

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 2607 OF 2021**  
**WITH**  
**WRIT PETITION (ST) NO. 96753 OF 2020**

- 1. DNYANESHWAR MAHADEO JAGTAP,**  
Aged 64 years, Occupation Business
- 2. PRAKASH MAHADEO JAGTAP,**  
Age 68 years, Occupation Business
- 3. DATTATRAYA VISHWANATH JAGTAP,**  
Age 50 years, Occupation Business
- 4. SANDIP VISHWANATH JAGTAP,**  
Age 44 years, Occupation Business  
All 1 to 4 are residing at 561, Nana Peth,  
Pune 411 002.
- 5. JASWANT MOTORS STORES,**  
Through its Partners Mohinnder Singh  
Kandhari Age 63 years, Occupation  
Business Residing at Bungalow No.1,  
Gurudwara Road, Pune Camp, Pune  
411 001.
- 6. MANIK YADAV,**  
Age 68 years, Occupation Business  
Residing at 561, Nana Peth, Pune 411  
002.

SHEPHALI  
SANJAY  
MORMARE

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7. **MAHINDERSINGH GANDHI,**  
Age 82 years, Occupation Business  
Residing at Plot No. 14, Alamin Society  
Market Yard, Pune 411 037.
8. **KRISHNA NARSINGH NAIDU,**  
**DECEASED THROUGH LEGAL**  
**HEIRS SUMIT DILIP SHASTRI,**  
Age 35 years, Occupation Business  
Residing at 238, Budhwar Peth,  
Babugenu Chowk, Tulsibaug, Pune 411  
002.

**...Petitioners**

**~ VERSUS ~**

1. **CHIEF EXECUTIVE OFFICER,**  
Slum Rehabilitation Authority,  
Pune and Pimpri Chinchwad,  
Senapati Bapat Road, Muttha Chamber,  
Pune 411 016.
2. **APEX GRIEVANCES REDRESSAL**  
**COMMITTEE,**  
4th Floor, SRA, Bandra, Mumbai.
3. **ANAND DEVELOPERS,**  
Through its Partner, Vikas Lalwani  
Having office at: C/o Gold Mart,  
Sadu Waswani Chowk, Near Pune  
Station, Pune

**...Respondents**

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**APPEARANCES**

**FOR THE PETITIONER  
IN BOTH WRIT  
PETITIONS**

**Dr Uday Warunjikar, with Siddhesh  
Pilankar.**

**FOR RESPONDENT NO.1- Mr Deepak R More, with Shivram A**

**SRA PUNE, IN BOTH  
WRIT PETITIONS**

*Gawde.*

**FOR RESPONDENT  
NO.2-AGRC, IN BOTH  
WRIT PETITIONS**

**Mr Vijay D Patil, with Yogesh Patil.**

**FOR RESPONDENT NO.3**

**Mr Mayur Khandeparkar, with  
Akshay Doctor, i/b Madhur  
Surana.**

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**CORAM : G.S.Patel &  
Neela Gokhale, JJ.**

**DATED : 12th April 2023**

**ORAL JUDGMENT (Per GS Patel J):-**

1. The eight Petitioners take exception to an order dated 25th September 2019 passed by the Apex Grievance Redressal Committee (“AGRC”) constituted under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“the Slum Act”). The complaint was about the Government Gazette Notification dated 14th June 2018/23rd July 2018 issued by the Slum Rehabilitation Authority (“SRA”), Pune declaring a plot of land of about 6740 sq mtrs CS No. 561/A, 561/B-1/A, 561/B/1 and 562 at Nana Peth as a slum rehabilitation area under Section 3C(1) of the Slum Act.

2. In Writ Petition No. 12991 of 2018, the Petitioners challenged an order of 24th October 2018 by the CEO, SRA under Section 3B read with Section 12(1) of the Slum Act ordering clearance of the

slum rehab area. In that Writ Petition the Petitioners filed a Civil Application. It stood disposed of on 19th March 2019 with a direction to the respondent concerned to decide the appeal in two weeks and continuing an ad-interim order.

3. But who are the Petitioners? And what is it precisely that they contend? There is no doubt that the Petitioners are on the subject land that is part of the SRA project. There is also no doubt that they are not owners of any part of the land. Dr Warunjikar says that may be so, but they are tenants for a very long period of time. We find that this does not actually assist the Petitioners much. Dr Warunjikar's submission is briefly this—that while the slum project concerned four plots of land, the area in which the Petitioners occupy premises did not admit of what he calls 'slum--like conditions' and was impermissibly dragged into the slum scheme. The authorities did not, he submits, satisfy themselves about the existence of slum-like conditions on the subject plot. In the plot of land—and he is careful to constantly refer to this as a distinct and distinguishable plot—as meeting the conditions necessary for a clearance order or a declaration. Nobody, he submits, has decided this and the AGRC, apart from allegedly proceeding without notice and without a hearing did not address the question.

4. We will come to the ARGC order momentarily but on facts, we need to be clear about where the Petitioners are — quite literally where they stand.

5. Mr Khandeparkar for the 3rd Respondent, Anand Developers has given us three sketch plans. Scanned copies are annexed to this order.

6. The first of these shows that the Petitioners are not on a distinct survey number at all. They are part of the CTS No. 561/B/1. This is clear also from the layout plan where the area occupied by the Petitioners is shown in blue diagonal lines. In the more detailed plot map that is the third annexure, the area that is under occupation of the Petitioners is shown in green boundary lines.

7. This tells us that the Petitioners are geographically embedded in the survey numbers that are brought into the scheme. What the Petitioners seem to contend is that their particular localised area, every inch of a survey number must be shown to have 'slum-like' conditions. Otherwise, no declaration can be made. This is not the purpose of the Act at all. A declaration under Section 3C proceeds in a certain manner. The definitions themselves will indicate the application of the Act and as a matter of convenient reference, we turn to Section 4(1) of the Act because this seems to us to set out in wide terms what are the conditions that have to be borne in mind while assessing an area as a slum.

8. Sections 3C and 4(1) read:

**“3C. Declaration of a slum rehabilitation area**

**(1) As soon as may be, after the publication of any Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied about the circumstances in**

respect of any land, whether or not previously declared as slum area, justifying its declaration as the Slum Rehabilitation Area which may include community economic activity area, for implementing the Slum Rehabilitation Scheme, shall after giving the land owners, including any public authorities or local bodies under the State Government constituted under any law enacted by the State Legislature, thirty days notice and after giving a reasonable opportunity of being heard, by an order published in the Official Gazette, and thereafter within forty-five days, declare such land to be a “Slum Rehabilitation Area”. The order declaring the Slum Rehabilitation Area (hereinafter referred to as “the slum rehabilitation order”), shall also be given wide publicity in such manner as may be specified by the Chief Executive Officer of the Slum Rehabilitation Authority. Thereafter, notwithstanding anything contained in any law for the time being in force, in such Slum Rehabilitation Area, the permission or the No Objection Certificate of the land owning authority or agency shall not be required:

**Provided that**, only in respect of any land which is required for Vital Public Project purpose, as per orders of the State Government and where the State Government either directly or through any public authority has undertaken the responsibility of relocation and rehabilitation of the protected and other occupiers of the building, then the Chief Executive Officer shall, execute the land required for Vital Public Project from the Slum Rehabilitation Area and issue an order to omit such land from the Slum Rehabilitation Area. Where the State Government either directly or through any public authority has undertaken the responsibility of relocation and rehabilitation of the protected and other occupiers of the building, such public authority shall prepare the Scheme of such rehabilitation or relocation and get it approved by the

Chief Executive Officer within the period specified in the Scheme which shall not be more than ninety days.

(2) Any person aggrieved by the order of the Chief Executive Officer may, within thirty days of the publication of such slum rehabilitation order, prefer an appeal to the Grievance Redressal Committee. The decision of the Grievance Redressal Committee in such appeal shall be final.

(3) On the completion of the Slum Rehabilitation Scheme, the Slum Rehabilitation Area shall cease to be such area.

#### **4. Declaration of slum area**

(1) Where the Competent Authority is satisfied that—

**(a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise; or**

**(b) the buildings in any area, used or intended to be used for human habitation are —**

**(i) in any respect, unfit for human habitation; or**

**(ii) by reasons of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area.**

the Competent Authority may, by notification in the *Official Gazette*, declares such area to be a slum area. Such declaration shall also be published in such other manner (as will give due publicity to the declaration in the area) as may be prescribed.

*Explanation.*— For the purposes of clause (b), the expression “buildings” shall not include,—

- (a) cessed buildings in the island City of Mumbai as defined in Clause (7) of Section 2 of the Maharashtra Housing and Area Development Act, 1976, or old buildings belonging to the Corporation;
- (b) buildings constructed with permission of the relevant authority at any point of time;
- (c) any building in an area taken up under the Urban Renewal Scheme.”

*(Emphasis added)*

9. What Dr Warunjikar says is that there is a factual dispute and that somebody should have investigated this. But there is no requirement that every square inch of a survey number must be possessed of all these features to qualify as a slum. The assessment is a broad one to see whether the survey number or the plot of land is generally of the description contemplated by the statute. It is not possible for individual occupants to say, for instance, that the five or ten sq ft outside their doorsteps is clear and therefore their structure should be excluded from a slum scheme. But that is almost exactly what these Petitioners seem to contend.

10. With this, we turn to the impugned order at page 104. We will deal with a threshold objection by Dr Warunjikar that the Petitioners were not heard. The impugned order does not say so. It says to the contrary. In fact, as we shall see, it notes the submissions made on behalf of the Petitioners who are the Appellants. It is curious that if they were not heard, the Petitioners made no grievance of this. Indeed, they filed written submissions in which too there was no such grievance of not being heard.

11. From paragraph 6, the AGRC dealt with the oral arguments and the written submissions filed by the Petitioners.

12. A telling sentence, the reason for which will become apparent shortly, is the second sentence of sub-paragraph (a) because some of the Petitioners' structures are residential and some are combined allegedly for residential and commercial purposes.

13. Passing over the case propounded by Anand Developers, in paragraph 6(f) the AGRC noted a submission by the applicants that the Deputy Commissioner and Competent Authority of Pune had said he had inspected the property on 13th December 2013 and opined that it was not maintained by the owner. Then in sub-paragraph (g), the Petitioners are noted to have argued that the area under their occupation was not fit for declaration as a slum. According to them there were toilet facilities, water, drainage and so on. They were also paying rent. Despite this, came the declaration under Section 3C. Then there were other allegations about the survey being farcical and so on. From paragraph 7, the AGRC noted

the contentions of the opposing developer and then in paragraph 8 the contentions of the 2nd Respondent.

14. The findings of the AGRC begin in paragraph 8 from page 111. The AGRC noted that there was a survey of the slum area. This was pursuant to a proposal for a slum redevelopment of the land altogether admeasuring 6740 sq mtrs. Eligibility lists in the form of Annexure II were prepared and then a public notice was issued on 31st May 2018 asking all concerned to show cause why the area should not be declared as a slum rehabilitation area under Section 3C(1) of the Slum Act.

15. This notice was also gazetted. Then came the declaration under Section 3C(1) on 24th July 2018, also gazetted and this was followed by a clearance order under Section 3D on 24th October 2018. The developer was asked to pay development charges and other dues. That was done. Having considered the conspectus, the AGRC concluded, especially in light of two decisions of this Court that the Appeal was without merit.

16. The first decision is *Bipin Kumar Havaladar Jaiswar v State of Maharashtra*.<sup>1</sup>

“...Extra ordinary jurisdiction of this Court cannot be used to defeat the aims and object of the Act and deny decent housing to those who are to be benefited by the scheme. Ultimately these schemes are part of right to life for the slum dwellers and Courts must bear in mind their right for

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<sup>1</sup> Writ Petition No. 2375 of 2005 decided on 16th December 2005 : 2005:BHC-OS:18289-DB.

decent housing. In these circumstances any action which may result in delay in providing decent housing to slum dwellers, does not warrant consideration by this Court in the exercise of its extra ordinary jurisdiction.”

17. The second reference was to the well-known decision of this Court in *Amdesh Tiwari & Ors v CEO, SRA & Ors*.<sup>2</sup> Paragraph 13 was quoted:

“13. Regulation 33(10) of DCR 1991 provide for a Scheme for rehabilitation of Slum Dwellers and in said Scheme, eligible Slum Dwellers are entitled to get free rehab tenements having a carpet area of 225 sq ft in exchange of their hut irrespective of area. Thus, individual hutment dweller has a limited right to get rehab tenement. Further, there is nothing in Scheme of Regulation 33(10) of DCR 1991 that an individual Slum Dweller gets right to decide which Society or which developer should implement Scheme.”

18. There are Affidavits in this record going to the stage of a sur-sur-Rejoinder or perhaps beyond. What is relevant are two Affidavits, one of the SRA and the principal reply of the developer. The SRA Affidavit is from page 207. It is by the competent authority, one Sanjay Gangadharrao Pawar. Paragraph 4 of this Affidavit at pages 210 to 211 deal with paragraphs 5 and 6 of the Writ Petition. We reproduce both. Paragraphs 5 and 6 of the Writ Petition read thus.

“5. The petitioner submits that out of 258 hutments, only 67 were held to be eligible for the residential purpose

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<sup>2</sup> 2006 SCC OnLine Bom 481 : (2006) 4 Mah LJ 282 : (2006) 5 Bom CR 772 : (2006) 5 AIR Bom R 3 (DB).<sup>2</sup>

and 191 were held as ineligible for getting any rehabilitation. It is submitted that under the provisions of the RTI Act, the documents about the proposal submitted by the respondent No.3, were obtained by one of the petitioner herein. The Deputy Commissioner and the competent Authority of Pune Municipal Corporation inspected the said area on 13.12.2013 and gave an opinion stating that the property was not maintained by the owner. Copy of the said opinion dated 11.4.2014 is annexed herewith and marked as **Exhibit B**. The petitioner further submits that subsequently it was learnt that the original owner has joined hands with the respondent No.3 and a joint venture agreement came to be entered into. Thus, according to the present petitioners it is the landlord who failed, avoided and neglected to discharge his burden of providing the basic facilities and he is now trying to take undue advantage of the said situation. However in these circumstance objection was raised by the petitioners and some other persons on 7.8.2015 and the objections were raised about the actual area which is in used, occupation and possession of the present petitioners. It was contended that the landlord was receiving the rent and he was executing the receipts. It was also contended that the area is not fit for declaration as a slum. The petitioners further submit that there is a road, there are toilets, there is an adequate water facility, as well as drainage facilities etc. It was contended that the owner is creating two unofficial portions of the said plot of land. The eastern portion is occupied by various persons for residential purposes and those houses are constructed by the owner. Whereas, the other portion which is used for commercial activity is distinct, and separate then the eastern portion. The said portion is safe, clean and cannot be declared as slum. Copy of the said reply is annexed herewith and marked as **Exhibit C**.

6. The petitioners submit that however no opportunity of being heard was given to the present petitioners and no opportunity was given of leading and evidence. In these circumstances, the respondents forwarded the papers to the Government and in the official capacity, on 14.6.2018 notification came to issued declaring the said area as slum under section 3(c) of the Slums Act. Copy of the said notification dated 14.6.2018 is annexed herewith and marked as **Exhibit D**.

19. Paragraphs 4 and 5 of the SRA Affidavit at pages 210 to 212 read thus:

**“4. With regard to averments made in Paragraph No.5.-** This Authority deny the averments made by the Petitioners Para 5. I say that, as per the final eligibility list published on 03/05/2016 of the said Scheme, there are total 273 slum dwellers residing in the said area, out of which 256 slum dwellers have been declared as eligible for rehabilitation in the said scheme. I say that after receipt of the proposal and it’s scrutiny his authority requested the Office of Deputy Commissioner, PMC, to survey the said area through its Medical Officer, in order to find out “Whether the said area is unfit for human inhabitation or otherwise”. I say that accordingly the Medical Officer, PMC conducted the survey of the said area in order to ascertain as to whether the said area is fit for human habitation or otherwise and based on its survey the said Medical Officer prepared it’s survey report. I say that perusal of the said report prepared by Medical Officer, PMC, itself establish that the said area is unfit for human inhabitation. I say that view of the findings Survey Report prepared by Medical Officer, PMC, this authority was convinced that there exists circumstances to declare the aid area as “Slum Rehabilitation Area”. It is expressly denied

that the said land wasn't fit for declaration as a slum rehabilitation area, as the report prepared by the Divisional medical Officer, Municipal Asst Commissioner Office, Bhavani Peth Pune, dated 11/12/2013 after its survey of the said area clearly establishes that the said area is unfit for human inhabitation. The said report itself clearly establishes that there exists slum on the said land prior to implementation of the scheme. Moreover, the Slum like Condition reports prepared after verification and inspection of the said area by the Deputy Commissioner and Competent Authority zone No.3 of Pune Municipal Corporation, dated 11/04/2014, and the Deputy Collector and the Competent Authority of this Respondent, dated 27/07/2017 also reveals the factual position of the existence of slum. I say that the door to door primary survey was conducted by the surveyors of this Authority also establishes the existence of slum. I say that though the Petitioners are claiming to be the occupants of authorized structures, even then the Petitioners ought to have submitted legally acceptable documents such as the Commencement Certificates and sanctioned plans issued by the concerned local Authorities to substantiate for their claim for so called Structures.

**5. With regard to averments made in Paragraph No 6** As required by Section 3C of the Maharashtra Slum (I,C & R) Act 1971, a preliminary order for declaration of the said Land as a 'Slum Rehabilitation Area' was published by this Respondent on 31/5/2018. The said notification has also been published in the daily news papers having wide circulation 'Lokmat' dated 06/06/2018 and the same has been published in the Maharashtra Government Gazette, Part-I, Pune Division, dated 14-20 June 2018. So also, the said Notification was also pasted on the conspicuous part in the said area so as to identify it easily. Therefore, the Petitioners cannot be allowed to raise any objections that

opportunity of being heard was not given to them. Rather the Petitioners are making contradictory statements and misleading this Hon'ble Court from the factual position. I say that, in the said Preliminary Notification, 30 days time period was specifically provided for inviting objections and suggestions from all those who are aggrieved by such notification. I say that as this authority did not received any objections on the said notification within the stipulated period of time, and as such the said Authority finally Notified and Declared the said land as "Slum Rehabilitation Area" on by an order dated 24/7/2018. The said final Notification was also duly published in the daily News Paper 'Lokmat' dated 25/07/2018 and again in the Maharashtra Government Gazette, Part-I, Pune Division, dated July 26-August 01, 2018. I say that even the said Notification was also pasted on the conspicuous part in the said area so as to identify it easily."

**20.** To our minds, this is a complete answer on facts and it is impossible to accept what follows in the Rejoinder because that drives us into the impermissible area of disputed questions of fact. That is a journey we cannot and will not undertake in exercise of our writ jurisdiction.

**21.** The 3rd Respondent, Anand Developers has filed a more detailed Affidavit. One of the points made is that the Petitioners are all — or at least most and to varying degrees — beneficiaries of the slum project. They are also only eight of a total of 273 occupants who are opposing the scheme. All the others have in fact been put in possession of the rehab buildings complete with an occupancy certificate. It is only these eight who continue to hold out. Another point is that this property is indivisible and it is not possible to carve

out islands within a slum scheme in the manner that the Petitioners implicitly suggest.

22. Dr Warunjikar readily accepts that some of the Petitioners have been held eligible while others have been partly eligible but their eligibility for the commercial structures has been denied. The submission is that on a without prejudice basis those appeals should be allowed to be decided but obviously this means that previous interim protection should continue. We are not inclined to do anything of this kind.

23. The balance of convenience and equity does not allow us to hold in favour of the Petitioners at all for any form of interim relief. Apart from anything else, what is being held up, as is pointed out on behalf of the 1st Respondent, is that a municipal primary school is proposed and there is a reservation for this precisely in the area that is being occupied by the Petitioners. That entire project is stalled because of the Petitioners. The Petitioners are thus stalling the development and the building of that school and its public purpose.

24. Now this brings into focus competing equities and we are forced to ask the question where lies the larger public interest? The answer plainly is that it is not with the Petitioners who have a narrow, self-serving interest and quite evidently seek to better their eligibility prospects rather than canvass any meaningful point of law.

25. On the challenge to Section 3C(1) declaration, we see no merit whatsoever. The Section 3D clearance order for which there is

a separate Writ Petition (St.) No. 96753 of 2020 is equally without merit because it is a necessary consequence of 3C(1) declaration.

**26.** So far as the clearance order is concerned there can be no grievance that the required procedure was not followed.

**27.** Mr Khandeparkar for Anand Developers is also not wrong in saying that once the developer has completed its obligations to the SRA and to the eligible slum dwellers by constructing the rehab units and delivering possession, and in the meantime having paid transit rent, obtained an occupancy certificate and put those eligible into occupation, the developer cannot be choked off at this stage when the time comes for the developer to begin realising his profits from the free sale component. We agree. There is a tendency to see all developers as the personification of evil or alternatively as some bottomless wells of untold wealth. Neither is true. Before a Petitioner can seek the sort of relief that the present Petitioners do, it must be shown that those Petitioners, seeking equity, are prepared to do equity. This is not demonstrated.

**28.** There is not a shred of merit in the Petitioners' case and the AGRC correctly dismissed the appeal. Therefore, there is no question of us continuing any interim or ad-interim relief that the Petitioners may have had.

**29.** In our view there is no substance whatsoever to the Petitions. They are each dismissed. In the facts and circumstances of the case, however, there is no order as to costs.

**30.** Dr Warunjikar asks for a continuation of the previous stay. In our view the Petitioners have enjoyed it for far too long. A public project is stalled because of this stay obtained by the Petitioners. The application for continuance of the stay is refused.

**(Neela Gokhale, J)**

**(G. S. Patel, J)**

CTS NO.  
561/A

CTS NO.  
561B/1

CTS NO.  
561B/1/A

CTS NO.  
562

| AREA TABLE AS PER SURVEY NO. |                |
|------------------------------|----------------|
| SURVEY NO./CTS NO            | AREA IN SQ.MT. |
| CTS 561/A                    | 126.80         |
| CTS. 561B/1                  | 2935.00        |
| 561B/1/A                     | 3583.00        |
| 562                          | 95.30          |

CTS NO.  
561/A

AREA OCCUPIED  
BY PETITIONER

AREA OCCUPIED  
BY PETITIONER

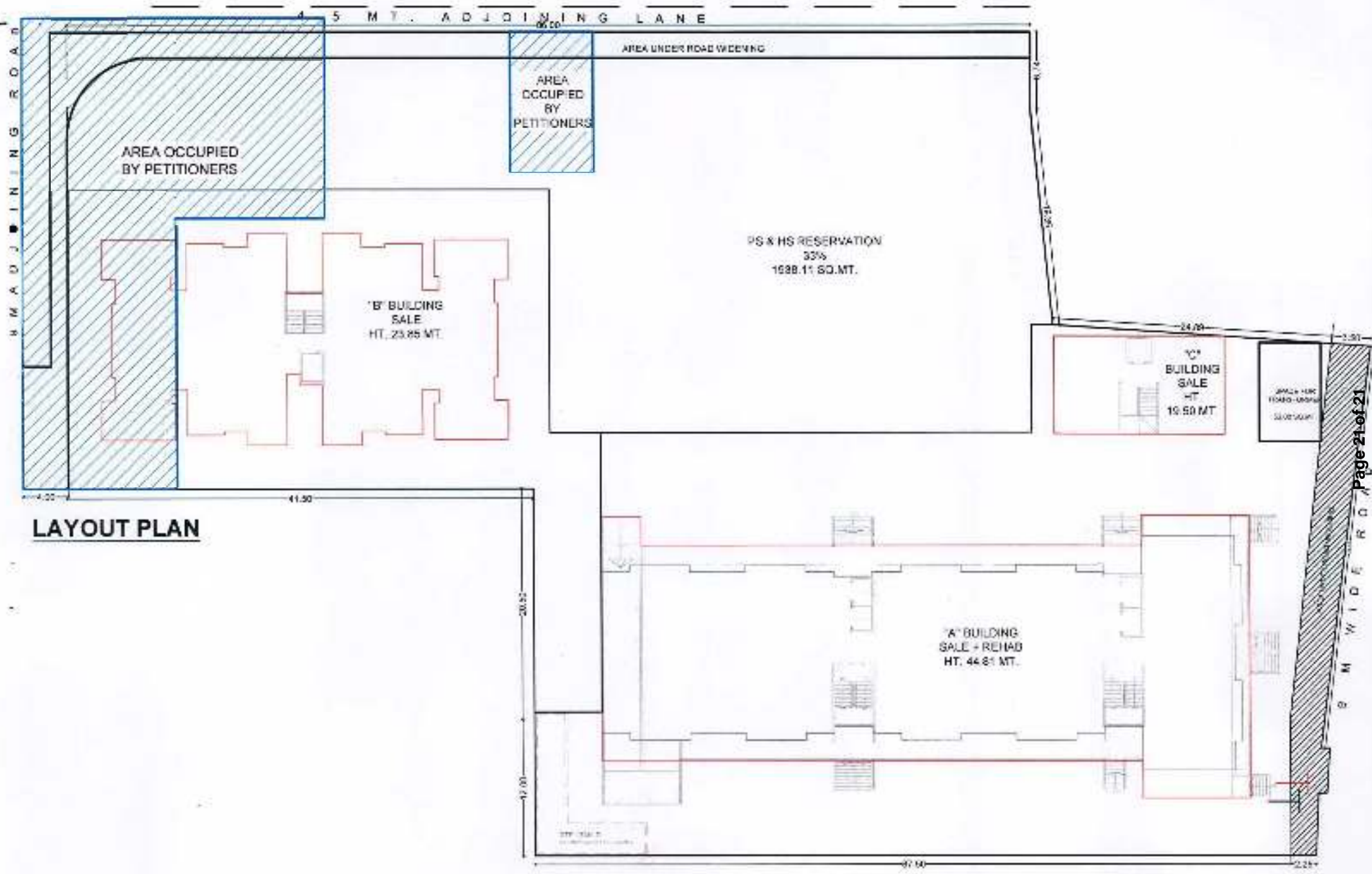
CTS NO.  
561B/1

CTS NO.  
561B/1/A

CTS NO.  
562

AREA TABLE AS PER SURVEY NO.

| SURVEY NO./CTS NO.           | AREA IN SQ.MT. |
|------------------------------|----------------|
| CTS 561/A                    | 125.80         |
| CTS 561B/1                   | 2836.00        |
| 561B/1/A                     | 3693.00        |
| 562                          | 95.30          |
| AREA OCCUPIED BY PETITIONERS |                |



**LAYOUT PLAN**