

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

WRIT PETITION NO.172 OF 2016

M/s. Oshiwara Land Development
Company Pvt. Ltd., a company
incorporated under the Companies Act,
1956, having its office at 2nd Floor, 71-73
Botawala Building, Apollo Street, Bombay
Samachar Marg, Mumbai - 400 023 and
its administrative Office at 3, Usha Kiran,
M. L. Dahanukar Marg, Mumbai - 400
026.

... **Petitioners**

Versus

1. The State of Maharashtra, Through
The Principal Secretary,
Urban Development Department,
Mantralaya Mumbai - 400 032.
2. Municipal Corporation of Greater Mumbai,
Through the Commissioner Having their
Office at - Municipal Head Office,
Mahapalika Marg, Mumbai - 400 001.
3. Sewerage Project Department Municipal
Corporation at Greater Mumbai having
their Office at Municipal Head Office,
Mahapalika Marg, Mumbai - 400 001.
4. Maharashtra Housing And Area
Development Authority, A body corporate
established under Section 3 of the
Maharashtra Housing and Area
Development Act, 1976 having its Office at
Griha Nirman Bhavan, Kalanagar, Bandra
(East), Mumbai - 400 001.
5. Pankaj Unit No.1 Housing Development
Company Pvt. Limited, A Company
incorporated under Part IX of the

Companies Act, 1956 having its registered office at Parijat, Gokhale Road (North), Dadar, Mumbai – 400 028.

6. Pankaj Unit No.2 Housing Development Company Pvt. Limited, A Company incorporated under Part IX of the Companies Act, 1956 having its registered office at Parijat, Gokhale Road (North), Dadar, Mumbai – 400 028.

... Respondents

**WITH
WRIT PETITION NO.1179 OF 2018**

1. Pankaj Unit No.1 Housing Development Company Pvt. Limited, A Company incorporated under the Companies Act, 1956 having its registered office at Parijat, Gokhale Road (North), Dadar, Mumbai – 400 028.
2. Pankaj Unit No.2 Housing Development Company Pvt. Limited, A Company incorporated under the Companies Act, 1956 having its registered office at Parijat, Gokhale Road (North), Dadar, Mumbai – 400 028.
3. Samartha Development Corporation through its Managing Partner, Vikas Kamlakar Walawalkar, a partnership firm registered under the Indian Partnership Act, 1932 having its registered address at 11-A, Suyash, Gokhale Road(North), Dadar (West), Mumbai 400 028.

... Petitioners

Versus

1. Municipal Corporation of Greater Mumbai, A statutory Corporation under the Mumbai Municipal Corporation Act, 188 and having its office at Mahapalika Marg, Mumabai – 400 001.

2. The State of Maharashtra, Through
The Principal Secretary,
Urban Development Department,
Mantralaya Mumbai – 400 032.

 3. Maharashtra Housing And Area
Development Authority, A statutory
Corporation under Maharashtra Housing
and Area Development Act, 1976 having
its Office at Griha Nirman Bhavan,
Kalanagar, Bandra (East), Mumbai – 400
050.

 4. M/s. Oshiwara Land Development
Company Pvt. Ltd., a company
incorporated under the Companies Act,
1956, having its registered office at 2nd
Floor, 71-73 Botawala Building, Apollo
Street, Bombay Samachar Marg, Mumbai
– 400 023 and its administrative Office at
3, Usha Kiran, M. L. Dahanukar Marg,
Mumbai – 400 026.

 5. The City Survey Officer – IV, Andheri,
having his address at Shree Swami
Samarth Marg, SVP Nagar, MHADA
Colony, Opposite Vesave Telephone
Exchange, Andheri (West),
Mumbai – 400 053.
- ... Respondents**

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Anirudh Hariani i/by
M/s. Bilawala & Co. for the Petitioners in Writ Petition No.172 of
2016.

Mr. Janak Dwarkadas, Senior Counsel a/w Mr. Kunal
Dwarkadas, Ms. Priyanka Kothari, i/by Mahimtura & Co. for
the Petitioners in Writ Petition No.1179 of 2018.

Mr. Milind Sathe, Sr. Advocate a/w Ms. Trupti Puranik for the
Respondent – BMC in Writ Petition No.172 of 2016.

Mr. Girish Godbole a/w Mr. Drupad Patil a/w Ms. Trupti Puranik for the Respondent – BMC in Writ Petition No.1179 of 2018.

Ms. Geeta R. Shastri, Additional GP for the Respondent No.1- State in Writ Petition No.172 of 2016 and Respondent Nos. 2 & 5 – State in Writ Petition No.1179 of 2018

Mr. P.G. Lad a/w Ms. Priyanka Naik a/w Ms. Sayli Apte i/by Mr. P. G. Lad for MHADA.

Mr. Arrikar, Asst. Eng. DP and Mr. Kamble, SEDP, Officer of BMC, Present in Court.

CORAM	:	A. A. SAYED & PRAKASH D. NAIK, JJ.
JUDGMENT RESERVED ON	:	28th NOVEMBER, 2019.
PETITIONS LISTED FOR DIRECTIONS ON	:	7th MARCH, 2022.
PETITIONS LISTED FOR DIRECTIONS AT THE INSTANCE OF RESPONDENTS & PETITIONERS AND CLOSED FOR JUDGMENT ON	:	10th MARCH, 2022.
JUDGMENT PRONOUNCED ON	:	7th APRIL, 2022.

JUDGMENT : (PER PRAKASH D. NAIK, J.)

1. After the judgment was reserved, the Petitions were listed for directions on 7th March, 2022 and the learned Counsel for parties were informed that the judgment would be pronounced shortly. The Petitions were again listed for directions on 10th March, 2022 at the instance of Respondent-Corporation vide praecipe dated 9th March, 2022. The Counsel for the Petitioners also filed praecipe dated 10th March, 2022.

We have heard the learned Counsel for Respondent-Corporation and learned Senior Counsel for the Petitioners further on the issue of registration of consent decree. Learned Counsel for Respondent-Corporation placed on record copies of (i) Plaint in Suit (L) No.20289 of 2021 filed by Samarth Development Corporation and Others; (ii) Interim Application (L) No.20296 of 2021; (iii) Affidavit-in-Reply of the Respondent-Corporation to the Interim Application (L) No.20296 of 2021; (iv) Interim Application No.731 of 2022 in Suit No.42 of 2022 filed by the Applicant-Byramjee Jeejeebhoy Private Limited for intervention in the Suit wherein according to the learned Counsel for the Respondent-Corporation, the Applicant therein has questioned the title of the Petitioners. He has also placed on record the judgment of the Supreme Court in Ripudaman Singh vs. Tikka Maheshwar Chand, (2021) 7 SCC 446, which according to him, holds the field. Learned Senior Counsel for the Petitioners has pointed out that the subject matter of the Suit (L) No. 20289 of 2021 is different than the subject matter in the present Writ Petition. He has placed on record the judgment of the Supreme Court in Mohammade Yusuf and Others vs. Rajkumar and Others, (2020) 10 SCC 264. He has pointed out that the said judgment has considered the judgment of the Supreme Court in Bhoop Singh vs. Ram Singh

Major and others, (1995) 5 SCC 709 relied upon by the Respondent-Corporation. The Petitions were again closed for judgment.

2. Since both the Petitions involve common issue, the Petitions are disposed of by common order.

3. The reliefs sought in Writ Petition No.172 of 2016 are as follows :-

A. That, this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction directing Respondent No.2, and/or any other concerned Authorities to complete the process of acquisition and to grant monetary compensation to the Petitioners under The Right To Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 and/or grant Transfer of Development Rights (TDR) / Development Rights Certificate (DCR) in view of Regulation 34 read with Appendix VII of the Development Control Regulations for Greater Mumbai, 1991 in respect of the said land admeasuring 2,62,031.0 sq. Metres of the Petitioner;

B. That, in the alternative to granting Transfer of Development Rights to the Petitioners, this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction, directing Respondent No.2, and/or any other concerned Authorities to grant monetary compensation in respect of the said land admeasuring 2,62,031.0 sq. Metres

belonging to the Petitioner;

C. That pending the Hearing and Final disposal of this Writ Petition :

(i) The Respondent No.2 and 3 by themselves, their officers, servants and subordinates be restrained by a mandatory order and injunction of this Hon'ble Court from in any manner dealing with the said land in pursuance of the reservation of the said land for public purpose.

(ii) The Respondent No.2 and 3 be directed to grant TDR/DRC to the Petitioners for the said land.

D. For ad interim reliefs in terms of prayer (C) above;

E. For costs of this Petition;

F. For such further and other reliefs as the nature and circumstances of the case may require.

4. Whereas the reliefs sought in Writ Petition No.1179 of 2018 are as follows :-

(a) That this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction requiring Respondent No.1 to perform its statutory duty under Section 126(1)(b) of the Maharashtra Regional and Town Planning Act, 1966 requiring Respondent No.1 to grant on proportionate basis TDR for the portion indicated in yellow wash and surrounded in red outline marked with letter 'B'

admeasuring 32.375 acres to the Petitioners and the TDR for the portion indicated in yellow wash and surrounded in red outline marked with letter 'A' on the said map admeasuring 32.375 acres to Respondent No.4;

(b) Pending the hearing and final disposal of the above writ petition, this Hon'ble Court do direct Respondent No.5 to issue, in lieu of the Property Register Card (Exhibit 'D' hereto), separate Property Register Cards for the said land admeasuring 64.75 acres in favour of Petitioners and Respondent No.4, as the holders thereof;

(c) For ad-interim relief in terms of prayer (b) above;

(d) For costs of this Petition, and

(e) For such other and further relief as this Hon'ble Court may deem fit in nature of the facts and circumstances of the present case.

5. The contentions of the Petitioners in Writ Petition No.172 of 2016 are as follows :

i. The Petitioner is owner of land including land comprising in Survey No.41(Pt.), CTS No.1 (Pt.) [New CTS No.739 (Pt.)] at Village Oshiwara admeasuring 26.20 Hectares/2,62,031.0 Sq. mtrs.

ii. The Sewerage Project Department of the Respondent No.2 was handed over possession of land at Versova admeasuring 77.36 Hectares including land

admeasuring 26.20 Hectares belonging to Petitioner by MHADA (Respondent No.4). The Respondent No.3 Sewerage Project Department is in possession of Petitioners' land. The Respondent No.4, handed over the possession of the land admeasuring 26.20 Hectares without the consent of Petitioner to Respondent Nos.2 & 3. The total land area admeasuring 77.36 Hectares which includes the land admeasuring 26.20 Hectares belonging to the Petitioner has been reserved for public purpose of Aerated Lagoon and Sewerage Purification Works. The Respondents have not followed the due process of law for acquisition of land. The title of the land is in the name of Petitioner. They are entitled for compensation either by monetary benefit or by grant of Transfer of Development Rights (TDR).

iii. The land is situated in residential zone as per development plan. It was shown to be reserved for 'Aerated Lagoon and Sewerage Pumping Station'. The land falls within the Coastal Regulation Zone (CRZ -1).

iv. No joint measurement was carried out at the time of handing over the possession of land by Respondent No.3. The Petitioner was not aware of such handing over of the

land. While MHADA was corresponding with Respondent No.3 on the transfer of land for the Aerated Lagoons fell in land bearing S.No.41 of Oshiwara and that the portion of land in S.No.41 was not owned by MHADA.

v. The Respondent No.2 approached City Survey Office Andheri to get the entire land measured between the period 8th November, 2006, and 15th November, 2006 and joint measurement was carried out in the presence of representatives of Respondent Nos.2 to 4.

vi. The Chief Engineer of Respondent No.2 gave clearance to the Chief Engineer of DP for taking over Petitioner's land for future expansion of Aerated Lagoon and Sewerage Purification Work after obtaining approval from BMC.

vii. Out of the entire land i.e. 77.36 Hectares handed over by MHADA to Respondent No.2, the land belonging to Petitioner admeasuring 26.20 Hectares was not owned by MHADA. Respondent Nos. 2 & 3 have not compensated the Petitioner for land. The Petitioner has repeatedly approached the Respondents authorities for payment of compensation or grant of TDR, as applicable, however, the Respondent authorities and Respondent No.2 has failed to

process the request of Petitioner.

viii. The Architects of the Petitioner vide letter dated 14th March, 2013 addressed to the Municipal Commissioner stated that the Petitioner is willing to handover the land to Respondent No.2 in lieu of development rights certificate as permissible under the sanctioned D.C. Regulation. By letter dated 20th October, 2014, Acquisition Officer was informed that the Petitioner's property is in possession of Respondent No.2 and that they have not received any compensation. By letter dated 25th May, 2015, the Municipal Commissioner was requested to set out their case in detail along with all relevant documents and requested for speedy action.

ix. The Respondent No.2 have taken over possession of the land and bound to complete the acquisition process and pay requisite compensation in terms of monetary compensation or TDR. The procedure contemplated under MRTP Act for acquisition of land is required to be followed. The Mumbai Municipal Corporation Act specified the procedure of acquisition of land for public purpose. As per Section 90 of the said Act, the Commissioner has power to acquire immovable property by agreement and in case if

the compensation to be paid for such property exceeds Rs.5,00,000/- such contract has to be approved by its improvement committee and by the Corporation if the price of compensation exceeds Rs.2,00,00,000/-.

6. The Respondent No.2 and 3 filed affidavit in reply dated 3rd June, 2017 and stated that the Writ Petition involves seriously disputed questions of fact and title which cannot be adjudicated in Writ Petition. The petition proceeds on the erroneous assumption that the land in possession and use of Corporation since 1980 and in possession of MHADA about 50 years before that belongs to Petitioner. The assertion is false. The Petitioner must establish title to the land which it claims and which is admittedly not in possession of the Petitioner for over 75 years. The ownership of land is claimed by the Petitioner on the basis that as per survey report boundary of Village Oshiwara and Versova have shifted and certain portion of the land is now required to be treated as part of S.No.41 of Oshiwara and therefore ought to be treated as belonging to the Petitioner. The hypothesis of the Petitioner is erroneous. The boundary of these two villages is still not fixed by revenue authority. The claim of the Petitioner is clearly made with considerable delay. Even the civil suit is barred by law of limitation. The claim which could not be considered by the Civil

Court cannot be agitated in writ jurisdiction. The Petitioner are estopped from raising any issue in respect of subject land since their claim is crystallized by Consent Terms in Suit No.3429 of 1991. If the Petitioner had any right in respect to land with MCGM since 1980, the Petitioner for the first time raised the issue in 2013 which demonstrated the hollowness of the claim. The Petitioner have no locus to file the petition as they have no right to the subject land. On 30th September, 1980, MHADA had handed over the land admeasuring 74.36 Ha for STP and its ancillary work and S.No.120 pt. Village Versova admeasuring 3.00 Ha for approach road. The total land of 77.36 Ha was handed by MHADA to MCGM for construction of Sewage Treatment Plant and for ancillary work. The land was reserved for public purpose of aerated lagoons and Sewerage Purification Work. The MCGM then constructed STP and lagoons in the year 1990 on part of land bearing S.No.120 (pt.) The measurement survey of land in possession of MCGM was carried out by the Collector in 2006. It was revealed that area of 604198.9 Sq.Mtr falls in village Oshiwara. In Survey No.41 about 177 Acres and 7.5 Guntha land owned by MHADA. The said land was handed over MCGM in 1980. There is discrepancy in the boundaries of Village Oshiwara and Versova. PR Card of land bearing CTS No.739 of Village Oshiwara has

been newly opened with the name of Oshiwara Land Development Co. only in the year 1999, although this land has been handed over to MCGM by MHADA in 1980 and is in possession of MCGM since then. PR Card of CTS No.739 shows that land of 90.20 Ha has been given on lease for 98 years to M/s. Pankaj Co-operative Housing Society Ltd by Oshiwara Land Development Company Pvt. Ltd. in 2015. Since the part of the land is in possession of MCGM from 1980, the execution of lease of this land by Oshiwara Land Development Company Pvt. Ltd. is not legally tenable. As per Consent Terms signed in the year 2004, reference is made to the possession of land with MCGM. However, MCGM is not made party to the Consent Terms. There is assertion that the land in possession of MCGM for lagoons belong to MHADA. The plan referred to in Consent Terms is limited to CTS No.1374/A of village Versova and does not refer to CTS No.739 of Village Oshiwara. The land is in possession of MCGM since 1980. The Deputy Director of Town Planning on behalf of Urban Development Department filed reply dated 6th June, 2017. In the said reply it was stated that as regards the Transfer of Development Right (TDR) Govt. in Urban Development has finalised the policy under Section 37(2) of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act".) vide Notification dated 16th

November, 2016 as well as issued directives under Section 154 (1) of MRTP Act on 14th March, 2017. The City Survey Officer filed reply dated 10th October, 2017 stating that by letter dated 4th October, 2006, the Chief Engineer, Development Plan Municipal Corporation had requested the office of City Survey, Andheri to carry out joint measurement of land bearing CTS No.739 of Village Oshiwara and CTS No.1374/A. As per letter dated 4th October, 2006, owner of the land came forward to hand over land reserved for Aerated Lagoons and Sewerage Purification work situated on land bearing CTS No.1(pt.) and Survey 41(pt.) of Village Oshiwara to MCGM free of cost in lieu of the TDR benefits. Notice dated 30th October, 2006 was issued to adjoining plot holders and also to the owner of the said plot. Measurement at site of CTS No.1374/A and CTS No.1374/A Pt. Village Versova and CTS No.739 of Village Oshiwara was carried out and forwarded to MCGM. In CTS No.1374/A of village Versova area of 487288.5 Sq. mtrs. is under reservation.

7. The Petitioner filed rejoinder affidavit dated 17th March, 2018. It was contended that the Respondent No.2 has taken turn from the stand in April 1997 in the affidavit filed in Suit No.3429 of 1991 regarding the rights of the Petitioner and entitlement for TDR in respect of the said land. Suit No.3429

was compromised. Municipal Corporation was not willing to sign Consent Terms. The Petitioner and other plaintiffs filed an application in 2004 for deleting Municipal Corporation who were defendant No.6 in Suit No.3429 of 1991. The Respondent No.2 was a party in the suit when order dated 23rd April, 1997 was passed in Notice Motion No.84 of 1992 whereby Commissioner was appointed for identifying the land.

8. The Respondent Nos. 5 & 6 have also filed affidavit in response to the reply affidavit of Respondent Nos. 2 & 3. It was contended that lands are part of larger piece of land bearing CTS No.739 equivalent to Survey No.41 of Village Oshiwara. Respondent Nos. 5 & 6 has held leasehold rights in respect of the larger piece of land and the Petitioner held the reversionary rights thereof by Lease Deed dated 17th September, 1981. Suit No.1975 of 2011 was filed by Respondent Nos.5 and 6 against the Petitioner seeking conveyance of reversionary rights in respect larger piece of land. The dispute have been resolved. Suit No.1975 of 2011 was disposed of in view of Consent Terms dated 6th February, 2018 between Respondent Nos. 5 & 6 and Petitioner. The Consent Terms were also filed by Samarth Development Corporation as Defendant in Suit No.1975 of 2011. By Deed of Conveyance dated 6th February, 2018 registered by the

Petitioner as the Vendor and Respondent Nos. 5 & 6 as confirming parties conveyed unto Samarth Development Corporation the reversionary rights of a portion of the larger property, which is reserved as No Development Zone and portion of the land admeasuring 32.375 acres out of the larger property being half of lands admeasuring 64.75 acres which has been reserved for SPS. Deed of Surrender dated 6th February, 2018 registered with the Sub Registrar of Assurances and Respondent Nos.5 & 6 have surrendered the leasehold rights in respect of portion of the larger property admeasuring 32.375, being half of the SPS which admeasures 64.75 acres in favour of the Petitioner. The Petitioner is now absolute owner of half of said land admeasuring 32.375 acres. Respondent Nos.5 & 6 are lessees and Samarth Development Corporation is the lessor of the other half of the said land. Respondent Nos.5 & 6 and Samarth Development Corporation are owners of the lands, which is reserved for SPS. The Respondent No.4 filed reply dated 21st April, 2018 and stated that companion petition has been filed by Pankaj Unit No.1 Housing Development Company Pvt. Ltd. and Ors. wherein MHADA has been joined as Respondent No.3. MHADA did not have any right or interest in respect of the lands which are subject matter of the petition. The Respondent No.2 had

required MHADA to give possession of land admeasuring 74.36 Ha, Survey No. 120 of Village Versova. Possession receipt dated 30th September, 1980 had been signed recording that the land out of Survey No.120 had been handed over by Mr. Mohite, Deputy Engineer of Respondent No.4 and was taken over on behalf of Respondent No.2 by Chief Engineer on 30th September, 1980 on the condition that the area of land will be finalized by the Government Surveyor which will be binding on both the parties. From the record it is clear that there has been dispute regarding land bearing S No. 120 of village Versova and the Petitioner filed suit No.3429 of 1991. The affidavit of Assistant Engineer dated 22nd April, 1997 filed in the suit mentions that several request were made by Municipal Corporation to the City Survey Officer to have the survey and demarcation of the land bearing S No.120 of village Versova. It was not demarcated or surveyed. Respondent No.4 is not concerned with any part of land which is subject matter of the Petitions. The lands which were subject matter of Consent Terms dated 19th December, 2006 in Suit No.3429 of 1991, which includes the portion of land admeasuring 31 acres 8 gunthas identified in light blue colour and marked with letter 'I' on the map annexed to the consent terms bearing CTS No.1374/A equivalent to Surve No.120 (part) of village Versova, which

belonged to Respondent No.4 has allotted to Respondent No.2. Whereas subject matter of Writ Petitions concerns land bearing CTS No.739 (part) equivalent to S. No.41(part) of village Oshiwara.

9. Writ Petition No.1179 of 2018 is preferred by Pankaj Unit No.1 Housing Development Company Private Limited, Pankaj Unit No.2, Housing Development Company Private Limited and Samarth Development Corporation. M/s. Oshiwara Land Development Company Pvt. Ltd is impleaded as Respondent No.4. Respondent No.1 is Municipal Corporation of Grater Mumbai. Respondent No.2 is State of Maharashtra. Respondent No.3 is Maharashtra Housing & Area Development Authority (for short "MHADA") and Respondent No.5 is City Surve Officer – IV, Andheri.

10. The contentions of the Petitioners in this Writ Petition No.1179 of 2018 are as follows.

- i. The Respondent No.3 MHADA is party defendant in Civil Suit No.3429 of 1991 filed by Respondent No.4 in respect of adjoining piece of land bearing S.No.120 of village Versova. On account of interim orders, the Petitioners were unable to process the application for TDR of the lands, which are subject matter of this petition,

reserved for SPS, although Respondent No.1 had taken possession thereof. The Respondent No.4 is absolute owner of the larger piece of land admeasuring 222.8 acres of which 64.75 acres is reserved for SPS under Development Plan 1991.

ii. Respondent No.4 is absolute owner of 32.375 acres being half of the area of the SPS and the Petitioners are owners of remaining 32.375 acres thereof along with adjoining area admeasuring 158.05 acres.

iii. In the course of acquisition, Respondent No.1 having taken possession of land has failed to comply the statutory duty under Section 126 (1) (b) of the Planning Act, 1966 to grant TDR to the land- owner (Respondent No.4 and Petitioners).

iv. The root of title to the lands commences from Kaul on the grant dated 12th October, 1820. The Respondent No.1 had prepared and Respondent No.2 had sanctioned Development Plan 1967. Portion of land bearing Survey No.41 of village Oshiwara fell within K-West ward were designated for reservation. The plan was replaced by Development Plan, 1991. The portion of land came to be reserved for Sewerage Purification works and the

reservation was extended into lands of the adjoining village being land bearing S.No.120 of Village Versove. In 1999, the land was measured and identified as CTS No.739 of Village Oshiwara. The Respondent No.1 had taken over entire area of land reserved for SPS. The identification and the measurement of SPS partly comprises CTS No.739 (part) equivalent to S. No.41 (part) of village Oshiwara and partly comprises of land bearing CTS No.1374A equivalent to S.No.120 (part) of village Versova. It was finally determined by joint survey on 8th November, 2006 and 15th November, 2006.

v. The Respondent No.1 had taken over the land reserved for SPS admeasuring 64.75 acres. The Petitioners are entitled to portion admeasuring 32.375 acres. The Respondent No.4 had acquired from Byramjee Jeejeebhoy lands in S.No. 41 of village Oshiwara, the title to which commenced under a Kaul or grant dated 12th October, 1820. By the Kaul of 1820, Byramjee Jeejeebhoy had been granted the entire S.No.41 of village Oshiwara.

vi. By virtue of decree in terms of Consent Terms dated 15th October, 1969 in Suit No.660 of 1968 and Consent Order dated 9th November, 1979, Byramjee Jeejeebhoy

transferred and conveyed unto the Respondent No.4 remaining land in S.No.41 of Village Oshiwara. The said conveyance excluded portion admeasuring 177 acres, located on eastern boundary of S.No.41 of Village Oshiwara which had been acquired by Respondent No.3.

vii. The Respondent No.4 raised dispute regarding shortfall in the area of the lands in S.No.41 of village Oshiwara. The sub divisional officer allowed application of Respondent No.4 by order dated 11th March, 1983 and held that the land admeasuring 86 acres 32 gunthas was part of survey No.41 of Village oshiwara which the records had indicated as being part of S.No.120 of Village Versova. Respondent No.3 attempted to commence construction on land admeasuring 86 acres and 32 gunthas, hence Respondent No.4 filed suit in Civil Court viz Suit No.1119 of 1985 for injunction.

viii. This Court had passed interim order dated 27th February, 1985, restraining Respondent No.3 from doing any acts. Interim order was dissolved Respondent No.4 made another application for interim relief, which was rejected. Respondent No.4 filed A.O. No.143 of 1990. Respondent No.4 filed suit No.3429 of 1991. It withdraw

suit No.1119 of 1985. This Court passed interim order dated 21st April, 1990 and 29th October, 1991. The Respondent No.3 never disclosed that it had handed over possession of the portion of land in light blue wash which is part of SPS under Development Plan in terms of Possession Receipt dated 30th September, 1980 to Respected No.1. The Suit No.3429 of 1991 was for land bearing S. No.120 of village Versova. Negotiations were held in 1981 between Respondent No.4 and predecessors in title of Petitioner Nos. 1 & 2 for lease. By Lease Deed dated 17th September, 1981 registered on 16th March, 1982 with the Sub-Registrar of Assurances at Mumbai, Respondent No.4 in consideration of the Rent reserved and conditions and covenants to be observed and performed, demised unto predecessor in title of Petitioner Nos. 1 & 2 the chunk of land, which includes the said lands. The land which is the subject matter of Deed of lease dated 17th September, 1981 had been identified as land admeasuring 222.8 acres. By deed of lease dated 17th September, 1981, Respondent No.4 had conferred a right on the lessee to acquire the reversion of demised lands, which includes the said land. By agreement dated 12th September, 1981, 17th September, 1981, and 17th July, 1983, the Petitioner No.3 were granted

development rights of the land which was subject matter of Lease Deed dated 17th September, 1981 which includes the said land.

ix. Part of SPS falls within boundary of land bearing S.No.41 of village Oshiwara being portion indicated in yellow wash. The remaining part of SPS falls in village Versova as indicated in light blue wash. Respondent No.1 requested Respondent No.3 to handover possession of 74.36 hectares of land. The Respondent No.2 pointed that the land was required for construction of Sewage Treatment Plant and ancillary works. By letter dated 2nd October, 1980 the Respondent No.1 recorded that it had received possession of land admeasuring 77.36 hectares from Respondent No.3 on 30th September, 1986. The Respondent No.1 having given undertaking that it would pay the value of land in question, such value or price could only be determined, if the area of the land and its demarcation was available.

x. Respondent No.1 by letters dated 13th November, 1991 and 20th August, 1992 stated that though it had taken possession on 30th September, 1980 believing that the land bearing S.No.120 village Versova and which admeasured

77.36 hectares, the Respondent No.1 realized that a part of land falls in villages Oshiwara. The Respondent No.1 had admitted the said fact in letter dated 10th November, 1994.

xi. The correspondence establishes that for almost a decade from 1980 till 1990, Respondent No.1 could not get Respondent No.5 to demarcate and measure the land which it required for Sewage Treatment Plant and its ancillary works. The correspondence indicate that even after Respondent No.1 realized that the land, which it acquired for Sewage Treatment Plant and its ancillary works, did not not entirely comprise of S.No.120 of village Versova and some part of that land fell within village Oshiwara and Respondent No.1 wanted to take over part of land which fell in S.No.41(part) of village Oshiwara. The correspondence establishes that the applications of Respondent No.1 to City Survey Office for demarcation did not yield results due to interim order passed in 1985.

xii. The Respondent No.1 wanted to take over portion of S.No.41 of village Oshiwara for Sewage Treatment Plant and ancillary works. Since 1993-1994 Respondent No.4 had been making inquiries and had meetings with Respondent No.1 and they were willing to purchase the

said land reserved for SPS. The Respondent No.1 wanted a separate property card.

xiii. Respondent No.1 while noting willingness of Respondent No.4 to give possession of the land bearing S.No.41 (part) directed Respondent No.4 to approach the Chief Engineer (Development Plan) TDR Section for compliances. The Respondent No.1 has admitted that there had been an acquisition by agreement of the land and the owners were entitled for TDR. The Respondent No.1 was Defendant No.6 in Suit No.3429 of 1991. Affidavit was filed by Dilip Kulkarni, Assistant Engineer (Sewerage Projects) dated 22nd April, 1997 to oppose Notice of Motion No.84 of 1992 which contains several admissions.

11. The Respondent No.1 filed affidavit in reply dated 12th July, 2018 opposing the reliefs prayed in the Petition. It was contended that Petition involves disputed questions of fact. The Petition is devoid of merits. The land is in possession of Corporation since 1980. The claim of the Petitioners to title of land is frivolous and misconceived. The Petitioner No.1 filed affidavit-in-rejoinder dated 24th July, 2018 denying the contentions in aforesaid reply. The Petitioner No.3 also filed affidavit in response to reply affidavit of Respondent No.1 dated

25th July, 2018. Thereafter, further affidavit-in-reply was filed on behalf of Respondent No.1 in detail on 16th April, 2019 along with several documents. Rejoinder-affidavit on behalf of the Petitioners in response to further reply-affidavit of Respondent No.1 was filed on 29th June, 2019. That was followed by sur-rejoinder on behalf of Respondent No.1 dated 3rd July, 2019.

12. Learned Senior Counsel Mr. Chinoy has submitted that the subject matter of Petition No.172 of 2016 is land admeasuring 2,62,034 Sq. mtrs. bearing CTS No.739 (part) which forms part of S.No.41 of village Oshiwara and adjoining village boundary of Oshiwara/Versova. This land is reserved for Sewage Purification Works and shown in yellow wash and red outline and marked with letters 'A' and 'B' on the Village Map/Plan. The Development Plan Sheet No. W/34 shows the area reserved for the Aerated Lagoon and SPS, with dotted line showing the village boundary of Versova-Oshiwara and bifurcating the area reserved for SPS into S.No.120 Versova and S.No.41 Oshiwara. The title of Pankaj Unit No.1 and Oshiwara Land Development Co. has been described in Writ Petition No.1179 of 2018. By Kaul/Grant dated 12th October, 1820 Byramjee Jeejeebhoy became entitled to S.No.41 admeasuring 1270 acres. 360 acres out of S.No.41 had been

carved out and merged with Village Versova as S.No.120. The public record showed the area of S.No.41 Versova as 723 acres. By virtue of Consent Terms dated 15th October, 1969 and Consent Judges Order dated 9th November, 1979, the Oshiwara Land Development Co. had acquired from Byramjee Jeejeebhoy Pvt. Ltd. the entire land in S.No.41 of Village Oshiwara admeasuring 222.80 Sq. Yds. excluding 177 acres located on the eastern boundary, which had been acquired by MHADA and portions, which were already sold by Byramjee Jeejeebhoy. This included 64.75 acres which is reserved for Sewerage Purification Station of MCGM. The Respondent No.1 has granted numerous permissions for development of construction of building on S.No.41 Oshiwara. By Lease dated 17th September, 1981 Oshiwara Land Development Co. had leased 222.80 acres of land to Pankaj Unit No.1 and conferred right on them to subsequently acquire the reversion of demised lands. Pankaj Unit No.1 housing development Co. had exercised the right to acquire the reversion. Since Oshiwara Land Development Co. had failed to execute conveyance of the reversion, Pankaj Unit No.1 had filed suit No.1975 of 2011 for specific performance. Interim orders were passed, restraining Oshiwara Land Developers from disposing off, alienating the lands. MCGM took out Chamber Summons to be joined as

Defendants in Suit No. 1975 of 2011 for directions to handover land admeasuring 8173 Sq. Mtrs. from Oshiwara land for construction of storm water pumping station. By order dated 21st November, 2016 Court clarified that there is no restraint on MCGM acquiring land but that compensation to be deposited in Court. Suit No.1975 of 2011 was decreed in favour of Pankaj Unit No.1 by Consent Terms dated 6th February, 2018. The MCGM deposited 30% compensation in the Court. MCGM confirmed that Pankaj Unit No.1 be allowed to withdraw the sum of Rs.41.25 Crores. Possession receipts recording that MHADA had handed over to Municipal Corporation 77.36 Hectares out of S.No. 120 of village Versova on condition that the government surveyor would finalize the area measurement of the land and MCGM would pay MHADA value of land. In September, 1981 Deed of Lease was registered. The Petitioner in Writ Petition No.172 of 2016 had demised unto the predecessor of Respondent No.5 & 6 therein the land reserved for NDZ admeasuring 222.8 acres which includes the land admeasuring 64.75 acres for 99 years. Order dated 11th March, 1983 was passed by SDO holding that 86 acres 32 Gunthas shown as part of S.No.120 of Village Versova. The said order was reversed. Suit No.3491 of 1991 was filed in the High Court. Suit No.1119 of 1985 was withdrawn. Due to interim order in

Suit No.1119 of 1985 and 2429 of 1991 the City Survey Office could not finalize the boundary between S.No.120 Village Versova and S.No.41 Village Oshiwara and Separate Property registered card could not be issued. Part of SPS falls in OSHIWARA, cts No.739 (Part) equivalent to S.No.41(part) of village Oshiwara. The remaining part falls in adjoining village Versova C.T.S. No.1374A equivalent to S.No.120 of Villave Versova. TDR claimed by letter dated 20th December, 1992. Letter was sent to MCGM to take possession of land. Letter dated 16th November, 1994 was sent by MCGM that it had taken possession of land from MHADA. Letter sent by B.H.R.A. Board that some portion is falling in S.No.41 of Oshiwara which is not owned by MHADA. Respondent Nos. 5 & 6 had granted development rights to Samarth Development Corporation. The Respondent No.1 was not in position to demarcate and have the lands measured. On account of interim orders in Suit No.1119 of 1985 and Suit No.3429 of 1991 City Survey Office was in position to finalize the boundary between S.No.120 village Versova and S.No.41 Village Oshiwara. On 16th September, 2019 the Petitioner addressed letter to Respondent No.1 stating that it intended to handover/surrender the said land and claim TDR. Documents were submitted to Respondent No.1. Correspondence were exchanged between both the sides. The

Respondent No.1 communicated that they are willing to take possession of the land of the Petitioner subject to terms and conditions. The Respondent No.1 had filed affidavit in Suit No.3429 of 1991 stating that the owner of private land reserved for aerated lagoon and Sewerage Pumping Station is eligible for TDR on merit. Commissioner's Report in Suit No.3429 of 1991 mentions that with the assistance of Officers of TILR, plan was prepared which indicated that the portion admeasuring 31 acres 8 gunthas out of S.No.120 of Village Versova, which is indicated in light blue wash on the plan annexed to the Commissioner's Report is in possession of Respondent No.1. The Petitioner had signed Consent Terms in Suit No.3429 of 1991 giving of its claims that the strip admeasuring 86 acres 32 gunthas which was part of S.No.120 of village Versova was in fact part of S.No.41 of village Oshiwara. The Corporation had addressed correspondence since last several years but had not managed to have joint survey and measurement of the land reserved for aerated Lagoon on account of interim order in Suit No.3429 of 1991. In view of Consent Terms in Suit No.3429 of 1991 the Respondent No.1 had approached City Survey Office for joint survey. The Petitioner paid charges for joint survey. In November, 2006, the Joint Engineer of Sewerage Department and Respondent

No.1 were present at the site during measurement and joint survey. The Consent terms in Suit No.3429 of 1991 were signed by all the parties. Note was issued by Sewerage Department land in S.No.41 belongs to Oshiwara Land Developer Co. Representations were addressed to the the Chief Minister regarding take over of land. Correspondence was exchanged with Respondent No.1. Reply affidavit of Executive Engineer, MHADA filed in Writ Petition No.172 of 2016 mentioned that MHADA is not concerned with any part of the land which is subject matter of the said Petition which deals with land bearing CTS No.739(part) equivalent to S.No.41(part) of village Oshiwara. In the light of several documents, the Petitioner in Writ Petition No.172 of 2016 are entitled for the reliefs prayed in this petition.

13. Learned Senior Counsel Mr. Chinoy relied upon the decision of the Apex Court in the case of Som Dev and Ors. V/s. Rati Ram and Another (2006) 10 SCC 788. The issue involved in the said decision related to registration of compromise decree. The defendants therein had resisted the Suit on the ground that right was created in the plaintiff by decree in Civil Suit which was one based on a compromise and since the decree purported to create a right in the plaintiff in a property in which he had no pre-existing right, the compromise decree

required registration under Section 17(1) of the Registration Act. It was held that, it was not a compromise decree, but a decree based on an admission recognizing pre-existing right under a family arrangement. It could not be said that it was not admissible or could not be treated as evidencing of right of plaintiff and his brother for want of registration.

14. Learned Senior Counsel Mr. Dwarkadas submitted that the Petitioners in both the Petitions have claimed compensation in the form of TDR and or monetary compensation from Municipal Corporation, in respect of subject land which forms part of S.No.41 (part) of village Oshiwara on account of the same having been converted into a Sewerage Purification Works by MCGM as per the reservation for this purpose in the Development Plan for the year 1991. It is the case of MCGM that it is not liable to compensate the Petitioners in Petitions primarily because the possession of the subject lands was taken by MCGM from MHADA who according to MCGM was the owner of subject lands and MCGM claims to be in adverse possession of the subject land. The said claims cannot be countenanced. The fact that MHADA is not the owner of the subject lands and therefore could not have passed valid title to MCGM cannot be disputed. MHADA has admitted by letter dated 8th December, 1994 that some portion of the

aerated lagoon is in land bearing S. No. 41 of village Oshiwara and this land is not owned by MHADA. MCGM by letter dated 25th January, 1995 addressed to Oshiwara Land Developers admitted that it would be willing to take possession of their land subject to complying terms and conditions, as per procedure, which will be intimated to them soon. The MCGM has admitted that the land in village Oshiwara was not originally owned by MHADA but belongs to Oshiwara Land Developers. MHADA has admitted that they did not at any material time had any right or interest in subject lands. The Petitioners are the owners of the subject lands is evident from several documents, such as Kaul dated 12th October, 1820, wherein the predecessors in title of Byramjee Jeejeebhoy Pvt. Ltd. granted rights in the entire S.No.41 of village Oshiwara, then admeasuring 1270 acres, 20 gunthas in 1906. Portion located at the Western boundary of S.No.41 admeasuring 362 acres, 10 gunthas was carved out and made part of the adjoining village. It was designated as S.No.120 of Village Versova. Consent Terms dated 15th October, 1969 passed by this Court in Suit No.660 of 1968 and by Consent Judges Order dated 9th November, 1979 Byramjee had transferred and conveyed unto Oshiwara Land Developers the remaining land in S.No.41 of village Oshiwara. The property register card

dated 15th June, 2015 shows Oshiwara Land Developers as the owner of Subject land and Pankaj Unit No.1 and Pankaj Unit No.2 as lessees thereon. The inter-se dispute between Oshiwara Land Developers and Pankaj Unit Nos.1 & 2 were resolved by executing the Consent terms dated 8th February, 2018 in suit No.1975 of 2011. Pankaj Unit No.1 & 2 surrendered their lease hold rights in 32.375 acres in favour of Oshiwara Land Development Co. The MCGM has never claimed any title in the subject lands by adverse possession. In 1980, MHADA handed over possession to sewerage project of MCGM lands falling in S.No.120 of Village Versova admeasuring 77.36 hectares for construction of sewerage treatment plant. MCGM erroneously took possession from MHADA 26.20 hectares of S.No.41 of village Oshwara belonging to Petitioners without their knowledge and consent. No joint survey was carried out while taking possession. The lands belonging to Petitioners were reserved for sewerage purification works and Aerated Lagoon. On 12th August, 1994 Oshiwara Land Development Co. sent letter to MCGM for taking possession of lands for SPS. MCGM by letter dated 16th November, 1994 stated that, possession of land referred for SPS is already taken over from MHADA in 1980. By letter dated 25th January, 1995 MCGM addressed letter to Oshiwara Land Development Co. stating

that, Corporation would be willing to take possession of their land subject to complying terms and conditions as per procedure which will be intimated soon. The MCGM in their affidavit dated 22nd April, 1997 filed in Suit No.3429 of 1991 admitted that plaintiff had requested for TDR in respect of land. As per Regulation 34, the owner of private land reserved for aerated lagoons and sewerage pumping station is eligible for TDR on merit subject to conditions. In November, 2006, MCGM applied to CSO for joint survey of lands. It was carried out. It was found that MCGM has taken over around 149.30 acres out of S.No.120 of Village Versova for SPS. The Petitioners have produced several undisputable documents. The MCGM has been unable to produce any document by which it can establish its title to the subject land or claim for adverse possession. He relied upon several documents which were placed on record such as letter dated 16th September, 1992 addressed by Oshiwara Land Developers by Municipal Corporation, Letter dated 29th December, 1992 addressed by Architect of Oshiwara Land Developers to Municipal Corporation, Development Plan Remarks dated 18th November, 1993 issued by Corporation to Oshiwara Land Developers, Letter dated 12th August, 1994 addressed by Oshiwara Land Developers to Municipal Corporation, Letter dated 16th November, 1994 addressed by

Municipal Corporation to Oshiwara Land Developers, Letter dated 8th December, 1994 addressed by Land Manager, Bombay Housing & Area Board, Unit of Mhada to Municipal Corporation, Letter dated 25th January, 1995 addressed by Municipal Corporation to Oshiwara Land Developers, Letter dated 27th January, 1995 addressed by Oshiwara Land Developers to Municipal Corporation, Internal Note dated 16th May, 1995 from Chief Engineer, (Sewerage Project) of Municipal Corporation to Chief Engineer (Development Plan) of Municipal Corporation, Letter dated 19th December, 1995 addressed by Municipal Corporation to Oshiwara Land Developers, Affidavit dated 22nd April, 1997 of Mr. Dilip Kulkarni, Asstt. Engineer of Municipal Corporation, Letter dated 20th March, 2009 addressed by Oshiwara Land Developers to Chief Minister, Government of Maharashtra, Internal Note dated 11th February, 2013 by Executive Engineer (Development Plan) of Municipal Corporation to Municipal Commissioner, Letter dated 14th March, 2013 by the Architect of the Petitioner to Municipal Corporation, Letter dated 22nd March, 2013 by Corporation to Architect to Oshiwara Land Developers, Letter dated 20th October, 2014 address by Oshiwara Land Developers to Municipal Corporation to Sub Divisional Officer, Mumbai Suburban District, Letter dated 25th

May, 2015 addressed by Oshiwara Land Developers to Municipal Corporation.

15. Mr. Dwarkadas further submitted that the disputes of the Corporation with regard to the Petitioners' title to the subject lands are baseless and unfounded. In the affidavit dated 3rd June, 2017 filed in Writ Petition No.172 of 2016, the Corporation had contended that MHADA is the owner of the said land. On 21st April, 2018 MHADA filed an affidavit in Writ Petition No.172 of 2016 and stated that MHADA is not concerned with any part of land which is subject matter of Writ Petition NO. 172 of 2016 and Writ Petition No.1179 of 2018. In view of the stand taken by MHADA, Corporation filed affidavit in Writ Petition No.1179 of 2018 and contended that the lands are owned by the Corporation. Subsequent affidavit dated 16th April, 2019 filed by the Corporation in Writ Petition No.1179 of 2018, the Corporation had contended that the said lands were owned by the Government of Maharashtra and that it has been handed over to the MCGM. The Corporation does not dispute existence of grant/Kaul dated 18th October, 1820. The title of the Petitioners in Writ Petition No.172 of 2016 commences from consent terms dated 15th October, 1969 filed in Suit No.660 of 1968 and Consent Judges Order dated 9th November, 1979 and

declaration dated 5th June, 1980. The PR Card shows the name of the Petitioners as the holders of the land. The Corporation had accepted that the Petitioners are owners of S.No.41 village Oshiwara in Chamber Summons No.159 of 2015 filed by Corporation in Suit No.1975 of 2011. The Corporation had accepted the title of the Petitioners to S.No.41 of Village Oshiwara by granting approvals to the Petitioners, their predecessors-in-title for constructions of townships under Section 17(2)(vi) of the Registration Act, registration of any decree or order of a Court comprising immovable property which forms the subject matter of the suit or proceedings is not required to be registered. The subject matter of Suit No.3429 of 1991 is different from subject matter of present Petitions. The Petitioners are not relying on consent terms in Suit No.3429 of 1991 in order to establish their title to the lands. By order dated 15th April, 1964 the Mamlatdar held that, land falling in S.No.41 of Village Oshiwara was not waste land within the meaning of Section 4 of Salsette Act. The same was appropriated by Byramjee Jeejbhoy before 14th April, 1951. The State filed appeal against order dated 15th April, 1964 before Additional Collector. Appeal was dismissed on 9th January, 1965. The subject lands are not government lands. There is no delay from Petitioners. Delay in approaching the

Court under Article 226 of the Constitution of India has not caused prejudice to the other party. The documents would show that, there is no delay by Petitioners in approaching the Court.

16. Mr. Dwarkadas relied on decision in the case of ABL international Ltd. and Another V/s. Export Credit Guarantee Corporation and Ors (2004) 3 SCC 553. In the said decision it was held that in an appropriate case the writ Court has jurisdiction to entertain a Writ Petition involving disputed question of fact and there is no absolute bar in regard thereto. Merely because one of the parties want to dispute the meaning of a document or part thereof would not make it disputed fact. On a given set of facts if the state acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the Court by way of Writ under Article 226 of the Constitution and the Court depending on facts of the case is empowered to grant the relief. A Writ Petition involving serious disputed questions of facts which requires consideration of evidence which is not on record will not normally be entertained by a Court in exercise of its jurisdiction under Article 226 of the Constitution of India, but there is no absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a Civil Suit.

17. Learned Senior Counsel Mr. Sathe appearing for Respondent Corporation in Writ Petition No.172 of 2016 submitted that the entire claim of the Petitioner is based on disputed questions of fact. The Petition proceeds on erroneous assumption that the land in possession and use of Corporation since 1980 and in possession of MHADA about 50 years before that, belongs to the Petitioner. The Petitioner must establish title to the land which it claims which is not in their possession for over 75 years. The claim of the Petitioner is on the basis that as per survey report boundary of Villages Oshiwara and Versova have been shifted and certain portion of land is required to be treated as part of S.No.41 of village Oshiwara. The Boundaries are not yet fixed by the Revenue Authority. There has been considerable delay in the claim of the Petitioner. The claim is made belatedly. Various suits, Petitions were filed where the Petitioner was the Party and directions were issued and orders in terms of Consent Terms were passed by the Court. This facts were suppressed by the Petitioner. Consent terms were signed in 2004 and reference is made to the land in possession of the MCGM. However, the MCGM is not made party to the Consent Terms. The land do not belong to Petitioner. Survey No.41 was given CTS No.1 Oshiwara, as per Kami Jasti Patrak. Thereafter, by orders of Superintendent of

Land Records, Mumbai Suburban District dated 2nd February, 1999 and City Survey Office, Andheri order dated 3rd February, 1999 issued, stating that the area under No Development Zone is separated from CTS No.1/A and given CTS No. 739 of villages Oshiwara. S.No.120 of village Versova was given CTS No.1374. CTS No.1374/A, 1374/A/1 to 1374/A/8 and 1374/B/1 to 1374/B/507 were carved out from CTS No.1374 Versova admeasuring 718150.8 sq. mtrs. CTS No.1374A admeasuring 718150.5 sq. mtrs is in the name of the State Government and CTS No.1374/B/1 to 1374/B/507 is in the name of MHADA Board. By letter dated 4th October, 2006, the Chief Engineer development Plan Municipal Corporation of Greater Mumbai requested the office of the City Survey, Andheri to carry out the Joint measurement of land bearing CTS No.739 Oshiwara and CTS No.1374/A. The land bearing S.No.120 of Village Versova admeasuring 74.36 Hectors has been taken over from MHADA on 30th September, 1980 which is in possession Department of MCGM. Notice dated 30th October, 2006 was issued to all the adjoining plot holders and owners of the plot. Measurement at site of CTS No.1374/A and CTS No.1374/A Pt. Village Versova and CTS No.739 Village Oshiwara was carried out from 8th January, 2006 to 15th November, 2006 and calculation was done and measurement plant was prepared and forwarded to MCGM on

31st February, 2007. In Property Card of CTS No.739 Oshiwara, admeasuring 901983.9 Sq.mtrs. it is mentioned as no Development Zone. In CTS No.1374/A of Versova, the area of 487288.5 sq. mtrs. is under reservation namely National Sea Science Institute, Sewage Purification Lagoon BSES Sub Station, Park area, and Bombay Bus Depot. Joint measurement was carried out and plan prepared as per demarcation for Aerated Lagoons and Sewerage Purification Works and the same was super imposed on available record of the City Survey Office and the said plan was given to MCGM. The Petitioner's claim is crystallized by Consent Terms in Suit No.3429 of 1991. Their claim against State Government/MHADA/MCGM cannot be re-agitated. Substantial portion of S.No.41 pt. 120 pt are declared as 'Reserved Forest', since they are covered by mangroves vide Notifications dated 18th February, 2009 and 7th July, 2008. The Petitioner have no locus standi to file the Petition as they have no right to subject land. There is discrepancy in the boundaries of Villages Versova and Oshiwara. PR Card of land bearing CTS No.739 of Village Oshiwara has been newly opened with the name of village Oshiwara Land Development Corporation in 1999, although this land has been handed over to MCGM by MHADA in the year 1980 and is in possession of MCGM since then. In the PR

card of CTS No.739 of S.No.41 (pt.) there is no name of occupier or original owner of land. The new property card for CTS No.739 has been created from CTS No.1 of S.No.41. 177 Acres & 7.5 Guntha land of CTS No.1 of S.No.41 is owned by MHADA who have handed over part of the land to MCGM in 1980. The Petitioner has not established their claim as owner of the land. The PR Card of CTS No.739 shows that the total land of 90.20 Ha has been given on lease for 98 years to Pankaj Co-operative Housing Society Ltd by Petitioner in 2015. Pankaj Unit No.1 Housing Development Co. Pvt. Ltd. has claimed that registered Deed of Lease dated 17th September, 1981 is entered into between the Petitioner Oshiwara Land Developers and Pankaj Co-operative Housing Society. The said lease agreement was made in 1981, without joint measurement of land with concerned parties. The Petition is devoid of merits. The land is in possession of MCGM since 1980 to facilitate the improved environment. The boundaries of villages Versova and Oshiwara is disputed and not yet finalized. Hence, the petition may be dismissed.

18. Learned Counsel Mr. Godbole representing Respondent MCGM in Writ Petition No.1179 of 2018 tendered list of date and events and submitted as follows.

- a) The Petition involves disputed questions of fact. The claim of the Petitioners is belated. The ownership of the Petitioner is disputed. The Petition is devoid of merits.
- b) In 2006 Survey has been conducted in which it is claimed that portion of land in possession of the Corporation is required to be treated as part of Survey No.41 of Village Oshiwara. Land admeasuring 139.43 acres out of S.No.120 equivalent to CTS No.1374-A (part) of Village Versova is adjoining the land which is subject matter of the Petition being the land admeasuring 64.75 acres out of land bearing S.No.41(part) equivalent to CTS No.739 (Part) of village Oshiwara and according to Petitioners boundary of village has shifted the portion which must be treated as part of land claimed by the Petitioners. Whenever situation arises where boundary of village is considered as shifted and portion of the land from one village is included in another village, than such portion of land does not get merged with existing Survey number and automatically belong to the adjoining owner. Such land is given separate number and it vests in the Government.
- c) The claim of the Petitioners is seriously disputed

which has to be established in a properly constituted civil suit and the Petitioners therefore must establish their right based on the survey in which they claimed that the boundary of village Oshiwara now passed through S No.120 and hence that land must be treated as belonging to the Petitioners.

d) The claim is misconceived.

e) The PR Card of CTS No.739 shows that the total land of 90.20 Ha has been given on lease for 98 years to M/s. Pankaj Co.Op. Housing Society Ltd. as the part of the said land is in possession of MCGM since 1980 then execution of this land by Oshiwara Land Developer will not be tenable in law.

f) The Petition is silent as to exactly in which proceedings and in what context the affidavit-in-reply was filed on behalf of Respondent No.1. The Petitioner had annexed affidavit in reply dated 22nd April, 1997 affirmed by Dilip Kulkarni, Assistant Engineer (SP) of MCGM who was defendant No.6 in Suit No.3429 of 1991 and Notice of Motion No.84 of 1992 filed by Oshiwara Land Development Co.Pvt. Ltd. and others. The Petitioners have deliberately not annexed the plaint and

other proceedings in Suit No.3429 of 1991. The suit was filed by Oshiwara Land Development Co. claiming to be the Chief Promoter of Shree Swami Samartha Prasanna Co-operative Housing Society (proposed) and others to be Chief Promoters of Apna Ghar Co-operative Housing Society (proposed). The defendants in the suit were State of Maharashtra, Collector, Bombay Suburban District; Officer on Special Duty, Mantralaya; Minister of Revenue, Government of Maharashtra and MHADA. The plaintiff sought amendment of the plaint and the BMC and National Institute of Oceanography were added as defendants. The plaintiff therein had sought declaration of ownership in respect of the property described therein and also sought declaration that the orders annexed therein are illegal and bad in law.

g) The orders were passed by the Additional Collector, Bombay Suburban District in suo-moto revision of the order dated 11th March, 1983 passed by Sub Divisional Officer, (SDO) Bombay Suburban District in Case No.2 of 1983. The SDO had allowed the application of Oshiwara Land Developers claiming to be owner of land bearing S.No.120 of Village Versova. This order was passed on the assumption that the land bearing S.No. 120 of

Versova was part of land bearing S.No.41 of Oshiwara and on further assumption that on account of the Consent Decree passed by this Court in Suit No.66 of 1968, the Oshiwara Land Developers had become owner of S.No.41 of village Oshiwara. The said order was passed without hearing MHADA or MCGM. The revision was suo-moto initiated by Additional Collector and vide order dated 17th August, 1984, the order dated 11th March, 1983 was set aside. The order dated 3rd January, 1986 which was the second order challenged in the suit was passed by OSD of the Government in Revenue Revision No.S.30/1199/3996-LI, the Revision was dismissed. The Review Petition was filed by the Oshiwara Land Developers before the Government. Review Petition was dismissed.

h) The plaint was amended by impleading MCGM and National Institute of Oceanography. The permanent injunction was sought against the above defendants. Decree was sought for enforcement of undertaking given by MCGM and restoration of land from defendant Nos.6 & 7. Notice of Motion was filed by the plaintiff in Suit No.3429 of 1991. No relief was claimed against MCGM. The Petitioners have deliberately not stated the correct

facts of the Petition.

i) In the reply filed by Dilip Kulkarni specific defences were raised. The averments were denied. The plaintiffs had voluntarily deleted added defendant Nos. 6 & 7 and all the averments added prayers regarding claim against MCGM were given up. Thus, the plaintiffs had specifically given up all the relief against Defendant Nos. 6 & 7 and thus, the plaintiffs are estopped from maintaining the Petition and the claims.

j) The survey conducted at the back of MCGM is not binding on them.

k) The Petitioners are deliberately not producing plan annexed to the Suit Nos .660 of 1968, 3429 of 1991 and 1119 of 1985. They are deliberately not producing the plan annexed to their own Lease Deed and the Consent Decree in the 1968 suit. The Petitioners had changed their stance in the light of reply of MCGM.

l) A Kowl was granted on 02/10/1820 in favour of one Cursetjee Cowasjee Banajee, predecessor in title of Sir Byramjee Jeejeebhoy in respect of 7 villages, including village Oshiwara, then called Wasivre. Banajee constructed extensive salt works. In 1906, Kami Jast

Patrak (KJP) was prepared under the Bombay Land Revenue Code 1879, in which area of S. No. 41 of Village Oshiwara (Wasivre) and the areas of land in Village Versova (Vesave) on the Western Side of Oshiwara were altered Viz. Original area of S.No. 41 Oshiwara comprised of two portions, namely, 1086 Acres 8 Gunthas of Khajan Land and 184 Acres 12 Gunthas of Creek. Entire Creek Area was Pot Kharaba (uncultivable). Out of the Khajan Area of 1086 Acres 8 Gunthas, 20 Acres 8 Gunthas was uncultivable (Kharab) and the remaining area was 1066 Acres. New Survey No. 120 of Village Vesave (Versova) was prepared by carving out 362 Acres 10 Gunthas from Khajan land of S. No. 41. Said S. No. 120 was included in village Versova. Area adm. 14 Acres 20 Gunthas of Creek from S. No.41 was also included in village Versova. In view of this, the area of S. No. 41 Oshiwara was reduced as :

Khajan Land- 723 Acres 38 Gunthas.

Creek- 169 Acres 32 Gunthas.

Total- 893 Acres 30 Gunthas.

m) The remarks in Column No. 17 in English translation reads as follows :

“Out of this, land admeasuring 362 Acres 10 Gunthas is included in Village Vesave and hence the same has been reduced. The uncultivable land which is part of the Creek is retained. Half the area of creek dividing Villages Oshiwara and Vesave was earlier included in Village Vesave and the remaining area of the said creek to the extent of 14 Acres 20 Gunthas was included in Village Oshiwara. However, since the Khajan Land admeasuring 362 Acres 10 Gunthas from S. No. 41 is entirely included in Village Vesave, the said creek earlier on the boundary of villages is completely included in Village Vesave, the area of 14 Acres 20 Gunthas of the said creek which was earlier included in Village Oshiwara is reduced from the said village and added in the Village of Vesave.”

n) Consequently, from 1906 the area of S. No. 41 of Oshiwara was clearly reduced to 723 Acres 38 Gunthas consisting of cultivable land admeasuring 703 Acres 20 Gunthas and non-cultivable (Kharab) land admeasuring 20 Acres 8 Gunthas. A separate 7/12 extract of the said land was prepared

o) Form IV (Akar Phod Patrak) of 1929 was prepared which also shows the area of Survey No. 41 of Oshiwara as 723 Acre 20 Gunthas only. Sir Byramjee Jeejeebhoy died intestate on 01/04/1946, leaving behind widow Jerabai and two Sons Nanabhoy and Jehangir. Letters of Administration were granted on 09/08/1947 by Bombay High Court, which was also in respect of only 723 Acres of S. No. 41 of Oshiwara. Vide registered Deed of Conveyance, Nanabhoy transferred S. No. 41 admeasuring 723 Acres in favour of Byramjee Jeejeebhoy Pvt. Ltd., which is also recited in the Lease Deeds.

p) The Legislature of the then Bombay Province / State enacted the Salsette Estates (Land revenue Exemption Abolition) Act 1951 (Act No.47 of 1951), which received the assent of President on 04/01/1952 and was brought into force on 01/03/1952 as a measure of aggregation reforms and abolished exemption from payment of amount of revenue enjoyed by the estate holders in certain villages in the villages of Salsette and for the vesting of waste land in the villages in the Government.

q) The Collector of Bombay Suburban District informed Byramjee Jeejibhoy Pvt. Ltd. (successor in title of Banaji) that w.e.f. 01/03/1952 by virtue of Section 4 of the said Act, all waste lands which were in property of the said holders under Kowl and all waste lands, which had been demised in the Kowl as property of the estate holders, but which had been appropriated before 14/08/1951 and all other kinds of property referred in Section 37 of the Bombay Land Revenue Act, 1879 and which were not property of any other individual shall vest in the Government. It was also informed that B.L.R.C. 1979 will apply to all villages and it was informed that the Kowl holder should stop collecting land revenue or rent.

r) Byramjee Jeejeebhoy Pvt. Ltd. sent reply on 05/03/1952 and contended that by Conveyance dated 22/09/1947 executed between OLDC and late Byramjee, all lands in the 7 villages were absolutely and for ever freed and discharged from the obligation of the Kowl of 1830 including all liabilities to pay land revenue under Regulation No.17 of 1827 and hence, the Act could not and did not apply.

s) Byramjee Jeejeebhoy Pvt. Ltd. Filed High Court-O.O.C.J. Suit No. 52 of 1953 for a decree declaring that the provisions of 1951 Act did not apply to the aforesaid 7 villages and for injunction. The suit was dismissed by holding that the Indenture of Conveyance dated 22/09/1947 was not a Lease and was only grant of form of right to recover revenue as an agent of the State and hence, the 7 villages were “Estate” defined u/s. 2(b) of the 1951 Act and was exempted from the operation of Section 3(1) of the Act. An Appeal against the said Decree was dismissed by Division Bench of High Court leading to filing of Civil Appeal No. 560 of 1962 in the Supreme Court.

t) Supreme Court dismissed the said Civil Appeal No. 560 of 1962 of Byramjee Jeejeebhoy Pvt. Ltd. on 03/04/1963, holding that provisions of Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 shall apply to the estate.

u) Agreement for sale was executed by Byramjee Jeejeebhoy Pvt. Ltd. on 25/01/1964 in favour of M/s. New Swastik Land Development Corporation in respect of land admeasuring 723 Acres.

v) Terms of above agreement were modified by the letters issued by advocate for Byramjee Jeejeebhoy Pvt. Ltd. The area of land was reduced to 637 Acres from 723 Acres.

w) 30/09/1968 : Byramjee Jeejeebhoy Pvt. Ltd. filed Suit No. 660 of 1968 for specific performance of above referred agreement as modified from time to time on 30/0/1968. Suit property is described as land, partly agricultural and partly Khajan, admeasuring 723 Acres, bearing S. No. 41 in Village Oshiwara, Taluka South Salsette, Mumbai Suburban. Boundaries indicated in the plan are crucial and are as follows:

North- Pahadi Goregaon

South- Versova

East- Oshivara village

West- Creek

x) Consent Terms were filed in Suit No. 660 of 1968 on 15/10/1969 wherein, Byramjee Jeejeebhoy Pvt. Ltd., Plaintiff therein, agreed to transfer the suit land being land admeasuring 723 Acres 38 Gunthas in favour of M/s. New Swastik Land Development Corporation. Thus, the land admeasuring 362 Acres 10 Gunthas which was reduced from the area of Village Oshiwara

and included in the area of Village Vesave (Versova) by Kami Jast Patrak of 1906 was never the subject matter of the agreement of which specific performance was sought in the said Suit and consequently never the subject matter of the said Suit. The area of 723 Acres 38 Gunthas is mentioned in the description of the property and most importantly the boundaries indicated in the Plaint are as referred above, which clearly show that the Creek referred on the West is the creek admeasuring 169 Acres 20 Gunthas which is the creek inside Village Oshiwara and is not the creek which was completely included in Village Versova in the year 1906. A separate conveyance was to be executed and till execution of conveyance, the Defendants were allowed to occupy the land as licensees of Plaintiff. This consent decree was not registered within the period of 4 months or extended period of additional 4 months with penalty stipulated under Sections 23 and 25 of the Indian Registration Act, 1908 nor was a separate conveyance executed and registered within the said period or thereafter.

y) M/S New Swastik Land Development Corporation assigned its rights under the Consent Decree in Suit No. 660 of 1968 in favour of OLDC. The Petitions and

documents filed by the Petitioner are completely silent about the mode, manner and instrument assigned.

z) The earlier Consent Decree dated 15/10/1969 in Suit No. 600 of 1968 was modified and was rescinded to the extent of land admeasuring 177 Acre- 7.1/2 Gunthas, which was subject matter of acquisition in view of proceedings under Land Acquisition Act, 1894 in Case No. LAQ25 and consequently decretal amount to be paid by M/s. New Swastik Land Development Corporation or its nominees under the Consent Decree was reduced to Rs.18,92,306 (pages 592-594). Clause 5 provided that the Consent Decree was to operate as a conveyance in favour of OLDC in respect of the area excluding the land acquired as also excluding the land conveyed to different parties by the Plaintiff at the instance of the Defendants. Both the Petitions and documents filed by the Petitioners are completely silent about the exact areas which were conveyed to different parties by the Plaintiff at the instance of the Defendants.

aa) Decree in terms of the aforesaid adjustment recorded on 06/10/1979 was drawn up and the certified copy was provided on 13/11/1979.

bb) Unilateral declaration was executed by Deepchand Gardi, Director of OLDC along with which only the subsequent order of adjustment of decree passed pursuant to the Consent Judge's Order dated 26.03.1979. This adjustment does not increase the area from 723 Acres 38 Gunthas. This declaration is registered at Sr. No. 1393 of 1980 on 23/06/1980 before the Sub-Registrar - Mumbai, which is claimed to be a conveyance by OLDC. The decree itself is not registered and is merely enclosed. The Schedule of Property mentioned in the Declaration is agricultural and khajan land admeasuring 22,24,222 sq. yards i.e. 18,59,734.47 sq. mtr (459 Acre- 22 Gunthas) in Village Oshiwara bearing CTS No. 1, S. No.41. Original S. 41 admeasured only 723 Acres- 20 Gunthas and the Kami-Jast Patrak of 1906 and Form IV (Akar Phod Patrak) of 1929 were final and binding and have attained finality.

cc) OLDC submitted Application to the Minister of Revenue on 27/09/1980, claiming that boundary of S.No.41 of Village Oshiwara, which is common with Village Versova, should be rectified based on which, pursuant to the orders of Additional Collector, BSD, enquiry u/s.20 (2) of the MLRC 1966 was initiated by

the SDO. In the said Enquiry, OLDC relied upon Sud Book of 1906 showing total area of S. No. 41 of Village Oshiwara as 893 acre-30 gunthas and as per City Survey as 806 acres and 33 gunthas and it was specifically contended by OLDC that the land was wrongly shown as a part of S. No. 120 of Village Versova and actually forms part of S. No. 41 of Village Oshiwara.

dd) MCGM was put in possession of 77.36 Hectors equivalent to 191 Acres- 6 Gunthas (approximately) on 30/09/1980, which land was never subject matter of the Agreement for Sale by Byramjee Jijeebhoy Private Limited and was in fact excluded from Village Oshiwara and included in Village Versova (Vesave) in the Kami-Jasta Patrak in the year 1906, which was also confirmed by Form IV (Akar Phod Patrak).

ee) Pankaj Unit No.1 Housing Development Company Private Limited got a Deed of Lease executed from OLDC on 17/09/1981, with right to purchase reversionary interest. The First Schedule in Writ Petition No. 1179 of 2018, describes the entire 723 acres land with the following boundaries:

On North : By boundary of Pahadi and Goregaon;

On East : By Ghodbunder Road;

On West : By creek;

On South: By Amboli in K-Ward of BMC.

These boundaries do not match with the boundaries in the Consent Decree dated 30/09/1968 mentioned in Clause (m).

ff) In the enquiry u/s. 28 of M.L.R.C. 1966, SDO passed an order directing the DILR - BSD to verify and carry out measurement which led to M.R. No. LND / DSO /41 & 120/Oshiwara/Versova/83 dated 23/02/1983, which stated that the contention of OLDC, the Applicant being in possession of the land admeasuring 86 acres 32 gunthas out of S. 120 of Versova was purportedly tenable. This was done behind the back of MCGM and MHADA.

gg) On the basis of the said Report dated 23/02/1983 and on the assumption that due to the Consent Decree in Suit No. 660 of 1968, OLDC had allegedly become owner; the SDO held that disputed land admeasuring 86 acres- 32 gunthas out of S. No. 120 of Village Versova allegedly originally formed part of S.41 of Oshiwara and on that basis, declared as owner of the said 86 acres- 32 gunthas.

hh) In suo motu Revision initiated by Additional Collector-BSD u/s. 257 of M.L.R.C. 1966, the said Order of SDO was set aside on 17/08/1984.

ii) OLDC challenged the said Order by filing Revision Application u/s. 257 of M.L.R.C. 1966 bearing No.30/1199/3996/LI before the State Government in the year 1985. OLDC filed Civil Suit No. 1119 of 1985 in the City Civil Court of Bombay against MHADA for seeking injunction in respect of the land admeasuring 86 Acres-32 Gunthas. Ad Interim Relief in Notice of Motion No. 272/1985 passed therein was vacated and ultimately, the Suit and the Appeals from Orders were withdrawn.

jj) In the Revision filed by OLDC, Byramjee Jijeebhoy Pvt. Ltd. objected to the claim of OLDC by submitting reply dated 24/10/1985, stating that Section 41 is surrounded by Government villages only to the south and west; whereas north is surrounded by Survey No. 161 Pahadi and Goregaon claim of OLDC to any area beyond 723.20 acres - 177 acres = 173.3/4 acquired by MHADA, 163.22 acres sold to industrial estate and other areas from 723 acres, which were transferred, was specifically disputed.

kk) Revision Application filed by OLDC was dismissed by the Secretary and O.S.D. of Government on 03/01/1986. The Operative Order of the State Government in Revision reads thus:

“ 21. Thus, from the foregoing, I have no hesitation to hold that the Sub Divisional Officer's Order is misconceived, arbitrary and ab-initio illegal hence, liable to be quashed. The Additional Collector's order setting aside S. D. O.'s decision cannot be faulted. The kami-jast patrak prepared as per S.D.O.'s Order is hereby rendered null and void. The revision petition is accordingly rejected.

Parties will bear their respective costs.

Bombay	Sd/-
Dated : 3.1.1986	(S.M.Deosthalee)
	Office on Special Duty
	Appeal & Revisions)”

Aggrieved by this Order, OLDC filed a Review Application on 12/03/1986 u/s. 258 of MLRC, 1966.

ll) Review Petition filed by OLDC was dismissed by the State Government on 18/02/1991. Thus, original inquiry initiated u/s. 20 of M.L.R.C. 1966 attained finality.

mm) OLDC filed Suit No.3429 of 1991 in this Hon'ble Court and sought a declaration of ownership in respect of the Suit as described in Exhibit-B. Prayers (a) to (c) read thus:

“The Plaintiffs, therefore, pray:

(a) That this Hon’ble Court be pleased to declare that the Plaintiffs are the absolute owners of The Suit lands, more particularly described I Exhibit ‘B’ hereto and that the Defendants and/or any of them have no right, title or interest in the said suit lands;

(b) That this Hon’ble Court be pleased to declare that the orders dated 17th August, 1984 (Exhibit “E” hereto) dated 3rd January, 1986 (Exhibit “I” hereto) and dated 18th February, 1991 (Exhibit “R” hereto) are illegal and bad in law;

(c) That this Hon’ble Court be pleased to grant a permanent injunction restraining the Defendants and/or any of them, their servants, officers, agents from, in any manner, interfering with and/or disturbing the Plaintiffs’ possession.”

nn) Three Mutation Entries were made in the PR Card of CTS No. 1A of Oshiwara whereby first entry recorded name of Byramjee Jeejeebhoy as Holder of 1,17,054 Sq. Mtrs, Second entry recorded name of New Swastik Land Development Corporation Pvt. Ltd. as Holder of 1,17,054 Sq. Mtrs. and the Third entry recorded name of Oshiwara Land Development Corporation ie OLDC as

Holder of 1,17,054 Sq. Mtrs equivalent to 11.7054 Hactares ie 12,59,969.26 Sq. Ft ie 28 Acre 37 Gunthas (Pg No.44 of WP No.172 of 2016) This is the only Mutation Entry of title which can be found from Exh.B to that Petition.

oo) Subsequently, by amending the Plaint, MCGM and National Institute of Oceanography were added as Defendant Nos. 6 & 7 and by adding prayers c(i) and d(i to iii) various reliefs were sought against them. Prayers c(i) and d(i to iii) read thus :

“ (c)(i) that this Hon’ble Court be pleased to grant a permanent injunction restraining the Defendant Nos. 6 & 7 and/or any of them, their servants, officers, agents from in any manner interfering with and/or disturbing the Plaintiffs possession in respect of the suit lands more particularly described in Exhibit “B” hereto”

“(d)(i) that this Hon’ble Court do enforce the undertaking given by Defendant No.5 as per affidavit dt.30th April, 1990 being Exh.P-1 hereto and do direct Defendant No.5 and Defendant No.6 & 7 (who claim through Defendant No.5) to restore the suit lands to its original condition and if Defendant Nos. 6 & 7 found to be in possession of any part of suit lands, this Hon’ble Court do direct the Defendant Nos.6 & 7 not to carry out any further works on suit land.

“(d) (ii) that in the event of the Defendants

Nos. 6 & 7 being found in possession of any portion of the suit property, it be declared that they are rank trespassers thereupon and have no right, title or interest therein.”

“(d)(iii) that in the event of the Defendant Nos. 6 & 7 being found in possession of any portion of the suit property described in Exhibit “B” hereto, Defendant Nos.6 & 7 be ordered and directed to hand over quiet and peaceful possession of the same to the Plaintiffs.”

pp) By Order dated 2.2.1999 passed by SLR, Andheri, a new PR Card for an area admeasuring 9,01,983.9 Sq. Mtrs. i.e. 97,08,954.7 Sq.Ft. Equivalent to 222 Acres 35.48 Gunthas was opened and was given CTS No.739 of Oshiwara. In this P.R. Card, the name of OLDC was recorded as Holder. Pg. 85 of W.P. No.1179 of 2018. It is impossible to find out from the averments in both Petitions or documents annexed thereto as to how the name of OLDC which was entered pursuant to the Consent Decree in Suit No.660 of 1968 for an area of 28 A 37 G was suddenly increased to 222 Acres and 35.48 Gunthas.

qq) By Order dated 29/03/2004, passed in Suit No. 3429 of 1991, the MCGM and National Institution of Oceanography were deleted as party Defendants in that

suit. The deletion of MCGM and National Institution of Oceanography was voluntarily sought by the Plaintiff therein. The claim against MCGM was specifically given up. It was stated that *“The Plaintiffs are advised not to pursue any remedy against them.”*

rr) On 29/06/2007, this Court passed an Order in Suit No. 3429 of 1991 and declined to pass a Decree in terms of the Consent Terms. In paragraph 66 it was recorded that there are various disputed facts which need detailed evidence in view of the Orders passed by the Competent Authority, which are in existence since 1984. Aggrieved by this Order, OLDC filed Appeal No.674 of 2007.

ss) By order dated 17/01/2008, the Division Bench of this Court allowed the Appeal and remanded the matter to the Single Judge. Aggrieved by this Order, MHADA filed SLP (C) No. 9785 of 2008 and OLDC filed SLP(C) No.2885 of 2018 before Supreme Court.

tt) On 23/10/2008, the Hon’ble Supreme Court granted leave in SLP(C) No. 9785 of 2008, which was numbered as Civil Appeal No.6245 of 2008 and SLP (C) No 2885 of 2018 of OLDC was numbered as Civil Appeal No.6246 of

2008. The Consent Terms dated 19/12/2006 were accepted with a rider that they will not bind the Defendants in another Suit No. 2385 of 2006 filed by OLDG against Mohit Construction. It was clarified that this will also include any consequential action that may have been taken on the basis of the Consent Terms such as mutation or otherwise. Prayer (b) in the Suit seeking quashment of Orders dated 17/08/1984 of Additional Collector-MSD and dated 03/01/1986 and 18/02/1991 of State Government were given up and the said Orders continue to operate and are legal, valid and binding. Consequently, finding recorded by Secretary and OSD of Government has attained finality. The Government had allotted land admeasuring 355 Acres to the then Bombay Housing Board from out of S. No. 120 of Versova and this fact was recorded and mutation entry no. 644 which was certified on 22/12/1964.

uu) The Divisional Commissioner-Konkan Division issued Notification dated 18/02/1909 declaring various lands in Village Oshiwara as private forests, which include Survey No. 41 (part) (corresponding CTS 739(part)) admeasuring 75.5271 hectares.

vv) Pankaj Unit No.1 and 2 filed Suit No.1975 of 2011 against OLDC for specific performance of the said Lease Deed and Agreement for transfer of Reversionary interest. In 2016 OLDC filed Writ Petition No. 172 of 2016 seeking a mandamus against MCGM to grant TDR in respect of huge area admeasuring 64.75 Acres on the ground that the same is owned by them.

ww) Consent Terms were filed on 06/02/2018, between Pankaj Unit No.1 and 2 and OLDC and on the same day, OLDC claims to have conveyed the land admeasuring 158.05 Acres to the Pankaj Unit No.1 Development Corporation Ltd.

xx) The consent decree relied upon by Petitioner to claim right in the property was not registered.

19. Mr. Godbole relied upon several documents on behalf of MCGM such as Kami Jast Patrak of Sud Book of Survey No.41 of 1906, Copy of Plaint in Suit No.660 of 1968, copy of Consent Decree dated 15th October, 1969 in Suit No.660 of 1968, Declaration of Mr. Deepchand Gardi dated 5th June, 1980, copy of indenture of Lease dated 17th September, 1981 between Oshiwara Land Developers and Pankaj Co-op. Housing Development Society, Order dated 17th August, 1984 passed by

Additional Collector, Bombay Suburban District, in Revision No. C/Desk-II/CTS/1/84, copy of Plaint in Suit No.1119 of 1985, copy of letter dated 24th October, 1985 from Byramjee Jeejeebhoy Pvt Ltd. to the Hon'ble Revenue Minister and copy of order dated 3rd January, 1986 passed by OSD in Revenue Revision No. S-301199/3996-LI.

20. Mr. Godbole has relied upon the following decisions.

- I. Sarguja Transport Service V/s. State Transport Appellate Tribunal M.P. Gwalior and Ors. (1987) 1 SCC 5.
- II. Shankar Rama Gaude & Ors. V/s. Devastan of Shri. Bhagwati of Tuem 2005 SCC OnLine Bom 1269.
- III. Ratan Lal Sharma V/s. Purshottam Harit (1974) 1 SCC 671.
- IV. Bhoop Singh V/s. Ram Singh Major and Others (1995) 5 SCC 709
- V. Phool Patti and Another V/s. Ram Singh (dead) through Legal Representatives and Anr. (2015) 3 SCC 164.
- VI. Order dated 18th December, 2018 passed by the Division Bench of this Court in Writ Petition No. 203 of 2014 and other connected matters.
- VII. Bhimabai Mohadeo Kambekar (dead) through Legal Representative V/s. Arthur Import and Export and Company and Ors. (2019) 3 SCC 191.

21. Learned Counsel Mr. Chinoy in rejoinder submitted that, the submissions of MCGM about belated change of stance are ex-facie baseless and malafide. Oshiwara Land Development Co. are owners of land S.No.41. They made claim to Additional 86 acres of government land in adjoining S.No.120 Versova. Claim was adjudicated under Section 20 of MLRC. Appellate authority set aside order of SDO and Additional Collector recorded that Oshiwara Land Development Co. was by consent decree of 1968 are owners of S.No.41 of village Oshiwara which is contiguous to S.No.120 of Village Versova. MCGM had not disputed the title of Oshiwara Land Development Co. to S.No.41 Oshiwara in the past. Correspondence was exchanged between Oshiwara Land Development Co. and MCGM. Boundary dispute was resolved in Suit No.3429 of 1981. Joint Survey conducted in 2006. By lease dated 17th September, 1981 Oshiwara Land Development Co. leased 222.80 acres land to Pankaj Unit No.1. Suit was filed against Oshiwara Land Development Co. Dispute settled. Contradictory affidavits are filed by MCGM.

22. Mr. Dwarkadas, in rejoinder submitted that the Petitioners have duly registered document of title. The title of Oshiwara Land Development Co. Pvt. Ltd. has never been disputed regarding 723 acres of S.No.41 Village Oshiwara. On

3rd April, 1963 the Hon'ble Supreme Court in the case of Byramjee Jeejeebhoy Pvt. Ltd V/s. State of Maharashtra AIR 1965 SC 590 held that the grant/kawl of 1830 conferred absolute rights of ownership of seven villages, including village Oshiwara in favour of Byramjee Jeejeebhoy Pvt. Ltd. The issue before the Supreme Court was whether Byramjee Jeejeebhoy was exempted from payment of land revenue under Section 3 of Salsette Estates (Land Revenue Exemption Abolition) Act, 1951. The Supreme Court held that the grant does not purport to demise merely a right of enjoyment of land. It confers rights of ownership in land. There is no contractual right reserved either expressly or by implication, to determine the grant. Byramjee Jeejeebhoy Pvt. Ltd had been conferred with absolute rights of ownership. On 9th January, 1965, the Additional Collector, held that S.No.41 of village Oshiwara admeasuring 723 acres 88 gunthas was not waste land and had been appropriated by Byramjee Jeejeebhoy Pvt. Ltd. prior to 14th August, 1951. Hence, the land in S.No.41 of Village Oshiwara could not be declared to be the property of State Government. Thus, the ownership of Byramjee Jeejeebhoy was established relating to S.No.41 of Village Oshiwara. Byramjee Jeejeebhoy have accepted and confirmed that it conveyed ownership right in the land of Oshiwara Land Developers which is evident from

the reply dated 24th October, 1985 filed in Revision Proceedings initiated by Oshiwara Land Developers. It was not disputed that it conveyed the ownership of property bearing S.No.41 admeasuring 723 acres 30 gunthas to Oshiwara Land Developers. Consent Decree dated 15th October, 1969 was passed in Suit No.660 of 1968 filed by Byramjee Jeejeebhoy Pvt. Ltd. as seller seeking specific performance of agreement to sell S.No.41 of Village Oshiwara. The schedule to the Consent Decree makes it evident that the subject matter thereof was entire survey No.41 of Village Oshiwara. By Consent Judge's Order dated 9th November, 1979, the Consent Decree was adjusted on account the fact that during the period between 1969 to 1979, certain portions of land falling in Survey No.41 of Village Oshiwara were acquired by the State Government/MHADA and were sold by Byramjee Jeejeebhoy Pvt. Ltd. The area which comprised is remaining land of S.No.41 of village Oshiwara and which was conveyed under the consent decree read with the Consent Judge's Order specified to be 459.22 acres. The Corporation has never denied the aforesaid fact. Chamber Summons was filed by Corporation on 6th July, 2015 for impleading them as party in Suit No.1975 of 2011 between Pankaj Unit Nos. 1 & 2 and Oshiwara Land Developers. Chamber Summons was filed for directions that

area admeasuring 8173 Sq.mtrs. on plot No.739 (part) of village Oshiwara be handed over to Corporation. The land in respect of which TDR is claimed totally admeasuring 64.75 sq. mtrs. and fall in the no Development Zone and covered by the same PR Card dated 3rd February, 1999 was relied upon by MCGM in Chamber Summons. Having accepted and admitted that Oshiwara Land Developer is the owner of No Development Zone, the MCGM cannot say that there is dispute regarding the title in respect to subject land. The dispute in respect to 86 acres of land from village Versova is not the subject matter of the present Petition. Oshiwara Land Developer filed Suit No.3429 of 1991 claiming ownership of the land. The order dated 23rd April, 1997 was passed in the Notice of Motion appointing Court Commissioner to inspect the site and submit report. The Commissioner submitted report stating that the total area of suit land is 95 acres 30 gunthas and not entire S.No.41. Plan was submitted by Court Commissioner identifying the exact location of suit land. MCGM was party to the suit. Subsequently, MCGM was deleted as party. They did not dispute or raise any objection with regard to the Commissioners Report. In the Affidavit dated 22nd April, 1997 filed by MCGM in Suit No.3429 of 1991. None of the objections raised by them were pleaded. MCGM has requested for joint

measurement to ascertain entire area of aerated lagoons and sewage treatment Plant which is partly falling in village Versova and village Oshiwara. The survey was conducted. The City Survey Officer confirmed that the land admeasuring 262,031 Sq. mtrs. falling in S.No.739 of Village Oshiwara was in the possession of MCGM for the purpose of Sewerage Project. Thus, the submission of MCGM that the land which forms the subject matter of the Petitioners is the same as the land which forms subject matter of Suit No.3429 of 1991 is incorrect. The Petitioners have duly registered document of title.

23. Learned Counsel Mr. Godbole in counter submitted that the Hon'ble Supreme Court in the case Byramjee Jijibhoy Pvt. Ltd (supra) has held that by indenture of 1847, he was discharged from the liability in the form or the cowl of 1830 and all obligations thereof ceased and the villages subject to the reservations already mentioned were granted absolutely without reserving any power to cancel the grant or to resume the lands. Under indenture dated 22nd September, 1847, the grantee was given the right to hold the villages free from liability to pay revenue on certain terms, one of which was to pay rent of Re.1 p.a. when demanded. The case of Byramjee of being absolute owner and hence not covered by Salsette Estate

(Land Revenue Exemption) abolition Act, 1951 was specifically rejected. Byramjee was advancing this argument to buttress their case that no part of village Oshiwara, including any waste land, was liable to be resumed by the State. This argument was rejected and the Hon'ble Supreme Court held that aforesaid Act was applicable. Since, in the enquiry under the Act, the Tahsildar held that Byramjee had appropriated the land, they were conferred the rights as Occupant under the B.L.R. Code, 1879. Even according to the Petitioners, the ownership of Byramjee Jeejeebhoy Pvt. Ltd. was to the extent of 723 acres 38 gunthas only and not the entire survey No.41. Byramjee was declared as Occupant on account of the appropriation of the land. The Petitioners had pleaded before S.D.O., Collector, O.S.D. and State Government, that Oshiwara Land Development Co. is owner of Survey No.41 which was 893 Acres, which claim was initially accepted by SDO but subsequently rejected by Additional Collector and State Government. The stand of ownership of 893 Acres is given up by the Petitioners. The submissions that Byramjee has confirmed that it conveyed ownership rights in S.No.41 admeasuring 723 acres to Oshiwara Land Development Co. is misleading. It is contrary to reply filed by Byramjee Jijibhoy Pvt. Ltd. in the Revision before State. The Petitioners are accepting the reply and the

statements made therein. If the reply is read in its entirety, it would be clear that even according to Byramjee Jijibhoy Pvt. Ltd., the Oshiwara Land Development Co. can claim balance land from out of 723 acres after reducing the area of industrial land sub division and the area acquired for the housing board. As per the reply, the area of industrial land is 163.22 acres. Whereas the area of land acquired for housing board is 177.17 acres. In the Consent Judges Order for adjustment of Consent Decree, which is claimed to be the document of title by Oshiwara Land Development Co.; land acquired for the then Bombay Housing Board and the land developed for industrial Estate was excluded. According to Byramjee Jijibhoy Pvt. Ltd. , Oshiwara Land Development Co. can claim right over the land admeasuring 383 acres or thereabout. The submission of the Petitioners is that the schedule to the consent decree makes it evident that the subject matter thereof was survey No.41 admeasuring 723 acres or thereabout. Since the survey of suburban Bombay was commenced in 1963 it was not concluded, the consent decree was passed, and the decree used word '723' acres or there about. Since consent decree was adjusted from 1969 to 1979, the rights were assigned in favour of heritage of Oshiwara Land Development Corporation, Consent Judges Order provide that consent decree will operate

as a conveyance in favour of Oshiwara Land Development Co. in respect of remaining land of S.No.41. According to Petitioners the said remaining land was subsequently specified as 459.22 acres. 222.8 acres, NDZ, 238.17 acres total area of 5 layouts. The portion of STP is located in S. No.41. The claim of the Petitioner is sufficient to throw their claim of ownership of 64 acres land in No Development Zone. The reply filed by Byramjee Jijibhoy Pvt. Ltd. before the State is accepted by Oshiwara Land Development Co. to overcome the objection about non joinder of necessary party. Byramjee Jijibhoy Pvt. Ltd. has stated that Oshiwara Land Development Co. can claim balance from out of 723 acres after reducing the area of industrial land sub division and the area acquired for the housing board. The area of industrial land is 163.22 acres and the area of land acquired for housing board is 177.17 acres which is excluded in the adjustment Consent Judge's Orders which is claimed to be the document of title by Oshiwara Land Development Co.. Thus, even according to Byramjee Jijibhoy Pvt. Ltd., Oshiwara Land Development Co. can claim over land admeasuring 183 acres. According to the Petitioners they developed 238.17 acres in residential zone. Deducting it from 383 acres only 144.83 acres can be claimed by Oshiwara Land Development Co. for which they have no title in the absence of

registration of Consent Decree. The Writ Court will not be in a position to decide disputed questions of title, locations, etc. The submission of the Petitioners that even in the absence of plans annexed to consent decree they can establish title over the property is devoid of merits. The Development plan of 1967 can be looked into to verify the location of boundary of village Oshiwara and Vesave. Decree was drawn in 1969. The location of boundary is shifted in 1991. The title can be considered on the basis of 1967 DP and the map which must have been annexed to consent decree of 1969. The plans annexed to the Lease Deed are not shown. Change in boundary appears to be the boundary of map prepared by DILR. There is variance about location of boundary shown in DP of 1967 and 1991. Shifting of boundaries in the DP cannot confer title of Oshiwara Land Development Co. or Byramjee Jijibhoy Pvt. Ltd. The contention of the Petitioners that the dispute in respect of 86 acres of land which confirm subject matter of Suit No.3429 of 1991 is not a part of land admeasuring 723 acres of village Oshiwara is untenable. It is admitted that 1968 suit was only for 723 A 38 G. It is now claimed that 86 acres, subject matter of 1991 suit was in addition to 723 A 38 G. The Oshiwara Land Development Co. has obtained a fraudulent and collusive Consent Decree in 1991 suit by deliberately deleting MCGM.

The area of S.No.41 is 723 acres 38 Gunthas, in the inquiry conducted under Section 37(2) of the Bombay Land Revenue Code, 1879, it is confirmed that the kawl of 1830 of 1830 was in respect of Khajan land. Perusal of Sudbook, Kami Jasti Patrak of 1830 of Oshiwara would make it clear that Khajan land was bearing S.No.41 and the area of said Khajan land is 723 acres 38 gunthas. The creek admeasuring 169 acres 32 gunthas is completely separate and the Grantee cannot have any claim over the creek. The Petitioners have admitted that the total area of S.No.41 is 723 acres. Now it is claimed that the area of S.No.41 is 893 acres. In the case of Bhoop Singh V/s. Ram Singh (Supra) followed in Phool Patti V/s. Ram Singh (Supra), legal position has been laid down. Section 17 of the Registration Act, 1908 applies to decree where the pre-existing right or title is declared and accepted by the Consent Decree and will not have application if the right in the immovable property is created for the first time by consent decree. Section 54 of the TP Act, 1882 provides that the mere claim for sale does not create any right in the immovable property. In the aforesaid decisions it is held that such a decree has to be registered. In the Case of Shankar Rama Gaude V/s. Deosthan (Supra) it is held that unilateral one sided declaration doesn't convey title on any one. Hence, the Petitions be dismissed.

24. The Petitioners filed a note on the judgments relied upon by the Respondent-Corporation regarding Section 17(2) (xi) of the Registration Act 1908 pursuant to order dated 10th March, 2022 and submitted as under :-

i. In their affidavit-in-reply, the Municipal Corporation of Greater Mumbai being Respondent No.2 in Writ Petition No.172 of 2016 and Respondent No.1 in Writ Petition No.1179 of 2018 has alleged that the Petitioners do not have title to the lands bearing S.No.41(part) corresponding to CTS No.739(part) of Village Oshiwara, Taluka Andheri, Dist. Mumbai suburban admeasuring 64.75 acres reserved for sewerage purification works under the Development plan, 1991 and Development Plan 2034 which is subject matter of Petitions. According to MCGM, the Petitioners do not have title because the consent decree dated 15th October, 1969 passed by this Court in Suit No.660 of 1968 r/w Consent Judge's Order dated 26th March, 1979 which records an adjustment and satisfaction of the said decree and records that "the consent decree to operate as a conveyance in favour of the Oshiwara Land Development Co. Pvt. Ltd. in respect of remaining land of S.No.41 of Village Oshiwara, Greater Bombay," has not been registered under the provisions of Registration Act, 1908.

ii. MCGM has contended that although Section 17(2)(vi) of the Registration Act, 1908 provides that a decree of a court, including a compromise decree [which pertains to immovable property which is the subject matter of the suit] need not be registered, the Supreme Court of India has held in the judgment of “Bhoop Singh v. Ram Singh Major & Ors”. (1995) 5 SCC 709 (“Bhoop Singh”), that section 17(2)(vi) of the Registration Act, 1908 only covers a compromise decree which declares a pre-existing right, and does not by itself create a new right, title or interest in praesenti in immovable property of the value of Rs. 100/- or upward.

iii. The Hon’ble Supreme Court in the subsequent judgment of “Mohd Yusuf vs Rajkumar” (2020) 10 SCC 264, extensively considered and distinguished the Judgment in Bhoop Singh’s case, of which details are set out hereunder :

(a) In Mohd. Yusuf’s judgment, the Supreme court in paragraph 9 held that :

“9. Following the above judgment of Bhoop Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709, the High Court held that since the compromise decree dated 4-10-1985 did not declare any pre-existing right of the plaintiff, hence it requires registration ...”

(b) In Mohd. Yusuf's judgment, the Supreme court fully extracted and set out paragraphs 16, 18 and 19 of Bhoop Singh's Judgment. The Supreme Court in Mohd Yusuf's Judgment held that Bhoop Singh's Judgment was required to be read / restricted to the facts in that case, as seen in paragraph 8 of decision which is as follows :

"8. In the facts of that case, this Court held that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct". Further, the earlier decree was held to be collusive. Two reasons for holding that the earlier decree in the abovesaid case required registration have been mentioned in para 19 of the judgment, which is to the following effect"

In Mohd Yusuf's Judgment, at paragraph 14 it is observed that:

"14. In Bhoop Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709], this Court held that the earlier decree required registration for the reasons as mentioned in para 19. The reasons given in para 19 of the above case have no application in the facts of the present case."

(c) In Mohd Yusuf's Judgment, the Supreme Court has after distinguishing Bhoop Singh's case as above held that by virtue

of section 17(2)(vi) of the Registration Act, 1908 any compromise decree which comprised immovable property which was the subject matter of the suit, was not required to be registered and the Supreme Court overruled the judgment of the High court which had followed Bhoop Singh's judgment and had held that since the compromise decree did not declare any pre-existing right of the plaintiff, it required registration. In Paragraphs 15 and 16 of the above decision reads as follows :

"15. This Court in Som Dev v. Rati Ram [Som Dev v. Rati Ram, (2006) 10 SCC 788] while explaining Section 17(2) (vi) and Sections 17(1)(b) and (c) held that all decrees and orders of the Court including compromise decree subject to the exception as referred that the properties that are outside the subject-matter of the suit do not require registration. In para 18, this Court laid down the following: (SCC p. 800)

"18. ... But with respect, it must be pointed out that a decree or order of a court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject-matter of the suit."

"16. In the facts of the present case, the decree dated 4-10-1985 was with regard to the property, which was the subject-matter of the suit, hence not covered by exclusionary clause of Section 17(2)(vi) and the present

case is covered by the main exception crafted in Section 17(2)(vi) i.e. "any decree or order of a court". When registration of an instrument as required by Section 17(1) (b) is specifically excluded by Section 17(2)(vi) by providing that nothing in clauses (b) and (c) of sub-section (1) applies to any decree or order of the court, we are of the view that the compromise decree dated 4-10-1985 did not require registration and the learned Civil Judge as well as the High court erred in holding otherwise. We, thus, set aside the order of the Civil Judge dated 7-1-2015 as well as the judgment of the High Court dated 13-2-2017. The compromise decree dated 4-10-1985 is directed to be exhibited by the trial Court. The appeal is allowed accordingly."

iv. MCGM seeks to rely on the Judgment in Ripudaman Singh vs Tikka Maheshwar Chand [(2021) 7 SCC 446]. In this connection, the Petitioners submit that:-

(a) The Judgment relied on by the MCGM i.e. Ripudaman Singh vs. Tikka Maheshwar Chand [(2021) 7 SCC 446] does not in any way affect or detract from the law laid down by the judgment / decision in Mohd Yusuf's case, which holds that any compromise decree which concerns an immovable property, which was the subject matter of the suit, does not require to be registered, in view of Section 17(2)(vi) of the Registration Act, 1908.

(b) In Ripudaman Singh's case, the compromise decree was in respect of land which was not the subject matter of the suit. Accordingly the exemption from registration under Section 17(2)(vi) of the Registration Act, 1908 was clearly not attracted and did not fall for consideration in that case.

(c) The Court however held that it was a settlement between members of the family, it did not create any new rights for the first time, but merely recognized a pre-existing right to property, by way of settlement in court proceedings and did not require registration.

(d) The Court did refer to Bhoop Singh's case which had held that a decree or order [including a compromise decree] which had held that where a decree holder has a pre-existing right, the decree did not require registration. The Petitioners submit that Mohd Yusuf's case deals with an issue similar to the facts of the Petitioners' case whereas the facts in Ripudaman Singh's case pertain to a family settlement. Thus, the question whether the exemption in Section 17(2)(vi) of the Registration Act, 1908 applies or does not apply to a compromise decree in respect of land which was not the subject matter of consideration in Ripudaman Singh's case.

(e) In facts of Ripudaman Singh's case the Court did not /

could not hold that the compromise decree was not registrable because of Section 17(2)(vi) of the Registration Act, 1908, as Section 17(2)(vi) specifically excludes compromise decrees comprising immovable property which was not the subject matter of the suit. Accordingly in paragraph 18 (at pg 455 of SCC) the Court finally holds that "The compromise was between the two brothers consequent to death of their father and no right was being created in praesenti for the first time, thus not requiring compulsory registration."

(f) In facts of Ripudaman Singh's case, the question of the construction of Section 17(2)(vi) of the Registration Act, 1908 could / did arise, as the exemption from registration of compromise decrees under Section 17(2)(vi) Registration Act, 1908 specifically excludes compromise decrees comprising immovable property which was not the subject matter of the suit. Accordingly the Court did not refer to or deal with Mohd Yusuf's case which had clearly laid down the legal position regarding the interpretation and effect of Section 17(2)(vi) of Registration Act, 1908.

v. The law as to the interpretation / content of Section 17(2)(vi) of Registration Act, 1908 has been clearly and categorically laid down in Mohd. Yusuf's decision - i.e. that the

exemption from registration under Section 17(2)(vi) of Registration Act, 1908 applies in the case of any compromise decree, except a compromise decree comprising property which was not the subject matter of the suit.

vi. This legal position is in no way affected by/detracted by the decision in Ripudaman Singh's case, which as stated above dealt with a compromise decree comprising property which was not the subject matter of the suit.

25. The Respondent-Corporation has also filed note to place on record subsequent developments and judgment under Section 17 of the Registration Act and submitted as follows :-

A. A Suit for specific performance of an Agreement for sale of immovable property is never a Suit for land and the land subject matter of the Agreement is never Suit property in such a Suit :

(i) A Suit on contract, such as a Suit for Specific performance, the subject matter of the Suit is the contract itself, and it is not a Suit on land. In the case of Debendra Nath Chowdhary v. The Southern Bank Ltd. (AIR 1960 Cal 626) in paragraph 19, it was held that a suit for specific performance is not a Suit for Land.

(ii) In the case of Adcon Electronics Pvt. Ltd. v. Daulat

& Ors. (2001) 7 SCC 698, the decision in Chowdhary (supra) is followed (para 9, 13-15). Though these aforesaid two judgments were decided in the context of applicability of Clause XII of the Letters Patent, the underlying principle that a Suit for Specific Performance is a Suit on contract and the land was not the subject matter of Suit but it was the contract which was subject matter of Suit, can be extended to apply in the present case to demonstrate that in Suit No. 660 of 1968, the subject matter of the Suit was the contract and therefore, any Consent Decree transferring land will require registration in order to operate as a conveyance / transfer.

(iii) Since Suit No. 660 of 1968 was a Suit on Contract and the land was not subject matter of the Suit, the exemption from registration of the Consent Decree in Section 17(2) (vi) cannot apply.

B. Consent Decree dated 15.10.1969 required compulsory registration :

(i) In paragraph 14 and 16 to 18 of Bhoop Singh v. Ram Singh (1995) 5 SCC 709, which is affirmed in Ripudaman Singh v. Tikka Maheshwar Chand (2021) 7 SCC 446, it is clearly held that if a Consent Decree seeks to transfer a

property to a party not having a pre-existing right, it has to be registered even if such property is the subject matter of the Suit. In that case, it was held that the dispute was between two brothers relating to properties of their father. Since pre-existing rights existed, and no new rights were created, it was held that the Decree in that case did not require registration.

(ii) Suit No. 660 of 1968 was filed by the owner against prospective purchaser for specific performance based on Agreement for Sale. Section 54 of the TP Act, 1882 is clear that a mere agreement for sale does not create any interest. Thus there was no pre-existing right in favour of Defendant therein (prospective purchaser), i.e. New Swastik Land Development Corporation. Hence, assuming without admitting that the land was subject matter of the Suit, the consent Decree would still require registration.

(iii) The reliance placed by the Petitioners on the Apex Court Judgment in *Mohammade Yusuf & Ors. v. Rajkumar & Ors.* (2020) 10 SCC 264 to contend that compromise decree comprising of property which is the “subject matter” of the Suit is not compulsorily registrable is misplaced. In that case, a Suit for declaration of title and

injunction of Suit property, being part of S. No. 203, was filed, resulting in a compromise Decree dated 04.10.1985 wherein Defendant accepted pre-existing right of Plaintiff in 7 Biswa area and Plaintiff acknowledged pre-existing right of Defendant in remaining area of S. No. 203. In a subsequent Suit filed against the sons of original Plaintiff in the first Suit in respect of same land, the earlier Consent Decree dated 04.10.1985 was relied upon by the sons of the original Plaintiff in the first Suit and the Trial Court held that the Decree is not admissible requiring compulsory registration u/s. 17(1)(e) of the Registration Act, 1908. In this factual conspectus, the Supreme Court held that the Decree does not require registration since the pre-existing rights of the respective parties in the first Suit were acknowledged by them in respect of two parts of the Suit Land. Hence, this Judgment is completely inapplicable and does not even remotely dilute the law laid down in Bhoop (supra.) and followed in Ripudaman Singh (supra.) and also in Phool Patti v. Ram Singh (dead) through Legal representatives & Anr. ((2005) 3 SCC 164).

C. Consent Judge's Order Dated 09.11.1979 Required Registration :

The Petitioners claim title under the Consent Judge's

Order dated 09.11.1979 to which none of the original Parties in Suit No. 660 of 1968 were parties. In any event, this would certainly require registration since they were claiming to be assignees of the rights of the original Plaintiffs and Defendants in the Suit, without any registered Deed of Assignment being placed on record.

D. Crucial Subsequent Events :

(i) The subject matter of Suit (L) No. 20289 of 2021 is NDZ land admeasuring 158.05 Acres situated in Village Oshiwara whereas the property in question in the present Petitions is an area admeasuring 64 Acres situated in Village Versova (according to this Respondent) and Village Oshiwara according to the Petitioners.

(ii) However, the instrument or derivation of title according to the Petitioners in the present Petitions, and the Plaintiffs in Suit (L) No. 20289 of 2021, is the same, i.e. the Consent Decree dated 15.10.1969 passed in Suit No. 660 of 1968 and the Consent Judge's Order dated 09.11.1979.

(iii) In the Petitions, it is specific contention of the MCGM that it is either the State Government or Byramjee Jeejeebhoy Pvt. Ltd. who can claim ownership of 64 Acres,

being land subject matter of the Petitions. Now, Byramjee Jeejeebhoy Pvt. Ltd., from whom the Petitioners herein claim to have derived title, have themselves called into question the title of the Petitioners herein by filing Interim Application No. 731 of 2022 in Suit (L) No. 20289 of 2021. This indicates that the question of derivation of title by the Petitioners in the present Petition is a triable issue that cannot be decided in writ jurisdiction without evidence.

(iv) In the said Application, at paragraph 7, it is stated that “The documents claimed by the Plaintiffs are not duly stamped and/or registered. Applicant No.1 has filed Suit No. 1096 of 2009 against OLDC, (ii) Chief Promotor of Shree Swami Samarth Prasanna Co-op Housing Society Ltd., (iii) 2 Promoters of Apna Ghar Co-op Housing Society Ltd., and Samartha Development Corporation, who is Plaintiff No.1 herein. The said Suit is pending”.

(v) This crucial fact of filing and pendency of the aforesaid Suit, is suppressed from this Hon’ble Court in the present Petitions. Further, in paragraph 10, the chequered history of litigation in respect of the property is set out, and the claim of the Petitioners herein to title of the Oshiwara Land has been challenged. In these

circumstances, without a declaration of title of the Petitioners to the property, the question of determination of title will not be permissible in Writ Jurisdiction.

(vi) Therefore, once this claim to title itself is under cloud in a Suit (by virtue of non-registration of the Consent Decree and by virtue of the contents of the Application filed by Byramjee Jeejeebhoy Pvt. Ltd.), the same must be decided by trial and leading evidence.

26. From the available record the following facts emerge :-

i. A Kaul was granted in favour of Sir Byramjee Jeejeebhoy in respect of 7 villages including village Oshiwara.

ii. A Kami Jast Patrak (KJP) was prepared. The copy of the Sood Book of 1906 of S. No. 41 Oshiwara is on record. By exercise undertaken under the Bombay Land Revenue Code 1879, area of S. No. 41 of Village Oshiwara and the areas of land in Village Versova on the Western Side of Oshiwara were altered as under -

(a) Original area of S. No. 41 Oshiwara comprised of two portions, namely, 1086 Acres 8 Gunthas of Khajan Land and 184 Acres 12 Gunthas of Creek.

Entire Creek Area was Pot Kharaba (uncultivable).
 Out of the Khajan Area of 1086 Acres 8 Gunthas, 20 Acres 8 Gunthas was uncultivable (Kharab) and the remaining area of 1066 Acres was shown.

(b) New Survey No. 120 of Village Vesave (Versova) was prepared by carving out 362 Acres 10 Gunthas from Khajan land of S. No. 41. Said S. No. 120 was included in village Versova. Area adm. 14 Acres 20 Gunthas of Creek from S. No. 41 was also included in village Versova.

(c) In view of this, the area of S. No. 41 Oshiwara was reduced as under:

Khajan Land - 723 Acres 38 Gunthas.

Creek – 169 Acres 32 Gunthas

Total – 893 Acres 30 Gunthas

This fact is clear from the remarks in Column No. 17 :

The English translation of the remark in vernacular language would read thus :

“Out of this, land admeasuring 362 Acres 10 Gunthas is included in Village Vesave and hence the same has been reduced. The uncultivable land which is part of the Creek is retained. Half the area of creek dividing Villages Oshiwara and Vesave was earlier included in Village Vesave and the remaining

area of the said creek to the extent of 14 Acres 20 Gunthas was included in Village Oshiwara. However, since the Khajan Land admeasuring 362 Acres 10 Gunthas from S. No. 41 is entirely included in Village Vesave, the said creek earlier on the boundary of villages is completely included in Village Vesave, the area of 14 Acres 20 Gunthas of the said creek which was earlier included in Village Oshiwara is reduced from the said village and added in the village Vesave.”

(d) Consequently, from 1906 the area of S. No. 41 of Oshiwara was reduced to 723 Acres 38 Gunthas consisting of cultivable land admeasuring 703 Acres 20 Gunthas and non-cultivable (Kharab) land admeasuring 20 Acres 8 Gunthas. Separate 7/12 extract of the said land was prepared, which fact has been recorded in the order of Additional Collector, BSD dated 17.8.1984. Paragraph 5 of the Order reads as under :

“As regards the area of S. No. 41, H. No. 1 of Oshiwara the VF 7/12 shows that total area was 723 Acres 34 Gunthas. According to the Hissa Form No. 4 (Akar Fod Patrak) prepared in 1929 the area of S. No. 41 was 723 Acres 38 Gunthas. The City Survey was introduced in both the villages in 1964 and accordingly after due enquiry the area of

723 Acres 38 Gunthas of S. No. 41/1 was confirmed. Even in the enquiry initiated U/s. 37(2) of the then Land Revenue Code r/w S. 4(b) of the Salsette Estate Land Revenue Exemption Abolition Act 1951 the enquiry officer held that the Ex-Khot were the owners of land bearing S. No. 41 of Oshiwara admeasuring 723 Acres 38 Gunthas.”

iii. Ld. Collector in his Order dated 17.08.1984 has recorded that area of S. No. 41 of Oshiwara is recorded as 723 Acres 38 Gunthas in following documents-

- Akar Fod of the year 1929
- Report of inquiry conducted under Section 37 (2) of Salsette Act.
- City Survey of 1963
- Order passed in 1965 in Appeal passed by Collector under Salsate Act.

iv. Sir Byramjee Jeejeebhoy died intestate leaving behind widow Jerabai and two Sons Nanabhoy and Jehangir.

v. Letters of Administration were granted by Bombay High Court, which was also in respect of 723 Acres of S. No. 41 of Oshiwara.

vi. Land admeasuring 723 acres of S. No. 41 of Oshiwara was transferred to Nanabhoy vide Deed of Transfer.

vii. Vide registered Deed of Conveyance, Nanabhoy transferred S. No. 41 admeasuring 723 Acres in favour of Byramjee Jeejeebhoy Pvt. Ltd.

viii. Supreme Court dismissed Special Leave Petition of Byramjee Jeejeebhoy Pvt. Ltd. holding that provisions of Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 shall apply to the estate.

ix. Agreement for sale was executed by Byramjee Jeejeebhoy Pvt. Ltd. in faovur of M/s. New Swastik Land Development Corporation in respect of only the said land admeasuring 723 Acres.

x. Terms of above agreement were modified by the letters issued by advocate Byramjee Jeejeebhoy Pvt. Ltd. The area of land was reduced to 637 Acres from 723 Acres.

xi. Company filed Suit No. 660 of 1968 for specific performance of above referred agreement as modified from time to time. Suit property is described as land, partly agricultural and partly Khajan, admeasuring 723 Acres,

bearing S. No. 41 in Village Oshiwara, Taluka South Salsette, Mumbai Suburban. Boundaries indicated in the Plaint are crucial and are as follows :

North- Pahadi Goregaon

South- Versova

East- Oshivara village

West- Creek

As shown on Plan.

xii. Consent terms were filed in Suit No. 660 of 1968 wherein, Byramjee Jeejeebhoy Pvt. Ltd., Plaintiff therein, agreed to transfer the suit land being land admeasuring 723 Acres 38 Gunthas. Thus, the land admeasuring 362 Acres 10 Gunthas which was reduced from the area of village Oshiwara and included in the area of Village Vesave (Versova) was never the subject matter of the agreement of which specific performance was sought in the said Suit and consequently never the subject matter of the said Suit. According to Respondents agreement dated 25th January, 1964 had a plan annexed. The area of 723 Acres 38 Gunthas is mentioned in the description of the property and most importantly the boundaries indicated in the Plaint show that the Creek referred on the West is the creek admeasuring 169 Acres 20 Gunthas which is the creek inside Village Oshiwara and is not the creek which

was completely included in Village Versova in the year 1906. A separate conveyance was to be executed and till execution of conveyance, the Defendants were allowed to occupy the land as licensees of Plaintiff. This consent decree was not registered within the period stipulated under the Indian Registration Act, 1908 nor was a separate conveyance executed and registered within the said period or thereafter.

xiii. M/S. New Swastik Land Development Corporation assigned rights in favour of OLDC.

xiv. Consent Decree was adjusted as under-

OLDC to pay balance consideration of Rs. 5 Lacs to Heritage Estate Pvt. Ltd. (assignee of Plaintiff)
Consent Decree shall operate as conveyance in respect of remaining area of S. No. 41, excluding 177 Acres 17.5 Gunthas acquired land and also excluding lands which are already sold.

All these facts are referred to the Indenture of Lease dated 17.09.1981 executed between OLDC and Pankaj Cooperative Housing Development Society Limited. 723 Acres of land which was subject matter of the Suit No. 660 of 1968 for specific performance in

which consent decree was passed wherein Village Versova was shown on South of the suit land. In this lease in Schedule-I instead of Village Versova Village Amobli is shown and in Schedule-II the boundary of village Versova is shown where as in Schedule-I the western boundary is shown as creek. Even according to the said lease deed, what was leased was culled as square yards of land from out of 723 Acres described in the first schedule. If the western side of the 723 Acres described in first schedule shows creek and does not show any portion of village Versova as adjoining the land.

27. From the factual aspects as above we have noted that :-

- I. The land is in possession of the Corporation since 1980.
- II. The land was in possession of MHADA from 1964 to 1980.
- III. No private party was in possession of land at any time or made any claim on same.
- IV. Land is in possession of MCGM taken from MHADA since 1980 to facilitate the improved environment to citizen of Mumbai and to serve public at large.

- V.** Ownership of land claimed by Petitioner is disputed.
- VI.** Boundary of village Versova and Oshiwara is disputed.
- VII.** The consent decree has not been registered.
- VIII.** The Petitioners have not annexed the plaint and other proceedings in Suit No.3429 of 1991.
- IX.** Plaintiff in Suit No.3429 of 1991 deleted Defendant Nos. 6 & 7. The reliefs claimed against MCGM were given up.
- X.** The claim of Petitioners are based on disputed questions of facts
- XI.** It is difficult to give finding that Petitioner in Writ Petition No.172 of 2016 is owner of land in question.
- XII.** Belated claims made in these Petitions raises shadows of of doubt about rights claimed by Petitioners.
- XIII.** Suit (L) No.20289 of 2021 filed by Samarth Development Corporation and Others. The subject matter of this Suit is NDZ land admeasuring 158.05 Acres situated in Village Oshiwara. According to Respondent, the property in question in the present Petitions is 64 acres situated in village Versova. According to Petitioners the derivation of title and

according to plaintiffs in Suit No.20289 of 2021 is same i.e. Consent Decree dated 15/10/1969 passed in Suit No.660 of 1968 and Consent Judges Order dated 09/11/1979.

XIV. Byramjee Jeejeebhoy Pvt. Ltd. from whom the Petitioners claim to have derived title, have themselves called into question, the title of the Petitioners by filing interim application No.731 of 2022 in Suit (L) No.20289 of 2021.

XV. In the Interim Application, the applicant has questioned the documents relied by Plaintiff therein by contending that documents claimed by Plaintiff are not duly stamped or registered.

XVI. In Bhoop Singh's Case (Supra) it was held that, if the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the Suit of Rs.100/- or upwards in favour of any party to the suit the decree or order would require registration. The Court must enquire whether a document has recorded unqualified and unconditional words of present demise of right title interest in the property and included the essential terms of the same; if the

document including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of other, relating to immovable property of Rs.100/- and upwards, the documents or record or compromise memo shall be compulsorily registered. The decree having purported to create right or title in the Plaintiff in the plaintiff for the first time that is not being a declaration of pre-existing right, did require registration. In the case of Mohammade Yusuf (Supra) it was observed that the reasons given in Paragraph 19 of the Bhool Singh's case have no application in the said case. In the case of Ripudam Singh (Supra) the Court considered decision in the case of Bhoop Singh (Supra) and held that, when compromise in question pertain only to pre-existing rights i.e. no new right, title or interest is created in immovable property vide compromise in question registration is exempted. In the case before us there was pre-existing right in favour of defendant therein. Apart from this issue of registration the entire claim is based on disputed/debatable issues which would disentitle the Petitioners the relief prayed in these Petitions.

XVII. The Petitioners are claiming the TDR and

compensation on the basis of the purported right in respect to the property and the contesting respondents are disputing the claim of the Petitioners.

XVIII. One of the ground urged by Petitioners is on the basis of survey report and that the boundary of Villages Oshiwara and Versova have shifted and certain portion of land is not required to be treated as S.No.41 of Village Oshiwara and to be treated as belonging to Petitioner OLDC. According to Respondents this hypothesis is erroneous and factually incorrect. The boundaries of these two villages is not fixed by Revenue Authority.

XIX. The objection of Respondents is that Petitioners are claiming the reliefs therein with considerable delay.

XX. The land is possessions with MCGM since 1980. Prior to 2013, the Petitioner did not raise the objection that the land is wrongly handed over to MCGM.

XXI. On 30/09/1980, MHADA had handed over the land admeasuring 74.36 Hactor for STP and ancillary work. S.No.120 Pt. Village Versova admeasuring 3.00 Ha. For road. The total area of 77.36 Hactor was handed over by MHADA to MCGM for construction of Sewage Treatement Plant. MCGM constructed STP and lagoons

in 1990 on part of land.

XXII. The Petitioner are relying upon orders passed in Suits, Consent Decree, Consent Judges Order, documents referred to above, correspondence etc. in support of their claims.

XXIII. The claims of Petitioners are seriously disputed. It is not possible to grant prayer based on disputed questions of facts.

28. Thus, there are claims and counter claims. The dispute relates to title of the property. In exercise of powers under Article 226 of the Constitution of India it is not possible to determine the ownership over the property. The claim of the Petitioners is based on disputed questions of fact. There has been inordinate delay in claiming right in respect to the property. The Respondent/Corporation has placed on record several documents which runs counter to the claim of the Petitioners. The Writ Court cannot go into these aspects and determine whether the Petitioners have right in the property and they are the owners of the property to grant relief in the form of compensation or TDR as claimed by them. It is not clear as to why the claimants were silent for several years. The

property is in possession of MCGM since 1980. It appears that for the first time in clear terms, the claim was made by the Petitioners with regards to the ownership of the property in the year 2013. In the light of these facts, the reliefs as prayed in these Petitions cannot be granted. Hence, both the the Petitions deserve to be dismissed.

29. Hence, we pass the following order :

ORDER

Writ Petition Nos. 172 of 2016 and 1179 of 2018 are
dismissed and stand disposed of accordingly.

(PRAKASH D. NAIK, J)

(A.A. SAYED, J.)