs. Dignity Realty & Ors.*) decided on **2nd March 2022**. He relied on the judgment of the Supreme Court in the case of *State of Maharashtra and Ors. Vs. Prabhu*⁴, and, in particular, on paragraph 4 of the said judgment to contend that one of the yardsticks for the Court to exercise its jurisdiction in quashing an order is to consider whether the same results in greater harm to the society and in that case, the Court may restrain from exercising the power. He submitted that the exercise of the power by this Court should be for the sake of justice.

12. As set out earlier, all the aforesaid three Writ Petitions were disposed of in terms of the Consent Terms. Clause 17 of the Consent Terms is very relevant and important for the purpose of the present Review Petition. The said clause No.17 specifically sets out the particulars of requisite authority of the parties for entering into the said Consent Terms. The said clause No.17 is reproduced herein below for ready reference:-

“17. The parties requiring the requisite authority for entering

4 (1994) 2 SCC 481

into these Consent Terms have obtained the same as under.

- 17.1 AGNPL and KKB have obtained Board Resolution / Shareholders Resolution dated 15th February 2021 and 15th February 2021, respectively, copies whereof are hereto annexed as Annexure “7” and Annexure “7A”, respectively.
- 17.2 Richa has obtained Board Resolution/Shareholders Resolution dated 10th February 2021, copies of which are hereto annexed as Annexure “8”.
- 17.3 **The Societies have issued Resolutions dated 30th October 2020 copies of the resolutions are hereto collectively annexed as Annexure “9”.**
- 17.4 The certified copy of the Board Resolution dated 15th February 2021 of Ruparel is annexed hereto as Annexure “10”.”

(Emphasis supplied)

The clause No. 20 is as follows:-

- “20. The parties hereby agreed that the impugned Order ought to be set aside and the captioned Petitions disposed off, in terms of these Consent Terms.”

Thus, it is clear that the resolutions dated 30th October 2020 passed by the respective societies give authority to the original Petitioner-Federation for entering into the said Consent Terms. It is admitted position that the said resolutions were not annexed to the said Consent Terms although specifically mentioned in the said

Consent Terms as annexed to the same. Thus, this Court, while passing order dated 1st March 2021 in terms of the Consent Terms have no occasion to verify the authenticity of the said resolutions purported to be passed by the Societies and whether said resolutions approve the Consent Terms.

13. The Respondent No.1 i.e. Federation filed a detailed affidavit-in-reply dated 13th October 2021. Various contentions are raised in the said affidavit-in-reply to contend that Review Petition be dismissed. However, in paragraph 4(xxi) at page 400, it is specifically contended as follows:

“(xxi). It is well known fact that from March 2020 due to Covid-19 pandemic, there has been a nationwide lock-down and several restrictions/conditions have been imposed by the Government of India and State of Maharashtra from time to time. **The restrictions imposed did not permit gathering of large number of people at one place. Therefore, some of the terms including holding of GBR could not be done due to Covid restrictions.**”

(Emphasis added)

14. Thus, admittedly, no General Body Meeting of the Respondent No.1 has been held approving the Consent Terms. It is also

very clear that no General Body Meeting of respective Societies was held approving the Consent Terms. Copies of said resolutions dated 30th October, 2020 purported to be passed by the respective Societies are produced by the Respondent No. 1 alongwith the affidavit-in-reply filed in the present Review Petition. The same clearly shows that the said resolutions are passed by the Managing Committee of the respective Societies. Admittedly, said Societies have not approved the appointment of new developer i.e. Respondent No. 13 in the General Body Meeting of the said Societies as required by Circular No.80 dated 15th February, 2008 and Circular No.148 dated 2nd February, 2015 issued by Slum Rehabilitation Authority. Thus, it is clear that the resolutions dated 30th October 2020 purported to be passed by the respective societies are not passed in their General Body Meeting and purported to have been passed in the meeting of Managing Committee and just two members have signed on the resolutions.

15. It is the contention of the Review Petitioners that some of the signatories who have signed the said resolutions in their purported capacity as members of the Managing Committee are declared as ineligible and therefore, they are not entitled to become the members

of the said Societies. On the other hand, it is the contention of the contesting Respondents that some of the Petitioners are declared as ineligible. It is not necessary to consider the said submissions for deciding this Review Petition as admittedly, the said resolutions purported to be passed by these Societies were not produced before this Court when the order in terms of Consent Terms was passed by this Court. Thus, this Court could not satisfy itself about the genuineness of the resolutions passed by the Societies. It is significant to note that the entire basis of entering into the Consent Terms by the Federation are the resolutions passed by the said Societies and the said crucial documents were not produced before the Court.

16. It is also very important to note that during the relevant time Administrators were appointed on the aforesaid three societies viz. Siddharth Nagar Co-operative Housing Society Ltd, Chembur Siddharth Colony Shatabdi Co-operative Housing Society Ltd., Siddharth Colony Pranali Co-operative Housing Society Ltd. By no stretch of imagination, two individual members could have given letter regarding the alleged resolutions passed by the Societies when Administrators have been appointed on the said Societies. Thus, it is clear that Consent Terms

were not approved by the members of the said Societies in General Body Meeting/Managing Committee Meeting and the resolutions passed are fraudulent.

17. Thus, it is clear that representation made to this Court that all these Societies have approved the Consent Terms and accordingly passed resolutions dated 30th October, 2020, is not correct. This Court was given an impression that the Consent Terms were accepted by all the Societies and all the Societies have passed the resolutions in legal manner accepting the terms and conditions of the Consent Terms. However, when this Court passed the order under review, none of the parties brought to the notice of the Court that the aforesaid resolutions passed by these Societies were not annexed to the Consent Terms and that there is no resolution passed approving the Consent Terms.

18. Perusal of the resolutions purported to have been passed by these Societies on 30th October 2020 clearly show that all the terms and conditions of the Consent Terms were not put forth before the Managing Committees of these Societies, assuming that resolutions are genuine resolutions passed by the said Societies.

19. The resolutions produced along with the affidavit-in-reply of the Respondent No.1 at Exh.-F clearly show that identical resolutions were passed by the respective Societies. Resolution No.1 is regarding acceptance of the Slum Scheme under DC Regulation 33(10). Resolution No.2 authorizes the Chief Promoter Raju Vishnu Waghmare to execute various documents including the Consent Terms, Resolution No.3 is regarding cancellation of development rights of Aadishakti Developers, Aadishakti Grih Nirman Pvt. Ltd., Yash Construction, Richa Homes Pvt. Ltd. as Developers and Resolution No.4 is regarding appointment of Ruparel Buildcon Pvt. Ltd., as a new developer for redevelopment of the Society under Regulation 33(10) of DC Regulations. If the resolutions purported to be passed by the respective Societies are compared with the Consent Terms, then it is clear that there are various terms and conditions in the Consent Terms which are not approved by the Managing Committees of these Societies. Clause 2.5 read with Annexure 4B of the Consent Terms clearly show that the Review Petitioners No.1 to 5, 9 to 11, 13, 14 and aforesaid three Co-operative Societies, on which Administrators are appointed, are the members of the Respondent No.1 – Federation. It is significant to note that clause 17 of the Consent Terms clearly

contemplates that the Federation has got authority to execute the Consent Terms on the basis of the resolutions dated 30th October 2020 passed by these individual Societies. Admittedly, the said resolutions were not produced alongwith the Consent Terms. Clause No.7 of the Consent Terms *inter alia* clearly records that the Federation and Societies have arrived at a settlement arrangement. Clause No.10 clearly records that all the disputes between the parties shall stand mutually and amicable resolved/ or settled on the terms recorded in the Consent Terms. Clause 10.5 provides that the Federation and the Societies agreed to compensate, through Ruparel Buildcon Pvt. Ltd. i.e. Respondent No.13, Nikalje's (including Aadishakti) a sum of Rs.69,83,44,800/- in the manner more particularly set out in the said clause. Clause No.10.6 of the Consent Terms provides that the Federation and the Societies agree to compensate, through Ruparel i.e. Respondent No.13, Bhatt Group (AG & PL and KKB) a sum of Rs.58,74,80,000/- in the manner set out in the said clause. A perusal of the Consent Terms clearly show that the same are very elaborate and there are certain financial obligations to be performed by the Societies through Respondent No.13. In any case, the resolutions of the Societies produced by the Respondent No.1 in the affidavit-in-reply

filed in the present Review Petition do not show that the elaborate terms and conditions contained in the Consent Terms are approved by the Managing Committees of these Societies, assuming that the Managing Committee of such societies have got power to pass such resolutions.

20. Various contentions raised by the learned Senior Counsel particularly, that after disposal of the Writ Petition in terms of the Consent Terms, 51% of the slum dwellers have given their consent in favour of Respondent No.13, LOI has been issued, Respondent No.13 has incurred substantial expenditure on making payments to the erstwhile developers, SRA has approved building plans of rehab building, certain procedures being not strictly followed is not relevant and granting relief under Article 226 of the Constitution of India is discretionary, are all to be considered while considering the merits of the case in the Writ Petition.

21. In this particular case, Writ Petitions have been disposed of by the order under review in terms of the Consent Terms. The entire basis of the Consent Terms are the resolutions passed by the respective

Co-operative Housing Societies and admittedly, the said resolutions were not produced alongwith Consent Terms, although an impression is created that the said resolutions are annexed as Annexure - 9 to the Consent Terms. There is grave doubt whether the said resolutions purported to be passed by the respective Societies are genuine resolutions. As set out hereinabove, on the three societies, Administrators were appointed and therefore, Committee members of said Societies have no power to pass the resolutions and to sign on the letterhead of the said Societies. Thus, there is material on record to show that the said resolutions purported to be passed by these three Societies are not genuine resolutions.

22. Mr. Samdani, the learned Senior Counsel is right in contending that as relief under Article 226 is discretionary relief various factors are required to be taken into consideration, and the same principle will apply to the Review Petition. In the present, case order under review is passed in terms of the Consent Terms and not on merits. However, the most crucial document which is the basis of the Consent Terms is not produced before this Court and therefore, the Court was precluded from examining several aspects and therefore the

submissions of learned Senior Counsel will not apply to the present case.

23. Mr. Aspi Chinoy, learned Senior Counsel submitted that the Consent Terms will not bind the Societies and will bind only the Federation. However, the same submission is required to be rejected for more than one reason. Firstly, it is admitted position that no General Body Meeting was held of the Federation approving the consent Terms. Secondly, Consent Terms specifically mentions that authority to enter into the Consent Terms are the resolutions passed by the respective Societies. Thirdly, there is grave doubt about the genuineness of the resolutions purported to be passed by the said Societies, produced along with the affidavit-in-reply filed by the Respondent No.1 in Review Petition. Effect of accepting the submission of the learned Senior Counsel will be that the Consent Terms will bind all the members of the Societies as Societies are members of the Federation without they passing the resolution approving the Consent Terms.

24. The Supreme Court in the case of *Inderchand Jain (Dead) Through LRs. Vs. Motilal (Dead) Through LRs.*⁵, in paragraph 33, has

⁵ (2009) 14 SCC 663

set out the parameters of review jurisdiction. Relevant portion of the said paragraph 33 is reproduced herein below:

“33.The High Court had rightly noticed the review jurisdiction of the court, which is as under:

“The law on the subject—exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarized as hereunder:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) **Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may conceivably be two opinions.**

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine ‘*actus curiae neminem gravabit*’.”

(Emphasis added)

24. The Supreme Court in the case of *Perry Kansagra Vs.*

Smriti Madan Kansagra⁶, made a reference to paragraph 90 of the judgment in the matter between ***BCCI Vs. Netaji Cricket Club***⁷ in paragraph 16, which reads thus:

“16. On the other hand, reliance was placed by the respondent on the decision in BCCI Vs. Netaji Cricket Club to submit that exercise in review would be justified if there be misconception of fact or law. Para 90 of said decision was to the following effect:

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine “*actus curiae neminem gravabit*”.”

(Emphasis added)

25. It is clear that power of review is to be exercised when some mistake or error apparent on the face of the record is found or even for sufficient reason. In this particular case, the order under review is passed in terms of the Consent Terms. The Consent

⁶ (2019) 20 SCC 753

⁷ (2005) 4 SCC 741

Terms specifically records that the authority to execute the Consent Terms are the resolutions passed by the respective Societies dated 30th October 2020 and all these resolutions are produced as Annexure- 9 to the Consent Terms. Admittedly, the said resolutions were not produced before this Court when the order under review was passed. Thus the present case is covered by the parameters set out by the Supreme Court. As discussed earlier, there is grave doubt about the genuineness of the purported resolutions passed by these Societies. As the resolutions passed by the Societies were not produced before this Court when the order sought to be reviewed was passed, there was no occasion for this Court to examine various aspects regarding the said resolutions. Therefore, this Review Petition is required to be allowed.

26. It is specifically clarified that all the contentions raised by the contesting Respondents even including subsequent events can be considered while deciding the Writ Petition on merits.

27. In view of the above discussion, the following order is passed:

ORDER

- (i) Order dated 1st March 2021 passed in Writ Petition No.2482 of 2012 is recalled and the same is set aside and Writ Petition No.2482 of 2012 is restored to the file;
- (ii) Review Petitioner Nos.1 to 15 and Chembur Siddharth Colony Shatabdi Co-operative Housing Society Ltd., Pranali Co-operative Housing Society Ltd. and Siddharth Nagar Samjhota Co-operative Housing Society Ltd. are directed to be impleaded as the Respondents in Writ Petition No.2482 of 2012;
- (iii) It is clarified that we have not considered the merits of the dispute involved in the Writ Petition and the same is expressly kept open;
- (iv) It is further clarified that various contentions raised by the contesting Respondents as far as the merits of the said Redevelopment Scheme are concerned, are expressly kept open and the same can be agitated in the said Writ Petition No.2482 of 2012;
- (iv) Review Petition is allowed and disposed of in above

terms;

- (v) In view of disposal of the Review Petition, all Interim applications do not survive and the same are disposed of accordingly.

(MADHAV J. JAMDAR, J)

(S.V. GANGAPURWALA, J)