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

WRIT PETITION NO.1254 OF 2016

1. a) Rajani Dattaram Tanawade late
widow of Dattram Tanawade
Age-2 years, Occu : Housewife,
Room No.6, Building No.1,
Mohamed Tajbhai Chawl.

2. Sunil Dhondur Tanawade
Age -50, Occu : Service,
Room No.6, Building No.1,
Mohamed Tajbhai Chawl

3. ANIL SHANKAR SAWANT
Age-45, Occ : Service
Room No. 13 Building No 1,
Mohamed Tajbhai Chawls,

4. DHONDUR SHANKAR KHADAYE
Age-63, Occ : Retired
Room No. 18 Building No. 1.
Mohamed Tajbhai Chawl

5. DNYANESHWAR YESHWANT RASKAR
Age-51, Occ : Service
Room No. 6. Building No.1,
Mohamed Tajbhai Chawl

6. BHAGWAN DATTATREYA PARANDWAL,
Age 59, Occ : Self Employed
Room No. 20. Building No 1,
Mohamed Tajbhai Chawl

7. RACHANA RAMCHANDRA TARPHE,
Age-43, Occ: Service
Room No. 21. Building No.1,
Mohamed Tajbhai Chawl

8 MANISHA GHANASHYAM KHOT.

Age-65, Occ: Housewife
Room No. 22. Building No.1,
Mohamed Tajbhai Chawl

9 VIDHYADHAR PARSHURAM LAD

Age-48, Occ: Service
Room No. 26. Building No. 1,
Mohamed Tajbhai Chawl

10 RAJENDRA DHANSINGH NALAWADE.

Age-47, Occ: Service

AND

11. ARVIND DHANSINGH NALAWADE,

Age-45, Occ: Self Employed
Room No. 27. Building No. 1.
Mohamed Tajbhai Chawl

12. NIRMALA GOPAL GAWDE,

Age-87, Occ: Housewife
Room No. 29 Building No. 1
Mohamed Tajbhai Chawl

13. SHUBHADA SANTOSH DALVI,

Age-40, Occ: Housewife
Room No. 5. Building No.2
Mohamed Tajbhai Chawl

14. SUNDER VITTAL SHETTY,

Age-63, Occ: Retired
Room No. 16. Building No.2,
Mohamed Tajbhai Chawl

15. MAHADEV LAXMAN NAVLE,

Age-76, Occ Retired
Room No. 17. Building No.2.
Mohamed Tajbhai Chawl

16. KASTURI VASU SHETTY,

Age 67, Occ: Housewife
Room No. 19. Building No.2.
Mohamed Tajbhai Chawl

17. VASANT SHRINIVAS SALIAN,

Age-53, Occ Service

Room No. 21. Building No.2,
Mohamed Tajbhai Chawl

18. KARUNA KISHORE GURAV,
Age 44, Occ: Housewife
Room No. 23. Building No.2,
Mohamed Tajbhai Chawl

19. RAJESH ATMARAM CHALKE,
Age 47, Occ: Self Employed
AND

20. MANGESH ATMARAM CHALKE,
Age 42, Occ: Self Employed
Room No. 55. Building No.5,
Mohamed Tajbhai Chawl

21. BHARAT RAMCHANDRA LAD,
Age 53, Occ: Service
Room No.26 Building No.2,
Mohamed Tajbhai Chawl

22. SHANKARPRASAD MATADIN SINGH,
Age 47, Occ: Self Employed

23. PRABHUNATH MATADIN SINGH,
Age 51, Occ: Self Employed
AND

24. GEETADEVI RAJENDRAPRASAD SINGH,
Age 48, Occ: Housewife
Room No. 27. Building No.2,
Mohamed Tajbhai Chawl,

25. CHAITANYA CHANDRAKANT GANDHI,
Age 38, Occ: Self Employed
Room No. 28. Building No.2,
Mohamed Tajbhai Chawl

26. SHARDA SUBBIAH NAIDU,
Age 52, Occ: Housewife Room No. 30.
Building No.2, Mohamed Tajbhai Chawl

27. SUHAS SADANAND ADIVAREKAR, Age-
52, Occ: Self Employed
Room No. 12. Building No.4,

Mohamed Tajbhai Chawl

28. VINAYKUMAR RAMCHANDRA TIWARI,
Age 43, Occ: Self Employed (Constituted
Attorney of Holder)
Room No. 15, Building No.4
Mohamed Tajbhai Chawl

29.DEVENDRA SARJU SINGH,
Age-50, Oce: Service
Room No. 16. Building No.4,
Mohamed Tajbhai Chawl

30. KAMALCHAND BUDHINARAYAN
GUPTA
Age-54, Occ: Self Employed
Room No. 27 A. Building No.4.
Mohamed Tajbhai Chawl

31. ANIL LALJI TIWARI,
Age 40, Occ: Service
Room No. 28. Building No.4.
Mohamed Tajbhai Chawl

32. ANISH CHANDULAL BASNATH,
Age 44, Occ: Service
Room No. 29A. Building No.4,
Mohamed Tajbhai Chawl

33.CHANDULAL DHANBAHADUR
BASNATH,
Age 75, Occ: Retired
Room No. 30. Building No.4.
Mohamed Tajbhai Chawl

34. HANMANT PANDURANG JADHAV,
Age-39, Occ: Self Employed
Room No. 34. Building No.4,
Mohamed Tajbhai Chawl

35. RAJDULARI SARJU SINGH,
Age 56, Occ: Housewife
Room No. 36. Building No.4.
Mohamed Tajbhai Chawl

36. PRISCILLA PASSANHA,
Age-58, Occ: Service
Room No. 50. Building No.4,
Mohamed Tajbhai Chawl

37. EUGENE D'SILVA,
Age-45, Occ: Service (Constituted Attorney
of Holder) Room No. 55. Building No.4,
Mohamed Tajbhai Chawl

38. NASIR MIR KHAN.
Age-50, Occ: Self Employed
Room No.57. Building No.4.
Mohamed Tajbhai Chawl

39. CHANDRAKANT SAMBHAJI MALEKAR,
Age-58, Occ: Retired

AND

40. PRAKASH SAMBHAJI MALEKAR,
Age-55, Occ: Retired Room No. 1 Building
No.5, Mohamed Tajbhai Chawl

41. SUMATI RAVJI ANBHAVANE
Age-80, Occ Housewife Room No. 4.
Building No. 5, Mohamed Tajbhai Chawl

42. a) SHARDA SHARAD PATOLE,
Age-42, Occ Housewife

43. b) KISHORE PANDURANG PATOLE,
Age-46, Occ: Service

44. c) RAJU PANDURANG PATOLE,
Age-42, Occ: Service
Room No.8. Building No.5.
Mohamed Tajbhai Chawl

AND

45. MINAKSHI SUDAM MAYEKAR,
Age 48, Occ: Housewife
Room No. 18. Building No.5,
Mohamed Tajbhai Chawl

46. FANISHANKAR JOGI BHAGAT,
Age-61, Occ: Retired

Room No. 21. Building No.5,
Mohamed Tajbhai Chawl

47. PRASHANT SUDAM MAYEKAR,
Age 37, Occ: Self Employed
Room No. 28. Building No.5,
Mohamed Tajbhai Chawl

48. SRIDHAR BABIRAM WARIK,
Age-62, Occ: Retired
Room No. 30. Building No.5,
Mohamed Tajbhai Chawl

49. DEEPAK VISHWANATH PARKAR,
Age 52, Occ: Self Employed
Room No. 33. Building No.5,
Mohamed Tajbhai Chawl

50. DEVENDRA VINAYAK PALEKAR.
Age 42, Occ Service
Room No. 41. Building No.5,
Mohamed Tajbhai Chawl

51. VIKAS SURESH MHETRE,
Age-36, Occ: Service
Room No. 42. Building No.5,
Mohamed Tajbhai Chawl

Petitioners

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52. CHANDRAKANT TANU GHADI.
Age-54, Occ. Service
Room No. 47. Building No.5,
Mohamed Tajbhai Chawl

53. VIJAY HARISHCHANDRA PUJARE
Age-48, Occ: Service
Room No. 44. Building No.5,
Mohamed Tajbhai Chawl

54. DEEPALI DILIP NAVLE
Age-45, Occ Housewife
Room No. 48 Building No. 5. Mohamed
Tajbhai Chawl

55. AARTI ARUN MONDE,

Age-49, Occ Housewife
Room No. 50. Building No.5,
Mohamed Tajbhai Chawl

56. SHASHIKANT MAHADEV PALEKAR.

Age-55, Occ: Service
Room No. 51 Building No.5,
Mohamed Tajbhai Chawl

57 a) VIJAY ARUN KAVLE,
Age-58, Occ: Service

58. b) SUNIL ARUN KAVLE,
Age-49, Occ: Ideal
Room No. 53. Building No.5.
Mohamed Tajbhai Chawl

59. SAVITA SHRIDHAR WARIK,
Age-58, Occ Housewife
Room No.54. Building No.5,
Mohamed Tajbhai Chawl

All residing at Property bearing CS. No.
128, 129 and 130 of Lower Parel Division,
Sr. E. Moses Road, Known as MT. Chawl,
Nos. 1, 2, 4 and 5, Worli, Mumbai - 400
018

V/s.

1. Municipal Corporation of Greater
Mumbai Through its Municipal
Commissioner having his office at
Mahapalika Road, Mumbai-400 001.

2. Asstt. Engineer (B.P) City - VI. G/South
Ward, Parel, Mumbai-400012

3. Maharashtra Housing and Area
Development Authority, Grihanirman
Bhavan, Kala Nagar, Bandra (East),
Mumbai-400 051.

4. Oricon Properties Pvt. Ltd,
[formerly known as National Cotton"
Products Pvt Ltd.]

35, Dr. E. Moses Road, Worli,
Mumbai 400 018

5 Chief Officer,
Mumbai Building Repairs and
Reconstruction Board,
under the Maharashtra Housing and Area
Development Act, 1976, having his office at
Griha Nirman Bhavan,
Room No. 401, 3rd floor, Kalanagar, Bandra
(East), Mumbai-400051

6. Executive Engineer - G /South Division,
MBR&R Board, Parel, Mumbai – 400012.

7. State of Maharashtra
Summons to be served
Ld. Pleader under Order
XXVII Rule 4 of the CPC.

...Respondents

...

Mr. Altaf Khan a/w. Supriya Ghadge with Mr. Akash Mangalgi for
petitioners.

Mr. S.U. Kamdar, Senior counsel with Mr. Chirag Kamdar with Mr. Nanki
Grewal with Ms. Raveena Modi and Ms. Manasi Joglekar I.by Wadia
Ghandy and Co. for respondent No. 4.

Mr. Amit Shastri-AGP for respondent No. 7/State.
Dr. Milind Sathe Senior Advocate a/w. Mr. N. R. Bubna i/b. Kunal
Waghmare a/w. Sagar Patil for BMC.

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CORAM : **SUNIL B. SHUKRE &
RAJESH S PATIL, JJ.**

RESERVED ON : **26 SEPTEMBER 2023**
PRONOUNCED ON **23 OCTOBER 2023**

JUDGMENT (PER RAJESH S. PATIL J,)

1. This Writ Petition is filed under Article 227 of the

Constitution of India, challenging the Corporation's Plan No. EEBP/7060/GS/A dated 22 December, 2015 of Rehab Building 'A' wing in respect of Property known as M.T. Chawl/ Building Nos. 1 to 5 in G/S ward , Worli , Mumbai 400 018, and seeking full benefit of approved fungible FSI in Rehab flats by directing the Corporation to modify the Plan EEBP/7060/GS/A dated 22 December 2015 of Rehab Building 'A' wing by providing full benefit of approved FSI in Rehab flats by increasing its area [300 sq.ft carpet area +105 fungible = 405 sq.ft carpet area] and further challenging the decision of the Commissioner under Regulation no. 64(b) of D.C. Regulation for reducing the open space area to 8%. And also seeking restrain the Respondent no 4, from incorporating lesser Car parking area in the individual Agreements in respect of the present redevelopment scheme. In addition, thereby directing that incorporation of condition for utilisation of any additional FSI generated or residue FSI for the purposes of Regulation No. 33 (7) of DCR scheme cannot be permitted to be incorporated in the Agreement to be executed between the individual petitioners / individual tenants and the Respondent Developer concerning redevelopment based on incentive FSI redevelopment scheme of

regulation no 33(7) of DCR,1991. Further, challenges vires of Clause Nos. 6.9, 6.16, 6.20, 6.23, and 6.24 of Appendix IV and consequential Clause No. 8 of Appendix I of D.C Regulation.

Factual Matrix –

2. The Petitioners are the tenants of property situated bearing C.S. No. 128,129 and 130 of Lower Parel Division, Sr. E. Moses Road known as M.T. Chawl/ Building Nos. 1 to 5 in G/S ward, Worli , Mumbai 400 018 (for short “Suit Property”).

3. On 28 September 1995, the Respondent no 4/ Developer, by conveyance deed bearing Registration No. BBE/3263/95, acquired the said suit property from erstwhile owners and become the Landlord of the Petitioners/ Tenants.

4. After Respondent No.4/Developer, acquired the said suit property, the Petitioner/ tenants, started regularly paying rent to Respondent no 4. So also, they were paying electricity bills. The Respondent No.4, came up with a proposal for re-development. However, as there were some disputes and differences, the Petitioners/tenants did not agree with development scheme, and refused to vacate their tenement. For this reason, eviction notice under Section 95 A of MHADA, Act was issued to Petitioners. On

01 June 2015, Petitioners filed a Writ Petition No. 1536 of 2015, inter-alia challenging the Eviction Notice dated 9 May 2015, issued under Section 95 A of the MHADA Act and various permissions granted to the Respondent No.4 with respect to the suit property.

5. By an Order dated 18 June 2015 passed in Writ Petition No. 1536 of 2015 certain arrangements were made on the statement given by Respondent No. 4 – Landlord/Developer, however, liberty was also granted to the Petitioners to approach this Court in case of any difficulty.

6. Some of the Petitioners through their association “Ekta Heights Rahiwasi Mandal”, addressed a letter dated 8 August 2015 to Advocate of Respondent No 4, stating therein that redevelopment should be in transparent, appropriate and in peaceful manner.

7. Shortly thereafter, on 19 August 2015, Advocate for Respondent No 4, sent a letter to association of the Petitioners calling them to sign and execute the Said Agreement. As there were differences between the Petitioners and Developer/ Respondent No.4, on with regard to certain clauses, on 26 October 2015, some of the Petitioners filed Application under RTI, seeking

inspection of all documents pertaining to the development of the suit property.

8. So also by a letter dated 03 November 2015, Petitioners through their Advocate, address a letter to the Advocates of Respondent No. 4 thereby *inter-alia* stating their rights and eligibility of entitlement of 405 sq.ft area and also requested to provide them with copy of Annexures.

9. Thereafter, the Contempt Petition (L) No. 1536 of 2015, was filed by Respondent No. 4 against the Petitioners for not complying with the Order passed by this Court on 18 June 2015.

10. On 15 January 2016, Petitioners claim that they came to know from RTI about Report filed by Asst. Engineer (B.P), City VI, [Respondent No. 2] by which the Petitioners further became aware about the Sanction granted by Municipal Commissioner dated 31 May 2014, allowing area under staircase, lift, lobby free of FSI without charging premium being a rehab building as per modified D.C. Regulation 35 (2) (iv).

11. Petitioners on 21 January 2016, received approved Building Plan Dt. 22 December 2015, sanctioned by Respondent

No. 1 and 2, according to Petitioners they then came to know that amended Plans are approved / sanctioned by the Respondent No. 1 and 2/Municipal Corporation, thereby granting orally 351 sq.ft carpet area to the Petitioners.

12. In the meanwhile, Developer/ Respondent no 4 demolished all the structures that were standing on the said property and the construction of the building started on the base of providing 'Rehab' accommodation of 351 sq.ft. Also the commencement certificate for the rehabilitation building for the basement and the plinth was issued on 18 November 2017.

13. Subsequently, the Plan was further amended on 13 May 2019 pertaining to the suit property being amended and approved so as to bring the scene in consonance with the DCPR, 2034. As per the new sanction, amenity space will be now referred as the "recreational ground" under the latest approved plan.

SUBMISSIONS

14.1. Mr. Altaf Khan, made his submissions on behalf of the Petitioners.

14.2. Mr. Khan submitted that Respondent No 4, has misled the Petitioner herein by explaining to them that it is not possible to give them the rehab alternate accommodation carpet area with 405 sq.ft. because the Respondent No 4 is paying for fungible FSI towards providing 51 sq.ft. carpet area over and above the required 300 sq.ft. and that the balance portion of the fungible FSI for the rehab buildings would be used for the construction of certain common areas such as staircase, lift, lobbies , etc. in the rehab component to be constructed for the tenants/ occupants. With respect to the same, the Petitioner sought appropriate legal advice and they were informed that as per Regulation No 35(2) r/w Appendix III, clause 12 of Development Control Regulations for Greater Mumbai,1991,(herein referred as DCR,1991) staircase , lift and lobbies are not counted in FSI, hence the balance portion of the fungible FSI cannot be used for the construction of staircase, Lift and lobbies merely on the basis of above statement of the Developer/Respondent No 4 . Further, Petitioner relied on the Certificate, issued by an Architect - J.G. Kawa and Associates dated 25 January 2016, and recent Certificate issued by an Architect Shri. Chandrashekhar, certifying that in the redevelopment of cess building entitlement area for

eligible tenant/ occupant is 405 sq.ft. carpet area.

14.3. Mr. Khan further submitted that Respondent No. 1 and 2, by way of an Amended approved Plan, dated 22 December 2015 of Rehab building of A wing of the first floor has only made provision for 351 sqft carpet area, however, on the other hand, the plan itself indicates that 35% fungible FSI shall be exploited by Respondent No 4 for the purpose of redevelopment scheme. The said 35% fungible area on 300 sq.ft. area is 105 sq.ft. Hence, the Petitioners are entitled for 405 sqft carpet area through the present redevelopment scheme.

14.4. He also submitted that report filed by the Respondent No 2 where the Petitioner came to know the sanction granted by Municipal Commissioner dated 31 May 2014, which clearly stated that staircase, lift, lobby is free of FSI and it cannot be used for construction and counted for the purpose of consumption of FSI. Hence, Petitioners are rightly entitled for 405 sq. ft. carpet area. Since, he submitted that in the absence of Cooperative society, Respondent No 4 has become the master and sole decision maker in the present DCR 33(7) scheme and allotment of Permanent alternate accommodation to the tenants has been done by the

developer himself without initiating any “Lottery System” . Therefore, every decision is made by the Developer / Respondent No 4 and participation of tenants is absent.

14.5. He also submitted that, the (Respondent No.4) Developer has not taken any concrete steps to inform the tenants / occupants regarding their permanent location of Rehab Tenants which is mandatory duty of the Developer in the light of the Judgment passed by this Court in the matter of - *“New Woodlands Cooperative Housing Society Ltd vs State of Maharashtra and Ors”*,

14.6. Mr. Khan submitted that, as per ambiguous and vague Clause No. 9 (L) of the Draft Agreement, Developer has only agreed to provide 18 number of parking to the tenants / occupants which is not correct position contemplated in D.C. Regulation, 1991. Moreover, on the basis of entitlement of 405 sq.ft carpet area Petitioners are entitled for one parking area for every 04 [four] tenements with carpet area exceeding 35 sq.mtrs [376.6 sq.ft area] additional parking allotment free of cost as per Regulation No. 36 of DCR, Table - 15, Sr. No. (1) (i) (B) which is absent in the Draft Agreement of the Developer / Landlord and it is bound to prejudice the rights of the Petitioners. So also the

Respondent No 4, has insisted the incorporation of less car parking numbers in the agreement to restrict Petitioners from claiming their lawful car parking areas.

14.7. Respondent No. 4 has also insisted the Petitioners to agree and accept the condition of any Additional FSI generated or residue FSI, then tenants will not have any claim on the same and it shall belong to the promoter and its nominee. Upon which Advocate for Petitioner submitted that redevelopment scheme for rehabilitation of the tenants being main objective, and the FSI utilisation is governed by the provisions of regulation No. 33 (7) of D.C. Regulation.

14.8. Mr. Khan further stated that, now the FSI is increased to 3.00 FSI. The RG open space area of 20% has been drastically decreased by the Commissioner to about 8%. Hence, effect of 3 FSI instead of 2 FSI warrants a proportionate increase in Amenity Open Space area also because, the FSI is being consumed vertically and, in that proportion, open space is required to provided on ground. Subsequently, by amended in Regulation No. 33 (7) of year 1999 FSI was increased from 2 to 2.5 for Rehab Purpose and the FSI claimed on-site is 3 FSI. Therefore, this one FSI increase warrants further increase in amenity open space, however, that has

been reduced. Therefore, this amenity open space is directly and adversely affecting the rights of the tenants of old building.

14.9. He further made his submissions that Clause Nos. 6.9, 6.16, 6.20, 6.23, and 6.24 of Appendix - IV of Development Control Regulation for Greater Mumbai, 1991 are unconstitutional and contravene, violate the provisions of Regulation No. 64 (b), 23 of D.C Regulation. Regulation No. 64 (b). 23 etc. have been sanctioned by the State Government exercising powers w/s. 31(1) of MR&TP Act, 1966. Thus, Regulation Nos, 64 (b), 23 etc. have attained the status of "Final Development Plan" u/s. 31 (6) of the MR&TP Act and it is binding on the Planning Authority. In addition, in the year 2003, DCR 1095/ 1209/ CR - 273/ 95/ UD - 11 dated 15.10.2003 the Appendix - IV of the D.C Regulation was sought to be modified and Clause No. 6. For this purpose, the State Government has exercised powers us. 37 (2) of the MRTP Act. By this power, the modification of part of "Final Development Plan" which does not change the character of Final Development Plan . However, the said above mentioned clause are contrary to the said regulation.

15. On the other hand Mr. Kamdar, Sr. Counsel, made his

submission on behalf of the Respondent No. 4/Developer.

15.1. Mr. Kamdar submitted that the petition suffers from gross delay as the petition was filed after the expiry of more than seven months from the date of passing of the Order dated 18 June 2015.

15.2. He stated that out of 208 eligible tenants, 198 tenants including the Petitioner granted their written consents for the redevelopment of the said suit premises. Additionally, he submitted that all the 208 eligible tenants have already vacated and handed over the possession to Respondent no 4.

15.3. Mr. Kamdar vehemently opposes the reasons given by the Petitioners for the delay. He submitted that the revised Plan referred by the petitioners have not been changed with respect to the carpet area to be provided by the respondent no. 4 to the petitioners, or the calculation of amenity area and that the petitioners only recently became aware of the revised Plans sanctioned by the respondent no 1 Corporation, hence the same cannot be used as a reason to justify the delay in filing the present.

15.4. He submitted that about 4 or 6 years prior to date of filling of the present Petition, around 2010 to 2012, the

tenants/including the Petitioners gave their irrevocable written consents to Respondent No. 4 for the redevelopment of the suit property. Thereafter, the certification by Respondent No. 5 was completed. On 6 June 2013, Respondent No. 5 issued objection certificate for the redevelopment of the suit property that is at least more than two years prior to the date of filing of this Petition.

15.5. He submitted that Respondent No.4 has relied upon the consent given and agreement signed by the tenants/the Petitioners and also the undertakings given by the Petitioners in the order.

15.6. Further, he submits that Respondent No. 4 obtained intimation of disapproval dated 25 June 2014 from Respondent No. 2 for the redevelopment of the suit property. In the said intimation of disapproval, the area provided to the Petitioner was 351 sq ft carpet area. The Respondent No. 4 has executed agreements for permanent alternate accommodation for 144 tenants out of which, 76 agreements have already been registered and all eligible Tenants/Occupants have vacated their respective premises and transit rent has been paid to all the entitled tenants.

15.7. He further submitted that Chawl No. 3 is already been

demolished, Chawl No.1 has been partly demolished and the doors of all the rooms in Chawl No. 2, 4 and 5 have been already removed from the suit property. Respondent No. 2 has approved the amendment Plan on 22 May 2015, where there is no change in the carpet area to be provided to the Petitioners or the calculation of amenity area. The commencement certificate of one building was obtained on 30 May 2015 and the amended plans was obtained on 22 December 2016.

15.8. He vehemently opposes the said contention of the petitioner stating that that they are entitled for the carpet area of 405 sq ft. instead of 351 sq ft. The Petitioner/Tenants, were residing in premises admeasuring approximately less than 150 sq ft. of carpet area on tenancy basis. With respect to the redevelopment of the property, the Petitioners were entitled to premises admeasuring 351 sq ft. carpet area on ownership basis. However, the Petitioners claim is with respect to the fungible FSI under regulation 35 (4) of the DCR, that they are entitled for 405 sq ft of carpet area. The Petitioners arrived at the said figure by multiplying 300 by 35% . Further more, as per regulation, 33 (7) of the DCR, the Tenants/the Petitioners are entitled to minimum of

only 300 sq ft. of carpet area, in the rehabilitation building. Upon which Respondent No. 4 is providing 351 sq ft. area that is 51 sq ft. more than the prescribed area. Further more under Regulation 35 (4), 35% compensatory FSI is available for the use of residential rehabilitation component free of premium receipt fungible FSI can only be used the rehabilitation component and not for the free sale component.

15.9. Mr. Kamdar, vehemently opposes the petitioner's contention about reduction in amenity Space. Further, he states that with respect to the powers granted under clause 8 of Appendix III of the DCR, only 8% of the amenities was sanctioned. This fact can be made out from the concession report. Also, the respondent No.1 has considered the hardship of respondent no. 4 prior to the sanctioning amenity space of 8%. Further, the respondent no.4 has to rehab 208 tenants which includes 21 commercial tenants with free of cost and on ownership basis. Further, he submits that the said suit property is also been affected by the Reservation for school of around 915.03 sq.mtrs. With such considerations, respondent number one has sanctioned plans with a minute space of 8%. So also the respondent No.1 has

considered all relevant facts before sanctioning of the plan with respect to the amenity space of 8%. *Supreme Court in "Municipal Corporation of greater Mumbai and others versus Kohinoor CTNL infrastructure company Private Limited and another"* in civil appeal number 11150 of 2013, duly confirmed that development schemes under regulation, 33(7) of the DCR provide for lesser amenity spaces and that reduction in the immunity open space is permitted to make the project viable and that minimum of 8% is required to be maintained as amenity open Space.

15.10. Also, 8% Amenity space that is 688.88 sq. mt was also being provided on the suit property as P.G./amenity space for the school. He vehemently opposed the contentions of the petitioner with respect to be permanent alternate accommodation. The agreement with respect to the permanent alternate accommodation was to be executed between the petitioners and the respondent no. 4. The same issue was already been decided by this court. The Order dated 18 June 2015 clearly provides that the agreement is to be executed with the petitioners would be in the same format as the agreement is already executed on the date of the said Order, also the said agreement were already been executed with other tenants, for that reason the Respondent No 4,

submits that as he is the owner of the suit property, all FSI vests in Respondent No 4. Further more, he submits that the letter dated 21 January 2016 was provided to the advocate for the Petitioners with copies of an executed to the agreement.

15.11. Mr. Kamdar, vehemently opposed the submission of the Petitioner on formation of cooperative society and bank guarantee. He states that there is no requirement for the formation of cooperative housing Society. As the redevelopment in the present suit property is a case being undertaken by the owner /the landlord respondent no 4. Further he states that the NOC for redevelopment granted by respondent no 4 clearly mentioned that the independent cooperative housing Society for the tenants will be formed after giving the possession to the existing tenants. Hence Respondent No 4 will form an independent cooperative housing Society at the relevant time. So also the respondent No.4 is the owner of the suit. Hence there is no requirement to provide any bank guarantee to any of the tenants.

15.12. He further submitted that the prior consent of the petitioner was taken by the respondent No.4. On 31 August 2014, the meeting was held with the tenants with respect to the chawl no

5 and on 5 September 2014 meeting was held with tenants of chawl no 4 and on 9 September 2014, the meeting was held with the tenants of chawl No.1 and 2 respectively. Also on 23 November 2014, was held with the tenants to resolve all the queries raised with respect to the redevelopment. Also, the petitioners were well informed about the redevelopment plan with respect to the permanent alternate accommodation agreement and supplemental agreement executed with them.

15.13. Mr. Kamdar denied the contention of the petitioner with respect to the car parking spaces. He submitted that one car parking space for every eight tenants having carpet area up to 35 sq.mtrs. each is being provided by the Respondent No. 4 according to the provisions of DCR.

15.14. He submitted that petitioners have filed suit in the City Civil Court L.C. Suit no 1265/2016, raising similar contentions as that of Writ Petition. The said court refused to grant any relief by Order dated 5 February 2016, and upon which the appeal was carried out in this court and this Court also refused to grant any relief in favour of the Petitioner.

15.15. He further submitted that the Petitioners through

their advocate addressed a letter dated 6 February 2016 to the Respondent No. 4 stating that the Petitioners were willing to accept transit rent and vacate the premises and pursuant to the same, the petitioners vacated the premises and also accepted transit Rent from the Respondent No. 4 and Panchnama was signed by Respondent No.5 with respect to the vacation of the premises. He further submitted that despite accepting rent and vacating the premises, the petitioners without giving any notice to the Respondent No. 4, approached the apex court and obtained an ex- party order dated 9 February 2016 by misleading the Court. The said Order directed status quo to be maintained in respect of the notices issued by Respondent No. 5 under section 95 A of MHADA Act, 1976. He submitted that the Petitioners are engaged in Forum shopping, to circumvent the said Order and that they are obstructing the development of the suit property to arm twist the Respondent no 4.

15.16. He further submitted that 158 Tenants/occupants have already vacated. However, due to such conduct of the petitioner, the rights of the 158 tenants are getting adversely affected. He submitted that Writ Petition be dismissed.

16. Dr. Milind Sathe, Learned Senior Counsel made his submissions on behalf of the Municipal Corporation.

16.1 Dr. Sathe submitted that the Municipal Commissioner's approval was obtained for the Plan dated 2 June 2014. Moreover, plans for proposed redevelopment were approved and IOD was issued on 27 June 2014, 22 May 2015 and on 22 December 2015 the amendment Plans were approved respectively. As per the last approved amendment Plan, the proposed building comprises of three wings. Wing A i.e. Composite rehab/ Sale building comprises of ground floor of N.R. Rehab plus service floor + 1st to 11th + part 12th upper floor of height, 41.85Mtrs.

'B' Wing i.e. composite rehab/Sale building comprising of ground + 1st to 7th podium floor for car parking + 8th podium floor for car parking and swimming pool plus service floor + 9th to 21st + part 22nd upper residential floors, having height of 81.84 Mtrs and school building comprises of ground+8 Upper floors of height 28.05Mtrs. Subsequently, these respondents granted C.C. upto *plinth level* for being the only as per face a prude programme on 30 May 2015.

16.2. He submitted that as per D.C. Regulation 35(4), the Commissioner, by special permission, permitted fungible,

compensatory floor space index, not exceeding 35% for residential development and 20% for industrial/commercial development, over and above admissible FSI, by charging premium at the rate of 60%, 80% and 100% of stamp duty ready reckoner rate for residential, industrial and commercial development respectively. Provided in case of redevelopment under DC regulation 33.(7), 33(9), and 33(10), the fungible compensatory FSI admissible on rehabilitation component shall be granted without charging premium. Further provided that such fungible compensatory FSI for rehabilitation component shall not be used for free cell component and shall be used to give additional area over and above eligible area to the existing tenants.

16.3. Moreover, as per clause two of appendix III to D.C. Regulation 33.(7), each existing tenant shall be rehabilitated and given the carpet area occupied by him for residential purpose in the old building subject to minimum fixed carpet area of 27.88 Sq. Mtrs. i.e. 300 Sq. ft. and/or maximum carpet area up to 70 Sq. Mtrs. i.e. 753 Sq. ft. as provided in the MHADA Act, 1976.

16.4. Mr. Sathe further submitted that as per Appendix IV of regulations, 33(10) clause 6.20, even if the amenity space is reduced to make the project viable, minimum of at least 8% of the

plot area shall be maintained as amenity open spaces. He further submitted that there is no such provision in DC Regulation to hear the affected parties prior to the approval of the proposed RG as per DC regulation 64(b).

17. Learned AGP made submissions on behalf of the Respondent No.7/State.

17.1. Learned A.G.P submitted that the purpose of making provisions under regulation 33(10) along with Appendix IV and Regulation 33(7) along with Appendix III in the DCR, 1991, for greater Mumbai. Mumbai, being a capital of Maharashtra and also financial capital of India and due to the rapid urbanisation, there are problems of slums, dilapidated buildings etc Hence, in order to make slum redevelopment and development of old and dilapidated buildings and to eradicate slums in Mumbai city and to avoid any subsequent to the collapse of old and dilapidated buildings, the government has made such provisions.

17.2 Further, for smooth implementation of redevelopment, Clause No. 6.9, 6.16, 6.20, 6.23 and 6.24 are provided in appendix IV. Therefore, the problems of redevelopment of cess buildings are almost similar to that of slums. Hence they require rehabilitation provisions regarding relaxation in regulation No. 33(10) of

DCR,1991 and hence Clause No. 8 of Appendix III has been provided for redevelopment of old and dilapidated buildings under regulation 33(7) of the DCR,1991.

17.3. Also, the similar provisions are there in the new development control and promotion regulations 2034 which has been sanctioned by the government vide notification dated 8 May 2018.

ANALYSIS AND CONCLUSION :-

18. Petitioners are tenants/ occupants of a of Chawl in Mumbai, belonging to lower middle class.

18.1. By the present Petition the Petitioners have challenged the amended plan approved by Municipal Corporation on 22 December 2015 thereby providing them rehab flats consisting of 351 Sq. Ft carpet area. So also the Petitioners have challenged the reduction in open amenities space area to 8%, which according to them should be 20%. There is also challenge to grant reduction in parking area.

18.2. Question to be answered in the present Petition is whether the Petitioners are eligible to receive 35%(105 Sq Ft) compensatory fungible area over and above the area of 300 Sq. Ft.?

(i) The Respondent No.4/ Developer, is ready and willing to give an area of 300 sq.ft. + 51 sq.ft. Totally, to 351 sq.ft.

(ii) At the relevant time Development Control Regulations for Greater Mumbai, 1991 (for short 'DCR', 1991), was in force in the city of Mumbai, for the purpose of building activity and Development work.

(iii) Regulation 35 of DCR 1991, deals with Floor Space Index Computation (for short 'FSI').

(iv) By an Government Notification dated 6 January 2012 Sub-regulations (2), (3) and (4) of Regulation 35 were substituted with the original Sub-regulation (2) and (3). The substituted Sub-Regulation (2) and (4) of Regulation 35 reads as under

(2) ***The following shall not be counted in FSI -***

(a)

(b)

(c) *Areas covered by stair-case room, lift rooms above the topmost storey/staircase/lift wells and messages in stilt, basement and floors exclusively used for parking and other ancillary users as permitted in this regulation No.35(2).*

(iv) *Areas covered by staircase/lift wells, including lobbies as specified, excluding those covered under D.C. Regulation No.35 (2) (iii) with special written permission of the Commissioner subject to payment of premium:*

(4) ***Compensatory Floor Space Index (FSI) :-***

Notwithstanding anything contained in the D.C. Regulations 32, 33 & 34, the Commissioner may, by special permission, permit fungible compensatory Floor Space Index, not exceeding 35% for residential development and 20% for Industrial/Commercial development, over and above admissible Floor Space Index, by charging a premium at the rate of 60%, 80% and 100% of the stamp Duty Ready Reckoner Rate, for Residential,

Industrial and Commercial development respectively.

Provided in case of redevelopment under regulation 33 (7), 33 (9) & 33 (1) excluding clause no.3.11 of Appendix-IV of Development Control Regulation 1991, the fungible compensatory F.S.I. admissible on F.S.I. consumed in existing structure shall be granted without charging premium.

Provided

Provided further that such fungible compensatory FSI for rehabilitation component shall not be used for free sale component and shall be used to give additional area over and above eligible area to the existing tenants/occupants.

Provided that this regulation shall be applicable in respect of the buildings to be constructed or reconstructed only.

Explanatory Note :-

(iii) The fungible FSI is usable as regular FSI.

[Emphasis supplied]

(v) The Petitioners had earlier challenged eviction notice issued under Section 95 A of MHADA Act, by way of Writ Petition No.1536 of 2016. The said Writ Petition was disposed of order dated 18 June 2015 thereby granting liberty to the Petitioners to apply in case of difficulty.

(vi) Municipal Corporation by their letter dated 31 May 2014 very specifically noted that the area under staircase, lift and lobby would be free of FSI and without payment of any premium. It further recorded that DCR 35 (2) (iv) granted compensatory FSI pursuing to fungible.

Letter dated 31 May 2014 reads as under :-

*No. EB/7060/GS/A
MUNICIPAL CORPORATION OF GREATER MUMBAI*

No.EB/7060/GS/A

Sub: Proposed redevelopment of property bearing C.S. No. 128, 129 and 130, Building no. 27-29, 31-33, 39-41, 43-57, 21-25 bearing Cess No. GS/1080(1). GS/1080(2), GS/1081(1), GS/1081(2): and GS/1082(1) of Lower Parel Division, G/S - Ward, situated at Dr. E. Moses Road, Mumbai, known as "M.T. Chawl"

Ref.: Endorsement of Honorable M.C. as at Pg N-37.

L.S. Mr. Nilesh Kadakia of M/s. Kadakia N.K.

Draft amended Plans as at Pg. C-289 to C-293.

"Reference is requested to the detailed note regarding approval of various concessions submitted to Ch. Eng. (D.P)/M.C. and M.C's endorsement as at Pg. N-37 for each point submitted for approval, cite the relevant regulations, as well as comment on the permissibility and the need for approval by M.C. Re-examine and re-submit accordingly may please be seen.

In view of Honorable M.C's endorsement, the revised report is submitted which is as under-

1. To allow 9.94% additional parking space without charging premium

as explained in Point No. 14 as at Pg.N-11.

In this case, Licensed Surveyor has proposed 313 Nos. of parking spaces on podium from 1 to 8 upper floor accessible by 6.00 ML wide two way ramp as shown on the plan as at Pg. C-225 to C-231. As such, there is no deficiency in parking spaces. Licensed Surveyor has also proposed 9.94% additional parking spaces which is permissible.

As per modified DC. Regn.35(2)(vi) additional parking to the extent of 25% of the regular parking may be permitted with the permission of the Commissioner, without payment of premium.

In view of above, Ex. Eng.(B:P) City-I's approval

is requested to allow.”

2.....

3.....

4.....

5. To allow area under staircase, lift, lift lobby free of F.8.1. without charging premium being a rehab building as per modified D.C. Regn.36(2) (c) as explained In Point No. 16A as at Pg.N-12.

As per the provision of modified D.C. Regn. 35(2)(iv), the area of staircase, lift and lift lobby, area of staircase room, lift machine room above top most storey, overhead water tanks is permissible free of F.S.I. with the special permission of the Municipal Commissioner.

[Emphasis supplied]

(vii) The Municipal Corporation circular dated 12 January 2012 reads as under :-

MUNICIPAL CORPORATION OF GREATER MUMBAI

NO. CHE/22276/DP/GEN. DT. 12-01-12

CIRCULAR

Subject :- Procedure to be followed for implementation of the modified provisions for certain D.C. Regulations, 1991 for Greater Mumbai

Government of Maharashtra in U.D Department issued directives under section 37(1AA) of M.R.&T.P Act, 1966 under No. CMS/TPB-4311/452 CR-58/2011/ UD-11 dtd. 25.7.2011. Thereafter, the suggestions & objections on the proposed modifications to D.C. Regulations,1991 were invited. After giving hearing the suggestions and objections by Dy. Director (Town Planning) the same have been submitted to the U.D. Deptt. in Government of Maharashtra. Now the Government of Maharashtra in U.D. Deptt. has sanctioned the modifications to the D.C. Regulations for Greater Mumbai, 1991 under Section 37(1AA)(C) of MRTP Act, 1966

Considering the final sanction to the said modification to the certain D.C. Regulations, the following procedure shall be followed for processing the building proposals to be approved hereinafter :-

A) The procedure to be followed for ongoing proposal/new proposals.

6) In case of redevelopment under regulation 33(7), 33(9) & 33(10) excluding clause no. 3.11 of Appendix-IV of Development Control Regulation 1991, the fungible compensatory FSI. admissible on rehabilitation component only shall be granted without charging premium.

(7)

(8) In case of such fungible compensatory FSI for rehabilitation component referred to in area (6) & (7) above shall not be used for free sale component and can only be used to give additional area over and above eligible area to the existing tenants/occupants.

(9) The fungible FSI used in rehabilitation component shall not be eligible for working out the saleable FSI for the free sale component. The fungible FSI will be available on such FSI for free sale component on payment of premium as per modified D.C.R.

[Emphasis supplied]

(viii) Taking into consideration Regulation 35 (4) and the third proviso of regulation 35 (4), along with the circular dated 12 January 2012, in our view there is no doubt that the Petitioners/Tenants are eligible to get total carpet area in rehab building of 300 Sq Ft + 105 Sq ft (35% compensatory fungible FSI). The argument of developer/Respondent No.4 has no legal sanctity that even though as per amended development control regulation 35% compensatory fungible area can be granted free of cost, the builder is not bound to give the entire 35% area, since

part of it will be adjusted against the passages and stair case area. The developer's offer to give an area of 300 Sq Ft + 51 Sq Ft (on account of fungible FSI) will be not in terms of the development control regulation as duly amended. The Regulation 35 (4), can not be read as per the submission of Developer/Respondent No.4.

(ix). The argument of developer that 35% compensatory fungible area for Rehab Building which is free of premium stands on different footing then 35% fungible area to saleable building, for which premium is payable; is devoid of merits as there is no concept in DCR 1991, that on payment of money, FSI can be granted to developer. The additional FSI available on account of compensatory fungible, is a provision in addition to the 300 sq.ft area. Just because the saleable component in getting 35% fungible on payment of premium and Rehab Building is getting 35 % fungible area, to tenant free of cost, therefore they stand on different footing, has no merits.

19. As far as the Municipal Commissioner in this project reducing 20% open RG amenity space to 8%, when 2 FSI according to us is increased to 3 FSI according to us is without considering the legal provision as contended in Development Control Regulation; therefore, the Municipal Commissioner is directed to rehear the parties on the issue of reduction in open RG amenity space. Such open amenity space has to be granted keeping in mind the health concerns and the provisions of DCR.

20. As regards to the parking issue the Petitioners have claimed that as they are entitlement of 405 Sq Ft carpet area, they

will be entitled for one parking area for every four tenements with the carpet area exceeding 35 sq mtr (376.6 sq. ft) additional parking allotment free of cost as per regulation No.36 of DCR, table-15,serial No.(1) (i) (B). Since we have already held that the Petitioners are entitled for area 405 Sq Ft area as Rehab, hence, Petitioners/Tenant would be entitled for one parking area for every 4 tenements and additional parking allotment free of cost as per Regulation No.36 of DCR, table-15, Serial No.1 (i) (B), which may be made available to them within eight weeks.

21. Hence, we hold that the Petition partly succeeds in the above terms.

22. The Petition is accordingly disposed of.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)