

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

WRIT PETITION NO.1935 OF 2016

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| 1. Aniruddha Tukaram Anavkar, | |
| Aged 39 years, | |
| residing at 4/41, Dattatraya Building, | |
| T.J. Road, Grant Road, Mumbai 400 007. | |
| 2. Shrikant Vishnu Bhatt, | |
| Aged 62 years, | |
| residing at 3/29, Dattatraya Building, | |
| T.J. Road, Grant Road, Mumbai 400 007. | |
| 3. Federation of Tenants Association, | |
| Through its President, | |
| having its office at C/of Mr. Manohar Samant, | |
| 15/4 Urankar Wadi, Tatyah Sahib Gharpure Path, | |
| Mumbai 400 004. | .. Petitioners |

Versus

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| 1. Maharashtra Housing and Area Development Authority, | |
| Having its office at Bandra (East), Mumbai. | |
| 2. State of Maharashtra, | |
| Through the Principal Secretary, | |
| Department of Housing, Mantralaya Annex, | |
| Mumbai 400 032. | |
| 3. Special Land Acquisition Officer, | |
| Mumbai Repair and Reconstruction Board, | |
| MHADA, Bandra (East), Mumbai. | |
| 4. Mohammed Hameed Uz-Zaffar | |
| 5. Mohammed Aziz Uz Zaffar | |
| 6. Mohammed Rashid Uz Zaffar | |

7. Safia Zaffar]
8. Mohammed Mateen Uz Zaffar]
9. Mohammed Majeed Uz Zaffar Khadija]
Respondent Nos.4 to 9 residing at 14, Valmiki Marg,]
P.S. Hazrat Ganj, Lucknow, U.P.]
10. Shree Dattaprasad Co-op. Housing Society (Proposed),]
5/27, Dattatraya Buildings, Tukaram Javji Marg,]
Grant Road, Mumbai – 400 007.]
Through its Chief Promoter : Nitin V. Patankar and]
Convener : Chandrashekhar V. Shirodkar]
11. Macrotech Developers Ltd.,]
412, Floor – 4, 17G Vardhaman Chamber,]
Cawasji Patel Road, Horniman Circle,]
Fort, Mumbai 400 001.]
12. Pradeep Manohar Argekar, Age : Adult,]
R/at Janardan Building, 3rd Floor, “A” Wing,]
Proctor Road, Grant Road (East), Mumbai 400 004.]
And]
Dattatraya Building No.1, Room No.19, 1st Floor,]
Tukaram Javaji Road, Grant Road (West),]
Mumbai 400 007.]
13. Rohan Pradeep Argekar, Age : Adult,]
R/at Janardan Building, 3rd Floor, “A” Wing,]
Proctor Road, Grant Road (East), Mumbai 400 004.]
And]
Dattatraya Building No.4, Room No.1, Ground Floor,]
Tukaram Javaji Road, Grant Road (West),]
Mumbai 400 007.]

14. Ramakant Laxman Pulkundwar, Age : Adult, |
Presently R/at 59/A, Mehar Nagar, Gar Kheda, |
Aurangabad 431 005. |
And |
Dattatraya Building No.2, Room No.42, 2nd Floor, |
Tukaram Javaji Road, Grant Road (West), |
Mumbai 400 007. |
15. Shrikant Laxman Pulkundwar, Age : Adult, |
R/at B/79, MIDC, Walunj, Aurangabad. | .. Respondents

ALONG WITH
WRIT PETITION NO.854 OF 2017
ALONG WITH
INTERIM APPLICATION (LODGING) NO.11212 OF 2023

1. Prakash Vasant Kedar, Adult, Aged 62 years, |
Indian Inhabitant, R/at 2/1, Dattatraya Buildings, |
Ground Floor, T.J. Road, Grant Road (West), |
Mumbai 400 007. |
2. Sanjay Shankar Mohite, Adult, Aged 47 years, |
R/at 6/16, Dattatraya Buildings, T.J. Road, |
Grant Road (West), Mumbai 400 007. |
3. Jayant Ganpat Kamat, Adult, Indian Inhabitant, |
having his address at 1/34-B, 2nd Floor, |
Dattatraya Buildings, T.J. Road, Grant Road (West), |
Mumbai 400 007. |
4. Ambaji Sakharam Rane, Adult, Indian Inhabitant, |
Having his address at 2/8, Dattatraya Buildings, |
Ground Floor, T.J. Road, Grant Road (West), | .. Petitioners /
Mumbai 400 007. | Applicants

Versus

1. Maharashtra Housing and Area Development Authority, |
Having its office at Bandra (East), Mumbai. |
2. State of Maharashtra, |
Through the Principal Secretary, |
Department of Housing, Mantralaya Annex, |
Mumbai 400 032. |
3. Special Land Acquisition Officer, |
Mumbai Repair and Reconstruction Board, |
MHADA, Bandra (East), Mumbai. |
4. Mohammed Hameed Uz-Zaffar |
5. Mohammed Aziz Uz Zaffar |
6. Mohammed Rashid Uz Zaffar |
7. Safia Zaffar |
8. Mohammed Mateen Uz Zaffar |
9. Mohammed Majeed Uz Zaffar Khadija |
Respondent Nos.4 to 9 residing at 14, Valmiki Marg, |
P.S. Hazrat Ganj, Lucknow, U.P. |
10. Shree Dattaprasad Co-op. Housing Society (Proposed), |
5/27, Dattatraya Buildings, Tukaram Javji Marg, |
Grant Road, Mumbai – 400 007. |
Through its Chief Promoter : Nitin V. Patankar and |
Convener : Chandrashekhar V. Shiroadkar |
11. Kora Construction Pvt. Ltd., |
A Company incorporated under the provisions of the |
Companies Act, 1956, having its registered office at |
C/3, Bharat Nagar, Grant Road, Mumbai 400 007. |
12. Shrikant Laxmanrao Pulkundwar, Age : Adult, |
Occ.: Officer on Special Duty, having his address at |

- ‘Sagar’, Government Officers’ Quarters, Flat No.29, |
8th Floor, “B-Road”, Churchgate, Mumbai 400 020. |
- And |
- B/79, MIDC, Walunj, Aurangabad, Mah. 431 136. |
13. Ramakant Laxmanrao Pulkundwar, Age : Adult, |
Having his address at 59/A, Meher Nagar, Gar Kheda, |
Aurangabad 431 005. |
- And |
- Room No.42, 2nd Floor, Building No.2, |
Dattatraya Buildings, Tukaram Javji Marg, |
Grant Road (West), Mumbai 400 007. |
14. Pradeep Manohar Argekar, Age : Adult, Occ.: Retired, |
R/at Janardan Building, 3rd Floor, “A” Wing, |
Proctor Road, Grant Road (East), Mumbai 400 004. |
- And |
- Dattatraya Building No.1, Room No.19, 1st Floor, |
Tukaram Javaji Road, Grant Road (West), |
Mumbai 400 007. |
15. Rohan Pradeep Argekar, Age : Adult, |
R/at Janardan Building, 3rd Floor, “A” Wing, |
Proctor Road, Grant Road (East), Mumbai 400 004. |
- And |
- Dattatraya Building No.4, Room No.1, Ground Floor, |
Tukaram Javaji Road, Grant Road (West), |
Mumbai 400 007. | **.. Respondents**

Mr. Kevic Setalvad, Sr. Advocate, with Mr. Mihir Desai, Sr. Advocate, i/by Ms. Janhvi Durve, for the Petitioners in WP/1935/2016.

Mr. Mihir Desai, Sr. Advocate, with Ms. Sonal, Ms. Nisha Shah and Mr. Narendra Dewansh, i/by Kalpesh Joshi & Associates, for the Petitioners in WP/854/2017 and for the Applicants in IA(L)/11212/2023.

Dr. Birendra Saraf, A.G., with Mr. P.G. Lad, Ms. Shreya Shah, Ms. Aparna Kalathil and Ms. Sayli Apte, for Respondent No.1-MHADA.

Mr. Dushant Pagare, with Mr. Akshay Kandarkar, i/by Mr. Rajesh S. Datar, for Respondent Nos.4 to 9 in WP/1935/2016 and WP/854/2017.

Dr. Milind Sathe, Sr. Advocate, with Mr. Cyrus Ardeshir, Ms. Alya Khan, Ms. Chandni Dewani and Mr. Anup Deshmukh, i/by Vashi & Vashi, for Respondent Nos.6, 11 and 12 in WP/1935/2016 and WP/854/2017.

Mr. Milind V. More, Addl. G.P., with Mr. Hemant Haryan, AGP, for the Respondent-State in WP/1935/2016.

Mr. Milind V. More, Addl. G.P., with Mr. L.T. Satelkar, AGP, for the Respondent-State in WP/854/2017.

Mr. Amogh Singh for the Applicants-Intervenors in Chamber Summons No.112 of 2017 in Writ Petition No.854 of 2017.

Ms. Oorja Dhond, i/by Mr. S.K. Sonawane, for the Respondent-MCGM.

CORAM : SUNIL B. SHUKRE AND RAJESH S. PATIL, J.J.

RESERVED ON : 5th JULY, 2023.

PRONOUNCED ON : 7th OCTOBER, 2023.

[In Chamber – at 5.00 p.m.]

JUDGMENT (Per SUNIL B. SHUKRE, J.) :

1. These petitions filed by the occupiers-tenants of “Dattatraya Buildings”, standing on the land bearing City Survey No. 310, Tardeo Division, Tukaram Javji Road, Grant Road (West), Mumbai 400 007, (*“Subject Property”, for short*), seek

quashing and setting aside of the Notification dated 8th March 2016, issued by respondent No. 3 – the Special Land Acquisition Officer, Mumbai Repair and Reconstruction Board, MHADA, Mumbai, whereby the Notification issued by respondent no.3 on 5th August 1994 for acquisition of the subject property in terms of Section 103-B(5) of the Maharashtra Housing and Area Development Act, 1976, (***“Act 1976”***, for short), came to be cancelled.

2. It is the contention of the petitioners that there were in all seven buildings, which were commonly known as “Dattatraya Buildings”, constructed in early 1920’s. Due to neglect by their owners, i.e. respondent Nos. 4 to 9, the subject property deteriorated in condition. The buildings were declared to be cessed buildings and the state of disrepairs became so acute that the majority of the occupiers-tenants of Dattatraya Buildings felt the need for redevelopment and reconstruction of all the buildings and, therefore, they formed a proposed cooperative housing society, namely, “Shri Dattaprasad Cooperative Housing Society (Proposed), (***“Proposed Society”***, for short), by passing a resolution by majority on 17th November 1989. By this resolution, the Proposed Society resolved to redevelop the subject property on their own, by taking recourse to the provisions of Chapter VIII-A of the Act 1976. Accordingly, the Proposed Society made an application on 20th November 1989, under Chapter VIII-A of the Act 1976, requesting the Mumbai Housing and Area Development Board, (***“Board”***, for short), constituted in terms of Section 18 of the Act 1976, to move the State Government to acquire the land, together with the existing buildings thereon, in

the interest of their better preservation or for reconstruction of new buildings in lieu of the old ones.

3. On receipt of the application for acquisition of the subject property for the purpose of its redevelopment and reconstruction, the Board verified and scrutinized the application, as required under Section 103B(2) of the Act 1976, and being satisfied with what the application disclosed i.e. the necessity for reconstruction of new buildings, directed the Proposed Society to deposit with the Board 30% of the approximate amount of compensation to be paid to the owner of the land within stipulated period of time. The petitioners submit that 30% amount, as required by the Board, was deposited by the Proposed Society and thereafter, the Board sent a proposal to the State Government seeking its approval for acquisition of the subject property for the said purpose. The State Government, on its part, recorded satisfaction about the reasonableness of the proposal and it accorded approval to the proposal sent to it by the Board. Thereafter, the petitioners state, the Board forwarded the proposal to respondent no.3-Special Land Acquisition Officer (*SLAO*) for initiating acquisition proceeding in accordance with the provisions of sub-sections 3,4 and 5 of Section 93 and Section 96, as required under Section 103B of the Act 1976.

4. The respondent no.3-SLAO, on receipt of the proposal from the Board, published the notice in terms of Section 93(3) of the Act 1976 and also served the notice in terms of Section 93(4) of the Act 1976 upon the occupiers and owners

of the said buildings and upon considering the objections and suggestions and on giving reasonable opportunity of being heard to the persons affected by the proposal, respondent no.3 approved the proposal and published a Notification dated 5th August 1994 in the Official Gazette fixing the date on which the proposal, as approved, would become operative in terms of Section 93(5) of the Act 1976.

5. The petitioners submit that respondent nos.4 to 9—the original owners challenged the award as well as notification by filing Writ Petition No.27 of 1996 in the High Court of Bombay but, the petition was dismissed on 26th February 1996. The petitioners further submit that the matter was then carried by the original owners to the Hon’ble Supreme Court by filing a Special Leave Petition (C) No.13428 of 1996 challenging the said order of the High Court and the Special Leave Petition was admitted by the Hon’ble Supreme Court. They submit that the Hon’ble Supreme Court, however, permitted respondent no.1—MHADA to take symbolic possession of the subject property and it was indeed taken by the Collector on behalf of MHADA.

6. The petitioners submit that the proposal of acquisition of the subject property was supported by more than 70% of the occupiers—tenants but, as the time passed by, the percentage of the occupiers—tenants, who had initially agreed to become member of the Proposed Society, was reduced to less than 70% due to some members of the Proposed Society opting out of the acquisition proposal or

on account of additional tenancies having been created or for some other reason. The petitioners submit that such reduction happened mostly due to the illegal tactics adopted by the original owners, who somehow influenced some of the occupiers-tenants to opt out of the acquisition proposal and made them sign a representation seeking cancellation of the notification of acquisition dated 5th August 1994. The petitioners also submit that the original owners created a sham entity in order to show that the majority of the occupiers-tenants had changed their mind and had taken a decision to opt out of the acquisition proceedings and thus made them send a representation to respondent no.1 to de-acquire the subject property, which was accepted by it and it then decided to send the proposal of de-acquisition to the State Government for its approval. They submit that doubt about the signatures of many occupiers-tenants was known to the officers of respondent no.1-MHADA, as respondent no.1, in Interlocutory Application No.8 of 2008 filed in Special Leave Petition (C) No.13428 of 1996, pending before the Hon'ble Supreme Court, had filed an affidavit mentioning the said fact and expressing the need for physical verification of the list of occupiers-tenants. Even then, the petitioners further submit, the officers of respondent no.1-MHADA forwarded the proposal to the State Government for de-acquisition of the subject property in complete violation of provisions of Chapter VIII-A of the Act 1976. They also submit that respondent no.1 had no authority to send such a proposal, as sub-section 2(A) of Section 103B of the Act 1976 clearly provides that even in a case where the percentage of the occupiers, who had initially agreed to become members of the co-operative society formed under sub-section

(1) of Section 103B is reduced to less than 70% of the occupiers, the power of the Board to send the proposal to the State Government remains unaffected and it still has the power to direct the co-operative society or the Proposed Society to deposit 30% of the approximate amount of compensation, as required under sub-section (2) of Section 103B of the Act 1976.

7. The petitioners further submit that the State Government, i.e. respondent no.2, ultimately approved the proposal on 16th August 2013 to rescind and cancel the Notification dated 5th August 1994 in spite of the fact that there was no provision made in Chapter VIII-A of the Act 1976 for de-acquisition of the land already acquired and that too, without following the process of verification and scrutiny of the proposal sent at the behest of the owners and the developer. It is pointed out by the petitioners that the approval of the State Government was on the following conditions :

- (i) Process of cancellation of the Notification dated 5th August 1994, acquiring the subject property, should be by following same procedure as was followed at the time of acquisition of the subject property.
- (ii) Consent should be obtained from all the parties to the Special Leave Petition, being Special Leave Petition (C) No.13428 of 1996, who would file consent terms and the Special Leave Petition be disposed of by the Hon'ble Supreme Court in terms of such consent terms.

8. The petitioners state that respondent nos.4 to 9—the owners of the subject property filed Interim Application No.10 of 2013 in the Special Leave Petition No.13428 of 1996, pending before the Hon’ble Supreme Court, seeking permission of the Hon’ble Supreme Court to withdraw the petition in view of the approval granted by the State Government vide its letter dated 16th August 2013. The petitioners further submit that no consent terms, however, were signed or filed before the Hon’ble Supreme Court.

9. The Hon’ble Supreme Court, it appears, was informed of the approval granted by respondent no.2—State vide its letter dated 16th August 2013, as a submission was made for the petitioners before the Hon’ble Supreme Court, who were the owners, that in view of the letter dated 16th August 2013 sent by the Government of Maharashtra to the Maharashtra Housing and Area Development Authority, the petitioners were no longer desirous of prosecuting the Special Leave Petition and, therefore, they had filed the Interim Application No.10 of 2013, for withdrawal of the Special Leave Petition No.13428 of 1996. Considering this submission, the Hon’ble Supreme Court dismissed the Special Leave Petition, by its order dated 4th October 2013, stating that *“in light of the above, Special Leave Petition is allowed to be withdrawn and it is dismissed as such”*. According to the petitioners, this withdrawal of the Special Leave Petition was without any notice to the original Chief Promoter of the Proposed Society – one Mr. B.B. Nagwekar and the occupiers and that this order does not make any

comment upon the legality or otherwise of the said letter dated 16th August 2013 issued by the State of Maharashtra.

10. The petitioners further submit that when the petitioners learnt that in pursuance of the letter dated 16th August 2013 of respondent no.2-State, respondent no.1-MHADA was taking steps to de-acquire the suit property, the petitioners sent a notice to the Principal Secretary of the State of Maharashtra and also to the Vice President of MHADA taking objection to the entire process of de-acquisition of the subject property. The petitioners submit that they also received a notice from respondent no.3-SLAO calling upon them to submit their say or objections, if any, to the process of de-acquisition initiated by him, to which an objection was sent by the petitioners on 28th April 2014. It appears that further notices were issued to all the occupiers-tenants of the subject buildings, including the petitioners, which were received by most of them and which were not received by few of them and then a further attempt was made by respondent no.3 to serve notices upon them through substituted mode of service. It is further seen that there was an official hearing that took place on 13th October 2015, which was attended to by some of the petitioners, who submitted their written objections. The petitioners submit that in spite of the objections taken by the petitioners on the legality or otherwise of the entire process of de-acquisition, the respondent no.3-SLAO, by Notification dated 8th March 2016, rescinded and cancelled the earlier Notification dated 5th August 1994 issued under sub-section (5) of Section 93, read with Section 103B (5) of the Act 1976.

11. The petitioners submit that the Notification dated 8th March 2016 is illegal, as there is no power conferred upon respondent no.3-SLAO under the Act 1976 to cancel the earlier Notification dated 5th August 1994 and they also submit that the entire process of de-acquisition initiated by respondent no.1-MHADA and the approval accorded to it by respondent no.2-State was, apart from being illegal, vitiated owing to non-compliance with the conditions of the approval granted by the State Government for de-acquisition in terms of its letter dated 16th August 2013 and the illegalities committed by the original owners-respondent nos.4 to 9 in collusion with the Developer-respondent no.11.

12. The main contesting parties to these petitions are respondent no.3-SLAO, respondent no.10-Proposed Society and respondent no.11-Developer, who have, by their respective replies, opposed these petitions. According to them, the impugned Notification dated 8th March 2016 is perfectly in order and it is in the larger interests of the majority of the occupiers-tenants and the proposed society and needs to be given full effect to, if the object of Chapter VIII-A of the Act 1976, which is to redevelop old and dilapidated cesses buildings, is to be achieved. They have also submitted that by this notification, a big relief has been provided to the occupiers-tenants and the process of redevelopment of the buildings, which had come to a halt, now, has started rolling and the majority occupiers-tenants are seeing a ray of hope to have a decent accommodation in the city of Mumbai. They also submit that during pendency of the Special Leave

Petition No.13428 of 1996 filed by the owners of the subject property before the Supreme Court, respondent no.10-Proposed Society sent a proposal to MHADA, seeking permission to redevelop all the buildings under Development Control Regulation 33(7) by releasing the buildings in question from acquisition as respondent no.10 found that it's majority of the members were not in possession of enough money to fund the redevelopment project and since MHADA found the proposal to be reasonable and also necessary in the larger interests of the majority occupiers-tenants, who are the members of the respondent no.10-Proposed Society, forwarded the same to the Government of Maharashtra for it's approval. It is also submitted that Government of Maharashtra, after examining thoroughly the issue, gave its approval to the said proposal and communicated its decision in that regard vide letter dated 16th August 2013, whereby permission was given to de-acquire the subject property, subject to compliance with certain terms and conditions mentioned therein.

13. It is further submitted by these respondents that this decision of the State Government was placed before the Supreme Court in the pending Special Leave Petition No.13428 of 1996 and the Supreme Court, by its order dated 4th October 2013, permitted the owners – petitioners therein to withdraw the Special Leave Petition, after taking on record the decision of the State Government dated 16th August 2013.

14. It is further submitted by these respondents that after the Special Leave Petition came to be withdrawn with the permission of the Supreme Court, respondent no.3-the Special Land Acquisition Officer followed the same procedure as he had adopted for acquiring the subject property, which included giving of notices to the affected parties and also granting hearing to the affected parties. It is further submitted that it was only after following the due procedure and complying with the conditions mentioned in the decision of the State Government dated 16th August 2013 that the suit property was de-acquired by issuing the Notification dated 8th March 2016.

15. It is further submitted by the contesting respondents that the notification, which is impugned herein, is legal as it fulfills effectively the object of Chapter VIII-A of the Act 1976. They submit that whenever any power is conferred upon the Authority to do an act, it also includes impliedly the power to undo the act. They also submit that facts of the case of *Kamlesh C. Shah and Ors. Vs. State of Maharashtra and Ors.*¹ were different and so it would have no application to the present case.

16. Learned counsel for the petitioners submits that the impugned notification has been issued in collusion with some of the officers of MHADA, who have acquired tenancy rights in the buildings in question, and whatever is stated about following of a due procedure is factually incorrect. He further submits that the State Government's approval for de-acquiring the subject property was subject to

¹ (2013) 7 SCC 510

compliance with certain terms and conditions, particularly the conditions about obtaining consent of the members of the proposed society, disposal of the Special Leave Petition by the Supreme Court on consent terms and following the same procedure as was followed under Section 103B of the Act 1976 at the time of acquisition of the subject property, which were not complied with. He further submits that the subject property has been acquired after issuing necessary notices and notification in terms of sub-sections (3), (4) and (5) of Section 93 of the Act 1976 and the possession has also been taken in terms of sub-section (5A) of Section 103B of the Act 1976 and the subject property has stood vested in the Authority i.e. MHADA and, therefore, now it cannot be de-acquired so as to allow the property to be re-vested in the original owners. It is also submitted that the Supreme Court has only granted its leave to withdraw the Special Leave Petition, but it has not said anything about the legality or otherwise of the approval granted by the State of Maharashtra on 16th August 2013 to the release of the suit property from its acquisition in favour of MHADA.

17. The learned Senior Advocates for the petitioners in both the petitions submit that, in a case like this, there is no application of Section 21 of the General Clauses Act, as the property had already stood vested in MHADA inasmuch as the notification, by which the subject property was acquired, was issued in exercise of a quasi-judicial power, there being a detailed enquiry held by the Special Land Acquisition Officer.

18. Dr. Birendra Saraf, learned Advocate General for respondent no.1-MHADA has supported the impugned notification. He submits that, ultimately, the object of the provisions of Section 103B of the Act 1976 is to provide benefit to the occupiers-tenants occupying dilapidated and dangerous buildings by allowing the redevelopment of these buildings so that the occupiers-tenants are not forced to live in dangerous conditions. He further submits that if one examines the Scheme of Section 103B of the Act 1976, one would find that the right that it vests in the occupiers-tenants is only of getting better housing and it does not extend to redevelopment of the property the way they want. He further submits that this is a case wherein no prejudice has been caused to the occupiers-tenants nor any prejudice has been pleaded by the occupiers-tenants.

19. Learned Advocate General further submits that in this case even though there were initially more than 70% of the occupiers-tenants who had proposed acquisition of the buildings in question by the MHADA and the acquisition was also done, the subject property could not be re-conveyed to the proposed society in terms of the Scheme of Section 103B of the Act 1976, as, later on, the members of the proposed society themselves changed their decision and passed a resolution for re-development of the subject property through some other person and for that purpose, they sought release of the land with buildings in question from their acquisition. He further submits that the overwhelming majority of the occupiers-tenants have already given their no objection for de-acquisition of the property and, therefore, now the petitioners, who are in minority, cannot take

any exception to the notification of de-acquisition of the property. He submits that if the minority members of the proposed society have any objection to such a notification, they would first have to approach the co-operative court challenging the decision of the society to de-acquire the subject property, which they have not.

20. Learned Advocate General further submits that the land in the present case had stood vested in MHADA but, it was only for the purpose of it being conveyed by its transfer to the co-operative housing society and, therefore, this is not a case wherein, after acquisition of the property, its de-acquisition is not possible and disposal of the acquired property has to be done by a public auction. He points out that the impugned notification was passed even before conveyance of the subject property in favour of the co-operative housing society could be done by MHADA and, therefore, the impugned notification cannot be said to be illegal in any manner. He further submits that there is a Government Resolution issued by the State Government in the year 2020 supporting the action of de-acquisition taken in the present case. He further submits that acquisition made in terms of Section 103B of the Act 1976 is only a step in acquisition taken for the benefit of the occupiers-tenants and, therefore, any notification of acquisition issued in this case cannot be said to be similar to any quasi judicial order. He submits that even though the procedure contemplates granting of hearing to the affected persons before notification of acquisition of the property is issued, it does not mean that the notification that would be issued would be a quasi judicial order. He submits

that there has to be involved some lis requiring adjudication before an order is termed to be a quasi judicial order, which is not the case here.

21. Dr. Milind Sathe, learned Senior Advocate for respondent no.11-Developer has submitted his argument on more or less similar lines. He submits that the petitions have been filed at the behest of only a handful of occupiers-tenants and today the position is such that an overwhelming majority of the occupiers-tenants are in favour of redevelopment of the buildings in question through respondent no.11. He further submits that the approval granted by the State Government on 16th August 2013 for de-acquiring the subject property has not been challenged by the petitioners and, therefore, now the petitioners cannot challenge the impugned notification, which is based upon the approval granted by the State Government. He also submits that the Supreme Court has taken due note of the approval granted by the State Government on 16th August 2013, when it granted leave to the owners to withdraw the Special Leave Petition. He further submits that proper procedure in this case has been followed and the petitioners have misread the order of the Apex Court. He also submits that the facts of the case of *Kamlesh C. Shah (Supra)* are different and, therefore, it has no application to the facts of the present case. He further submits that the case of *Kamlesh C. Shah* declares no such law as could be made applicable to the facts of the present case. He further submits that if redevelopment of the buildings in question takes place through respondent no.11-Developer, all the occupiers-tenants would stand to gain much as they would be getting, from out of the construction made,

carpet area of 300 sq.ft. at its minimum and carpet area of 1,292 sq.ft. at its maximum, even though their eligibility to get the area, in fact, would be somewhat lesser than these carpet areas. He further submits that the subject property having not been acquired for larger public purpose but having acquired only for the individual benefits of occupiers-tenants, the redeveloped buildings cannot be used for any purpose other than the object of providing benefit to the occupiers-tenants and, therefore, it would be wrong to say that if the subject property is to be disposed of, it has to be disposed of by public auction. He further submits that in a case like this, it is precisely for the reason that the subject property cannot be disposed of by public auction but has to be used only for the benefit of the occupiers-tenants, that the property has been de-acquired keeping in view the interest of the occupiers-tenants, and, therefore, Section 21 of the General Clauses Act would have no application to the facts of the present case. He further submits that, even otherwise, power to do something includes power to undo it. He further submits that appropriate procedure has been followed in the present case and all conditions of the State Government's approval dated 16th August 2013 have been complied.

22. We have also heard Mr. Amogh Singh, learned counsel for the intervenors –occupiers-tenants, who have filed their application for intervening in this matter. He submits that there is a resolution of the Society passed in its meeting held on 31st July 2015 and by a Resolution Nos.2 and 3, a decision has been taken for redevelopment of the property through another Developer and today, more

than 93% of the occupiers-tenants have also signed the Development Agreement and the signatories include some of the petitioners as well. He submits that the resolution so passed by respondent no.10-Proposed Society, if not acceptable to the petitioners, must be challenged by them before the Co-operative Court, but that has not been done by them and the petitioners being in the minority and not representing the society, now cannot speak for the society and seek to challenge the Notification dated 8th March 2016. He further submits that the petition must be dismissed or otherwise the buildings, which have been already demolished, would never be redeveloped as the property on which the dilapidated buildings have been standing and which have been demolished would never be redeveloped and the occupiers-tenants like the intervenors would continue to suffer for want of any proper housing in the city of Mumbai.

23. The question which falls for reconsideration here is as to whether or not the respondent no.3, Special Land Acquisition Officer after having issued notification dated 5th August 1994 for acquisition of the land with buildings standing thereon (*subject property*), in exercise of the powers conferred upon him under sub section 5 of section 103 (b) read with section 5 of section 93 of the Act 1976, could have issued another notification dated 8th March 2016 (*impugned notification*) rescinding/ canceling the notification dated 5th August 1994 thereby de-acquiring the subject lands with buildings standing thereon so as to let the subject land vest in the owner with all its encumbrances.

24. In order to answer the question, it would be necessary for us to consider the relevant provisions of Chapter VIII-A of Act, 1976, which was inserted by way of amendment introduced to it by Maharashtra Act No. 21 of 1976 and other relevant provisions of the Act, 1976, the relevant facts and circumstances of this case and the case law relied upon by the parties to this petition. We would make a beginning by considering the relevant provisions of law, which are reproduced as under :

Chapter VIII

“93. Clearance and compulsory acquisition.

- (1)
- (2)
- (3) On receipt of the acquisition proposal from the Board, the Land Acquisition Officer shall publish simultaneously in the Official Gazette, and in at least four newspapers circulating within [Brihan Mumbai] a notice stating the fact of such proposal having been made by the Board and approved by the Government and alternative accommodation proposed to be provided to the occupiers affected by the proposal and the time before which the building must be vacated.
- (4) The Land Acquisition Officer shall serve the notice referred to in sub- section (3) on the occupiers and owner of the building and, so far as it is reasonably practicable to ascertain such persons, on every mortgagee of the building, and call upon them to submit objections and suggestions, if any, why the land should not be

acquired, so as to reach him on or before a date specified in the notice.

- (5) On considering the objections and suggestions and on giving a reasonable opportunity of being heard to the persons affected by the proposal, the Land Acquisition Officer may sanction the proposals with or without any modification (the modifications being approved by the Board) and shall publish a notification in the Official Gazette fixing a date on which the proposal as approved shall become operative and the land specified therein, shall, on and from the date of such publication, vest absolutely in the Board on behalf of the Authority free from all encumbrances.”

CHAPTER VIII-A

103B. Acquisition of cessed property for co-operative societies occupiers.

- (1) Notwithstanding anything contained in any of the provisions of Chapter VIII or any other law for the time being in force or in any agreement, contracts, judgment, decree or order of any Court or Tribunal to the contrary, a co-operative society formed or proposed to be formed under the provisions of the Maharashtra Co-operative Societies Act Act, 1960, by not less than seventy per cent of the occupiers in a cessed building may by written application request the Board to move the State Government to acquire the land together

with the existing building thereon [or where the owner of the building does not own the land underneath or appurtenant to such building but holds it as a lessee or licensee, or where any person holds the building or the land underneath or appurtenant to such building or both under a lease or licence, then to acquire the right or interest of such owner or person in or over such building or land or both as lessee or licensee together with the existing building thereon] (hereinafter in this Chapter referred to as "the land"), in the interest of its better preservation or for reconstruction of a new building in lieu of the old one and intimate their willingness to pay the amount of such acquisition as may be determined under the provisions of this Chapter and to carry out the necessary structural and other repairs or, wherever necessary, to reconstruct a new building, as the case may be, at their own cost.

*[Explanation I.—*In this section the expression, “seventy per cent, of the occupiers” means the seventy per cent of the occupiers on the date of commencement of the Maharashtra Housing and Area Development (Second Amendment) Act, 1986, and include their successors in interest or new tenants inducted in place of such occupiers, but does not include the owner or the occupiers inducted by virtue of creation of any additional

tenancies or licences by the owner after the date of commencement of the aforesaid Act.

Explanation II.—For the purposes of this sub-section, any suit or proceeding for recovery or possession of tenement or premises or part thereof, initiated against the occupier in any court or before any Authority whether, before or after making an application under this sub-section, shall not affect the right of such occupier to join or to continue as a member of the co-operative society of the occupiers of the building, but his membership of such co-operative society shall be subject to the final decision in such suit or proceeding.

Provided that, if in the meantime before the final decision in such suit or proceeding, the acquisition proceedings under this Chapter are completed and the land is conveyed to the co-operative society of the occupiers under sub-section (7), the claim for possession made in such suit or proceeding, at any stage where it is pending on the date of execution of such conveyance, shall abate.

- (2) On receipt of the application made under sub-section (1), the Board shall after due verification and scrutiny, approve the proposal if it considers that it is in the interest of better preservation of the building or to be necessary for reconstruction of a new building and shall direct the co-operative society, whether registered or proposed, to deposit

with the Board within the period specified by it in that behalf thirty per cent of the approximate amount that would be required to be paid to the owner if the land is acquired and give intimation in that behalf to the owner.

[(2A) Where after the date of application made under sub-section(1),—

- (a) any owner has undertaken the work of any repairs to the building; or
- (b) the percentage of the occupiers who had initially agreed to become members of the co-operative society formed under sub-section (1) is reduced to less than seventy per cent of the occupiers as a result of some members opting out, or due to the number of additional tenancies or licences created in the building thereafter or due to any other reason whatsoever, then the power of Board to approve the proposal shall not be affected, and notwithstanding anything contained in sub-section (1), the Board shall approve the proposal and direct the co-operative society to deposit the approximate amount as required under sub-section (2).]

- (3) On receipt of the amount of deposit as provided in sub-section (2), the Board shall submit to the State Government a proposal to acquire the land for the aforesaid purpose.

- (4) If on receipt of an acquisition proposal under sub-section (3), the State Government is satisfied about the reasonableness of the proposal, it may approve the proposal and communicate its approval to the Board.
- (5) On receipt of the Government approval, the Board shall forward acquisition proposal to Land Acquisition Officer for initiating an acquisition proceedings in accordance with the provisions of sub-sections (3), (4) and (5) of section 93 and section 96 of this Act.

Provided that, where any proceedings for acquisition of land are so initiated the notice to be published under sub-section (3) of section 93 in respect thereof need not contain any statement regarding provision of any alternative accommodation to occupiers in such land.

[Provided further that, where the proposal involves acquisition of the right or interest of the lessee or licensee in or over the building or land as referred to in sub-section (1), then such building or land on its transfer by the Authority to the co-operative society under sub-section (7), shall be held by the co-operative society on lease or licence, as the case may be, subject, however, to the following conditions namely :-

- (i) where there is a subsisting lease or licence, on the same terms and conditions on which the lessee or licensee held it, and

(ii) where the lease or licence has been determined or where the lessee or licensee has committed breach of the terms and conditions of the lease or licence, as the case may be, on the fresh terms and conditions, particularly in regard to the period of lease or licence and rent as may be stipulated by the owner of the land.]

[(5A) Where acquisition proceedings have been initiated as provided in sub-section (5) and a notification under sub-section (5) of section 93 is published, the Collector shall take and hand over possession of the land to the Board in accordance with the provisions of sub-section (6) of section 93.]

(6) After the land is vested absolutely in the Board on behalf of the Authority free from all encumbrances and the amount to be paid to the owner is determined, the Board shall require the society to get itself registered if it is not registered till then and to deposit the remainder of the amount to be paid to the owner with the Land Acquisition Officer. The Board shall simultaneously pass on the amount deposited by the co-operative society with it to the Land Acquisition Officer. The Land Acquisition Officer shall thereupon make the payment of the amount for acquisition or deposit the same in the court as provided in section 46.

(7) Subject to the provisions of sub-section (6), the Authority shall convey the land acquired under

this section to the co-operative society of the occupiers thereof with its right, title and interest therein and execute without undue delay the necessary documents in that behalf.

103C. Prohibition on transfer of land or building by society.

- (1) After the land is transferred to the co-operative society under sub-section (7) of section 103B, the society shall use the same for the purpose for which it was used before its acquisition by carrying out structural repairs to building thereon or reconstruction of new building in lieu of existing building, as the case may be, as provided in this Chapter and or no other purpose.
- (2) Save as otherwise expressly provided in this Chapter and notwithstanding anything contained in any law for the time being in force, no co-operative society shall transfer such land or building or interest therein, or no member or tenant of the co-operative society shall transfer his interest in any tenement by sale, gift, exchange, leave and licence, assignment or lease; and any such transfer by way of sale, gift, exchange, leave and licence, assignment or lease by the co-operative society of any land vesting in it by under the provisions of this Chapter or transfer by the member or tenant of his interest as aforesaid shall be void.

- (3) If the co-operative society contravenes the provision of sub-section (1) or enters into any transaction which is void under sub-section (2), or if the society is not functioning, it shall be lawfull for the Authority to resume such land and building from such society after making full payment to the society of the amount of the acquisition which the society has paid for such land and building and upon such resumption to transfer the same to any other co-operative society of the occupants of the tenements in the transit camp provided by the Authority, on payment of the acquisition price which was paid by the co-operative society for whom the land was acquired.
- (4) (a) Any person who enters into any transaction which is void under sub-section (2) shall—
- (i) if he is a member of the co-operative society, cease to be such member and be evicted;
 - (ii) if he is a tenant, then notwithstanding anything contained in the Rent Act, be evicted.
- (b) Any person claiming through such member or tenant shall also be liable to be evicted.
- (5) The Competent Authority appointed under section 65 shall be the Competent Authority for the purposes of eviction of persons referred to in sub-section (4) and shall follow the same procedure as prescribed in section 66 for such

eviction as if the premises were Authority premises and thereupon the provisions of Chapter VI shall *mutatis mutandis* apply in respect of orders passed by the Competent Authority as they apply to the orders passed under Chapter VI.

25. It would be clear from the above referred provisions of Chapter VIII-A that the intention of the legislature is to provide benefit to the tenants or other occupiers of cessed buildings in getting proper housing and that they are not compelled to live in old, dilapidated or dangerous buildings. It is for this purpose that these provisions for acquisition of cessed property for the benefit of occupiers of Co-operative Societies have been enacted. In fact, as held by the Supreme Court in *Kamlesh Shah (Supra)*, Section 103B contains the *raison d'être*, for the introduction of Chapter VIII-A into the 1976 Act, providing, inter alia, for acquisition of cessed property for co-operative societies of occupiers. This provision of law comes into play the moment an application is made by not less than 70% of occupiers-tenants in a cessed building requesting the Board i.e. the Maharashtra Housing and Area Development Board to move the State Government to acquire the land together with the existing building thereon and where the owner of the building does not own the land underneath it, then to acquire the right or interest of such owner or person in or over such building or land or both as lessee or licensee together with the existing building, in the interest of its better preservation or reconstruction of a new building in lieu of the old one. In the application which is to be made by the majority of the

occupiers-tenants, the occupiers-tenants are required to intimate their willingness to pay the amount of such acquisition as may be determined under the provisions of Chapter VIII-A and to carry out necessary structural and other repairs or whenever necessary, to reconstruct the new building, as the case may be, at their own cost. Once such an application is received by the Board, the Board is required to conduct its due verification and scrutiny and approve the proposal on its satisfaction that it is in the interest of better preservation of the building or is necessary for reconstruction of a new building. The Board has to direct the Co-operative Society, whether registered or proposed, to deposit with the Board, within the period specified by it in that behalf, 30% of the approximate amount that would be required to be paid to the owner if the land is acquired. This provision further requires the Board to send the proposal to the State Government, upon receipt of 30% of the appropriate amount from the Society or the proposed Society for the purpose of acquiring the land for better preservation of the buildings standing thereon or reconstruction of a new building. The provision further lays down that if the State Government is satisfied about the reasonableness of the proposal, it may approve the same and communicate its approval to the Board and thereafter, the Board is mandated to forward the acquisition proposal to SLAO for initiating the acquisition proceedings in accordance with the provisions of sub-sections (3), (4) and (5) of Section 93 and Section 96 of the Act 1976.

26. It would be further clear that after the completion of acquisition proceedings, the land vests absolutely in the Board on behalf of the Authority, i.e. MHADA, free from all encumbrances and then the Board has to call upon the Society to get itself registered if it is not registered till then and to deposit the remainder of the amount to be paid to the owner, with the Land Acquisition Officer. They cast a duty upon the Authority i.e. Maharashtra Housing Area and Development Authority to convey the land so acquired under section 103 (B) to the registered Co-operative Society of the occupiers-tenants along with its right, title and interest therein by executing the necessary documents in that behalf. In other words, after the registration of the Co-operative Housing of the society by the occupiers and depositing of remainder of the amount to be paid as compensation to the land owner, the registered Co-operative Housing Society acquires indefeasible right to get the land transferred to it with all rights, title and interest attached to the land by execution of Conveyance Deed. But, till it happens, the Authority in whom the land stands vested on completion of acquisition proceedings, becomes its owner and holds it for the purpose of transferring it to the Proposed Society at a later stage.

27. Section 103C deals with prohibition on transfer of land or building by society, once the land is transferred to it under sub section 7 of Section 103B. Sub-section (1) of Section 103C casts an obligation upon the society to use the land for the same purpose for which it was used before acquisition. Sub-section (2) thereof puts a restriction on the Society or its members to transfer such land

or building and says that if it is so transferred, same shall be void. Sub-section (3) thereof deals with situations where Co-operative Society contravenes the provisions of sub-section (1) or if the Society is not functioning. In these situations, it says that the Authority would have the power to resume such land and building from such society after making full payment to the society of the amount of the acquisition which the society has paid for such land and building. It further provides that upon such resumption, the Authority has to transfer the same to any other co-operative society of the occupiers of the tenements in the transit camp provided by the Authority, on payment of the acquisition price which was paid by the Co-operative Society for whom the land was acquired. The provisions made in Section 103C, one can see, come into picture only after the land is transferred by its conveyance to the Co-operative Society upon the Co-operative Society fulfilling the conditions of Section 103, sub section (2) and sub section (6) of Section 103B of the Act, 1976. If these conditions are not fulfilled, in particular the condition requiring depositing the entire amount of compensation to be paid to the owner with the SLAO and the society being registered or getting itself registered, there would be no transfer of acquired land by executing necessary documents in favour of the Co-operative Society by the Authority. They also make it clear that till the land is not transferred to the Co-operative Society, the new owner of the land, that is the Authority, would continue to hold it free from all encumbrances, in trust for the benefit of the occupiers of land and the building standing thereon.

28. Sub sections 3 and 4 of Section 93 prescribe the procedure to be followed by the SLAO before he issues and publishes a notification in the Official Gazette, for acquisition of the land. The procedure is essentially of publishing a notice in the Official Gazette and atleast four news papers having local circulation and also serving a notice on all the occupiers and owners of the building intimating them about the proposal made for acquisition of the land and calling upon them to submit their objections and suggestions, if any.

29. Sub section (5) of Section 93 requires the Land Acquisition Officer to afford a reasonable opportunity of hearing to the affected persons and take his decision to sanction the proposal with or without modifications. It also requires him to issue and publish a notification of such acquisition. It lays down that on and from the date of publication of such notification in the Official Gazette, the acquired land shall stand vested absolutely in the Board on behalf of the Authority free from all encumbrances. Section 96 of the Act is about the determination to be made by the Land Acquisition Officer of the amount of acquisition after publication of the notification under sub-section (5) of section 93 of the Act, 1976. It is a necessary step without which transfer of the land acquired to the Society cannot take place.

30. An overall consideration of the above referred provisions of law would indicate that when the Scheme as provided for under Chapter VIII-A of the Act 1976 is for protecting the interests of the tenants or the occupiers and making

available to them all the benefits as conferred under the Scheme, the vesting of the land in the Authority would only be for the purpose of making available the benefits of the Scheme to the occupiers-tenants and nothing else. The provisions of sub-sections (6) and (7) of Section 103B enable the achievement of the purpose of the Scheme, which is of taking the benefits to the doorsteps of the occupiers-tenants. These benefits are in the nature of ability of the cooperative society of occupiers-tenants to carry out necessary repairs for better preservation of the land with building thereupon or, when the building standing on such an acquired land is so dangerous as to not permit its safe and meaningful occupation by its occupiers-tenants in a continued manner, to reconstruct a new building in lieu of the old one. But, this purpose would not be achieved unless the land vested in the Authority is conveyed to the cooperative society by execution of necessary documents in that behalf and such conveyance would be possible only when the cooperative society fulfills the conditions prescribed in sub-section (6) of Section 103B. These conditions are two fold, such as, cooperative society must be a registered one or if it is not a registered one, it must get itself registered before deed of conveyance is executed in its favour and the society must deposit the remainder of the amount to be paid to the owner with the Land Acquisition Officer as per determination of the quantum of the compensation made by Land Acquisition Officer in that behalf. Without fulfillment of these two conditions by the cooperative society, there can be no conveyance deed executed for the purpose of transferring the right, title and interest in the acquired land to the cooperative society.

31. With such nature of the Scheme of Chapter VIII-A of the Act 1976, one can safely say that the land vested in the Authority is ultimately held by the Authority not for its own purpose, but for protecting the interest of the ultimate beneficiaries, who are the occupiers-tenants of the old building which was standing earlier on the acquired land by enabling them to do everything that is necessary for preservation of the old building and if that is not possible to do, then do what is necessary for reconstructing a new building in lieu of the old building. In other words, the Authority would hold the land vested in it in trust for the end beneficiaries i.e. the occupiers or tenants, which is something that was suggested by the learned Senior Counsel appearing for the MHADA in the case of *Kamlesh Shah (Supra)*. It would also mean that the acquired land cannot be used for any other purpose including the development by a third party without the occupiers-tenants agreeing for it. If that is so, vesting of acquired land in the Authority would come with an obligation in the Authority to duly discharge the trust reposed in it by the occupiers-tenants by reconveying the land to the registered cooperative society of the occupiers-tenants upon making full payment of the amount of compensation determined by the SLAO.

32. There may, however, be cases where the Authority would face difficulty in conveying the land back to the cooperative society of the occupiers or tenants. Such difficulty may arise from the cooperative society not being registered or the cooperative society though registered, not depositing with the Land Acquisition Officer full amount of compensation or both. In either of these cases or both the

cases, the Authority would be handicapped in conveying the acquired land to cooperative society of the occupiers or tenants and the acquired land would continue to remain vested in the Authority. By virtue of vesting of the acquired land in the Authority, the Authority would be owner of the land on record, but it would not be able to dispose of the land by its public auction as there is a prohibition upon the Authority in doing so under the Scheme of Chapter VIII-A of the Act, 1976 and so what we understand to be an irreversible step of statutory vesting of land in the Government under the provisions of Land Acquisition Act, in the sense that once the land statutorily vests in the State Government under the provisions of Land Acquisition Act, it cannot be de-vested by cancelling or rescinding the notification issued under Sections 4 and 6 of the Land Acquisition Act, would not be so as long as the cancelling or resending of the notification of vesting of the land does not go against the interest of the occupiers or tenants, or till the time the interests in better preservation of the old building or reconstructing of the new building in lieu of the old building of the occupiers-tenants are protected, and as such, in our respectful submission, the case of *L.T. Governor of Himachal Pradesh & Anr. Vs. Sri Avinash Shrama*¹ would have no application to the facts of the present case.

33. Now, if the contingency discussed as above really arises, there would be a question as to what would the Authority do with the acquired land, which has stood absolutely vested in it in terms of Section 93(5), read with sub-section (5A) of Section 103B of the Act of 1976. If the co-operative society of the occupiers or

¹ 1970 (2) SCC 149

tenants is not registered or even when registered, it does not deposit with Land Acquisition officer the remainder of amount of compensation determined by him, the Authority would not be in a position to convey the acquired land to such society of occupiers-tenants on the one hand and would also not be able to dispose it of by public auction for achieving another kind of public purpose on the other. At the same time, the Authority cannot sit over the land just for the sake of holding it as ultimately it has to discharge the trust of occupiers-tenants by enabling them to reconstruct new building in place of the old building. This contingency, in fact, has arisen in the present case and there is no provision made in Chapter VIII-A of the Act 1976 dealing with such a situation. There is a provision which is sub-section (3) of Section 103C, which may perhaps throw some light on a related aspect of the matter. It says that if the cooperative society contravenes the provisions of sub-section (1) and enters into any transaction which is void under sub-section (2) of Section 103C or if the society is not functioning, it shall be lawful for the Authority to resume the acquired land and building from such society after making full payment to the Society of the amount of compensation which the society has paid and upon such resumption, to transfer the land to any other cooperative society of the occupiers in the transit camp provided by the Authority, on payment of same price of acquisition by the new society. This provision, however, comes into operation only after the acquired land is transferred to the cooperative society as can be seen from sub-section (1) and sub-section (2) of Section 103C of the Act 1976. Such power of the Authority, however, cannot be exercised if the acquired land has not been

transferred to the co-operative society. So, the difficulty pointed out earlier, remains there.

34. In the present case, there is no dispute about issuance of notification dated 5th August 1994 acquiring the land with buildings standing thereon after following the procedure prescribed under Section 103B, read with sub-sections (3), (4) and (5) of Section 93, and about symbolic possession of the acquired land having been taken in terms of sub-section (5A) of Section 103B. There is also no dispute about the fact that the conditions prescribed under sub-section (6) of Section 103B have not been fulfilled by the proposed society so far in the sense that the proposed society did not get itself registered and as informed by the Deputy Registrar of Cooperative Societies to the Board, the application of the proposed society made in that regard was also rejected. That being so, there was no question of the proposed society depositing with SLAO the remainder amount of compensation of the acquired land. All this has resulted in creating a deadlock over the issue of reconstruction of new buildings by the proposed society of the occupiers-tenants. The net effect has been that since the year 1994 till the year 2012, there was no development and it was then that the occupiers-tenants of the subject buildings got together and made an application dated 25th January 2012 to the Minister of State Housing, Government of Maharashtra seeking his indulgence for issuing necessary directions for withdrawing the Government Resolution dated 2nd July 1993 and Notification dated 5th August 1994 and for granting necessary permission to have the buildings reconstructed through the

owners. It was after making of this application by the occupiers-tenants of the buildings in question that things started moving at the level of the Board and the Authority, which resulted in State Government granting its approval for commencing the process of rescinding or cancelling the notification dated 5th August 1994 on fulfillment of the conditions stated in its approval letter dated 16th August 2013. The conditions imposed were to the effect that either the consent of Supreme Court be obtained as at that point of time Special Leave Petition (C) No.13428 of 1996 filed by the owners of the subject property challenging notification dated 5th August 1994 was pending or all parties to the Special Leave Petition should file consent terms and that the process of rescinding or cancelling the notification dated 5th August 1994 would be commenced only after the Supreme Court disposed of the Special Leave Petition in terms of the consent terms. The other conditions imposed were that during the process of cancellation of the said notification, MHADA should take steps for ensuring that alternate accommodation is provided to all the occupiers-tenants and the proposed buildings were reconstructed within a fixed period of time and that same procedure for cancellation of notification dated 5th August 1994 would be adopted as was followed while acquiring the land by issuing notification dated 5th August 1994. After receipt of such conditional approval that Notification dated 8th March 2016, impugned herein cancelling or rescinding the notification of acquisition dated 5th August 1994 was issued on 8th March 2016, whereby the Authority gave the sanction to rescind or cancel the Notification dated 5th April 1994 vesting the subject property in the owner on and from the date of

publication of the notification in the Government Gazette, which was published on 10th March 2016. According to the Authority and SLAO, this impugned notification was issued after fulfillment of the conditions of the approval granted by the State Government vide its Communication dated 16th August 2013, which included issuance of notices to the affected persons and giving due hearing to the affected persons.

35. The question that we have raised earlier is about the dilemma of the Authority regarding the manner in which it has to deal with a situation where, on the one hand, acquired land is absolutely vested in it and, on the other hand, it is unable to transfer the land back to the cooperative society of the occupiers-tenants on account of the society being not registered and remainder amount of compensation for acquisition of such land having not been deposited with it. We had also seen that the solution provided under sub-section (3) of Section 103C of the Act 1976 is not useful for resolving such an issue. In order to get over such a difficult situation, a solution was provided to the Authority by the occupiers-tenants themselves and it is seen from the impugned notification that the occupiers-tenants, who prompted the Authority to take such a decision for cancellation of the earlier notification, were in an overwhelming majority. There is of course a dispute raised by the petitioners about this fact of occupiers-tenants by majority taking a decision or about the signatures of occupiers-tenants being not genuine. But, in our opinion, it has no substance as the petitioners have not challenged the resolution of respondent no.10-Society taken in this regard before

a Co-operative Court, though they could have challenged it. Then, the impugned notification also discloses that there were about 245 occupants out of the 297 occupants of the subject land, who by their letter dated 22nd June 2014 informed the Authority that they did not have any objection for rescinding or cancelling the notification dated 5th August 1994 and there is no material on record to doubt this finding. It was upon such a solution provided by the overwhelming majority of the occupiers-tenants that the Authority decided to do something so as to reach the benefits of the Scheme under Section 103B, Chapter VIII-A, of the Act 1976 to the occupiers-tenants. This would raise a further question as to whether or not such a step taken by the Authority was permissible in law.

36. In the opinion of learned counsel and learned Senior Advocate for the petitioners, it is not permissible for the Authority to rescind or cancel the notification of acquisition once the land has stood vested in the Authority. They also submit that the power exercised on behalf of the Authority regarding acquisition of the land in a case like this is quasi judicial and, therefore, by taking recourse to provisions made in Section 21 of the General Clauses Act, the notification of acquisition cannot be cancelled as Section 21 power applies to legislative or executive acts and not to the judicial or quasi judicial acts. According to learned Advocate General and learned Senior Advocate for the respondents, this is, however, not true. They submit that just because some enquiry was required to be made and opportunity of hearing had to be afforded to the affected persons, the exercise of power to acquire the subject land would

not assume the character of quasi-judicial power for the reason that in the instant case, there was no lis involved and there was no controversy between the two parties which was to be determined by the SLAO. They submit that these ingredients being absent in the present case, the exercise of acquisition of the land carried out by the SLAO was more or less an executive function discharged in terms of the Statutory Scheme.

37. Both sides have relied upon the case law in support of the points that they have made before us. Before we turn to the case law, we feel that it may be a useful exercise for us to again go back to the Scheme of Chapter VIII-A of the Act 1976, in particular the provisions made in Section 103B of the Act 1976, in order to resolve the controversy here.

38. We have already indicated the situation where the Authority, after vesting of the land in it, may find itself in and feel to be in a quandary; it may not be able to decide as to how to discharge the trust of the occupiers or tenants reposed in it, when the co-operative society has not registered itself or has failed to deposit with the Land Acquisition Officer the remainder of the amount of compensation to be paid to the land owner within a reasonable period of time. Whenever such a situation arises, the Authority would be hardput to transfer the land to the cooperative society by executing a conveyance Deed in its favour. But, decide as the Authority must or otherwise, the land vested in it would go waste; interest of occupiers or tenants would suffer irreparably; end to the ordeal of occupiers or

tenants would not be within even a distant sight and, the object for which Chapter VIII-A was introduced to the Act 1976 by way of amendment in 1986 would be frustrated. Then, the Authority would also not be in a position to resume such land and transfer it to any other co-operative society of the occupants, in the transit camp provided by the Authority, on payment of acquisition price, in terms of sub-section (3) of Section 103C of the Act 1976, just because the land has not been transferred to the cooperative society under sub-section (7) of Section 103B of the Act 1976.

39. In our view, in such a situation, having the potential of frustration of the object of the Scheme itself, the Authority would have the power to decide as to in what manner the land vested in it be dealt with subject to the condition that such dealing with the land by it is only and only in the interest of overwhelming majority of the occupiers-tenants. Afterall, in such a case, the land is held by the Authority as owner thereof, after it's vesting in it absolutely, and this capacity of the Authority as owner of the land, may be an onerous owner of the land, would confer upon it the same power as regards dealing with the property as an owner thereof, subject to the limitation pointed out by us earlier. This capacity of the Authority would bring to it all attributes of ownership albeit in a limited manner and, therefore, the Authority, in our view, would be entitled to dispose of the property for the purpose for which the Authority has become its owner under the statutory provisions.

40. Once we understand the position of the Authority being owner of the land for the purpose of discharge of its obligation to transfer the land in favour of the co-operative society, it would not be difficult for anyone to also understand that as an owner of the land in question, the Authority would have the same power as any other owner of the land for the purpose of its being dealt with but with a difference that while the other owner of the land can enjoy the land at his free will within the parameters of law, the Authority as owner of the land would have to utilize the land for the same purpose for which it holds the land for a limited period of time in terms of the statutory provisions. We are, therefore, of the opinion that in a case where the Authority is unable to discharge its obligation regarding transfer of the land to a co-operative society, not on account of its own deficiency or lacunae, but on account of the lapses committed by the co-operative society, the Authority, in its capacity as an owner of the land, holding it for a limited purpose, would also have the power to take a decision regarding transfer of the land to its original owner, if it is satisfied that it serves the object of the Act 1976 i.e. ensuring benefit to the end user of the land, who is the tenant or the occupier thereof.

41. In the present case, there is material available on record, which, in fact, has been reflected in the impugned notification that there is an overwhelming majority of the occupiers or tenants, who have given their consent to the Authority for restoring the land to the owners for the purpose of its reconstruction in accordance with the applicable rules and there is also, in fact, a

tripartite agreement, as informed by the learned counsel for the respondents, executed between the stakeholders. The impugned notification also shows that same procedure was followed, which was adopted at the time of issuance of the acquisition notification dated 5th August 1994. Of course, there have been objections taken by learned counsel for the petitioners that no proper notice was issued and no proper hearing was granted to many of the objectors but, the number of the objectors, as seen from the impugned notification itself, was small, something about 37 out of which many were heard, as compared to the overwhelming majority, about 245 out of 297 occupiers-tenants, who had given their consent. The petitioners have also doubted about capacity of these persons as occupiers or tenants and genuineness of their signatures. They also point out that the Authority itself had doubted genuineness of signatures of persons who had filed the Interim Application before Supreme Court. But, we must say that, subsequently, the respondent no.10-Proposed Society had passed a resolution on 31st July 2015 with a majority vote of tenants supporting the said action of the Authority and this resolution has not been challenged by them before a Co-operative Court. Then, a few years after reply given by the Authority to Interim Application No.8 of 2011 in the Supreme Court, the situation changed and majority of occupiers-tenants got together and supported the de-acquisition proposal. We, therefore, find no substance in the said contentions. Therefore, this is not a case where the interests of occupiers or tenants were not considered and were not ensured to be protected.

42. Learned counsel for the petitioners have also submitted that in its affidavit filed before the Supreme Court, MHADA had opposed the Special Leave Petition filed by the owners opining that there was no provision in law to de-acquire the land after the land had been acquired and had stood absolutely vested in the Authority. They also point out that in that affidavit, MHADA had also stated that there were very few occupiers or tenants, who were ready and willing for de-acquiring the land. They submit that after having given such admissions, the Authority would have to be held bound by them and they rely upon the observations of the Apex Court in the case of *Nagindas Ramdas Vs. Dalpatram Ichharam @ Brijram and Ors.*¹, wherein it was held that admissions in pleadings or judicial admissions made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions and are binding upon the party which makes them and that they constitute a waiver of proof. There can be no dispute about the principle of law laid down by the Supreme Court in the said case of *Nagindas Ramdas*, and there is also no dispute about the fact that all these admissions are to be found in the affidavit of MHADA dated 22nd April 2008. But, we must say it here that after April 2008, there was change in the fact situation and by the year 2016, it was found by the Authority, as seen from the impugned notification, that overwhelming majority of the occupiers-tenants had given their consent for de-acquisition. Such change in factual situation also resulted in change in the approach of the Authority impelling it to find out a workable solution to the plight of occupiers-tenants and, therefore, the admissions made in April 2008, though were binding on the

1 (1974) 1 SCC 242

Authority in the context of the factual situation prevailing in the year 2008, could not be said to be binding upon it on the backdrop of changed circumstances in the year 2016. As regards the opinion expressed about interpretation of law by the Authority, we must say that, it cannot be equated with a finding on a question of law recorded by a court.

43. In the present case, the application was made on behalf of the majority of the occupiers-tenants in the year 2012 for de-acquiring the suit property but, ultimately the decision that was taken for moving such a proposal, as seen from the reasons recorded in the proposal dated 7th June 2012 by the Board, was on behalf of the Authority-the owner of the land in question. That being so, we find that, in principle, decision to de-acquire the land, which was taken by the Board, was effectively the decision taken by the Authority - the limited owner of the land in question. This decision, as can be seen from the reasons recorded in the proposal dated 7th June 2012, was taken to secure and promote interests of the occupiers-tenants after considering the pros and cons of it. This decision, for the reasons stated by us earlier, was permissible having regard to the object of the Scheme of Chapter VIII-A of the Act 1976. Besides, there is no prohibition imposed on the Authority in taking such a decision to de-acquire the land as long as the decision is taken in its capacity as "owner" of the land and in the larger interest of tenants or occupiers.

44. In the case of *Kamlesh C. Shah (Supra)*, the Supreme Court had refused to grant any relief to the applicants–occupiers–tenants, who had sought release of the property from acquisition after vesting of the property in MHADA by operation of law and that was for the purposes of that case, as is evident from the observations made in paragraph 24 of the said case. In that case, it were the occupiers–tenants, who, after having sought acquisition of the property, later on, decided to seek release of the property from its acquisition and, therefore, sought permission in that regard from the Supreme Court by filing an interim application. In that case, MHADA, as owner of the property, had not taken any decision on its own to move the State Government for de-acquiring property in the interest of the occupiers–tenants, unlike the present case, and, therefore, in our respectful submission, the case of *Kamlesh C. Shah (Supra)* would not assist the petitioners in any manner.

45. The impugned notification also relies upon Section 21 of the General Clauses Act, which lays down that power to make would also include power to add or amend or vary or rescind orders, rules or by-laws. Learned Senior Advocate and learned counsel for the petitioners, relying upon the cases of *Industrial Infrastructure Development Corporation (Gwalior) Vs. Commissioner of Income Tax, Gwalior, Madhya Pradesh*¹, and *Indian National Congress (I) Vs. Institute of Social Welfare and Ors.*², submit that power under Section 21 of the

¹ (2018) 4 SCC 494

² (2002) 5 SCC 685

General Clauses Act could not have been invoked by the Special Land Acquisition Officer as it was not available. They submit that the notification dated 5th August 1994 of acquisition of the subject land was in exercise of a quasi judicial power, as it was based upon an enquiry. They submit that power under Section 21 of the General Clauses Act is available only against a legislative or executive acts and not against quasi-judicial acts. While there is no dispute about the fact that the decision arrived at by the Land Acquisition Officer, which resulted in issuance of acquisition notification dated 5th August 1994, was based upon an enquiry and by that yardstick, it could also be stated to be of having some attributes of quasi judicial power, the fact remains that the decision was taken for securing interests of the occupiers or tenants and it resulted in vesting of the land absolutely in the Authority. Once the land is vested in the Authority and the Authority becomes its owner, the chapter of acquisition in terms of Section 103B of the Act 1976 gets over and the Authority has to proceed further in terms of sub-sections (6) and (7) of Section 103B. At this stage, a new chapter begins and the Authority has to transfer the land to the Society, if conditions of sub-section (6) are fulfilled. But, if it cannot transfer it on default committed by the Society, it would get the power to deal with it as it's owner, subject to condition that it deals with it for the benefit of occupiers-tenants. As long as the Authority continues to be it's owner, it, as owner thereof, would have the power to deal with the land like any other owner though with the obligation to do so only and only in the interest of occupiers or tenants. This way, in our opinion, the role of SLAO had came to an

end here and, therefore, there was no question or occasion for him to review his decision by invoking any power under Section 21 of the General Clauses Act.

46. Here in this case, the decision to move a proposal for de-acquisition of the land has been taken by an owner like MHADA or the Authority and not by the SLAO, who had issued the initial notification of acquisition, and, therefore, the exercise of power by the SLAO in de-acquiring the property could not be said to be something like review of his own order, which is when an officer or an authority who has taken the first decision decides to revisit and review his own order, which were the facts in the cases of *Industrial Infrastructure Development Corporation (Supra)* and *Indian National Congress (I) (Supra)*. In the said cases, decisions to rescind or cancel the order in terms of Section 21 of the General Clauses Act were taken by those authorities which had taken initial decisions to make the orders, which is not the case here and, therefore, in our respectful submissions, both these cases would not be applicable to the facts of the present case.

47. As regards the compliance to be made with conditions of the Government's letter dated 16th August 2013, we find, as can be seen from the order of the Supreme Court granting leave to withdraw the Special Leave Petition in view of Government's communication dated 16th August 2013 and the impugned notification, that there is substantial compliance with those conditions and so the objection of the petitioners on this count need not detain us any more.

48. In the result, we find that there is no merit in the petition. The petition stands dismissed. In view of dismissal of the petition, Interim Application (Lodging) No.11212 of 2023 and interlocutory applications, if any, pending in the petition, also stand disposed of.

49. At this stage, the learned Senior Advocate and learned counsel for the petitioners make a request for protecting rights of the petitioners by balancing the interest of both sides, although, admittedly, there was no interim relief granted in the present case. They point out that there has been a No Objection Certificate issued by the Authority on 2nd November 2021, subject to certain conditions; one of which is that the NOC is issued by the Authority subject to final outcome of both these petitions.

50. The request is opposed by Mr. Amogh Singh, learned counsel for the applicants-intervenors¹ and learned counsel for respondent no.11-Developer on the ground that since beginning of the petitions, no interim protection whatsoever was granted by this court to the petitioners.

51. We are of the view that as the Authority has issued a conditional NOC to respondent no.11-Developer for reconstruction of the buildings in question, making it dependent upon the outcome of these petitions, it would be in the interest of both sides that at-least for the present, status-quo in relation to the

¹ *Chamber Summons No.112 of 2017 in Writ Petition No.854 of 2017*

subject property is maintained by the parties and accordingly, we direct that the parties shall maintain status-quo in respect of the subject property for a period of six weeks from the date of the judgment and order.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)