

PSV/PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2329 OF 2019

WITH

INTERIM APPLICATION NO. 770 OF 2023

Estella Fernandes Nee Estella Fernandes	...Petitioner
Versus	
Swarna Highrise Constructions & Anr.	...Respondents

WITH

WRIT PETITION NO. 2411 OF 2019

Ali Akbar Lakhani	...Petitioner
Versus	
Swarna Highrise Constructions & Anr.	...Respondents

WITH

WRIT PETITION NO. 2096 OF 2019

Nasim Banu Shabbir Ali Nayabi & Anr.	... Petitioners
Versus	
Swarna Highrise Constructions & Anr.	...Respondents

WITH

WRIT PETITION NO. 2097 OF 2019

Domnie Iimon Nazareth	... Petitioner
Versus	
Swarna Highrise Constructions & Anr.	...Respondents

WITH

WRIT PETITION NO. 2107 OF 2019

Anandi Anvekar & Ors.	... Petitioners
Versus	
Swarna Highrise Constructions & Anr.	...Respondents

**WITH
WRIT PETITION NO. 2104 OF 2019**

Vilas Shankar Sawant	... Petitioner
Versus	
Swarna Highrise Constructions & Anr.	...Respondents

**WITH
WRIT PETITION NO. 2206 OF 2019**

Anisha Imtiyaz Shaikh	... Petitioner
Versus	
Swarna Highrise Constructions & Anr.	...Respondents

Mr. Anil V. Anturkar, Senior Advocate a/w. Mr. Ranjit Shinde and Mr. Harshwardhan Suryavanshi i/b. Patel & Associates for Petitioner/applicant.
Mr. Shailendra S. Kanetkar for Respondent No. 1.
Mr. Anoop Patil a/w. Ms. Vandana Mahadik for MCGM.

**CORAM : G. S. KULKARNI &
 R. N. LADDHA, JJ.**

RESERVED ON: APRIL 19, 2023

PRONOUNCED ON: MAY 04, 2023

JUDGMENT (Per G.S.Kulkarni, J.):

1. These are seven petitions in which common issues are raised by the petitioners, hence they are being disposed of by this common judgment.

2. This is yet another case whereby about seven tenants of the building in question, intend to stall the redevelopment to the prejudice of majority of the tenants who are out of their houses and awaiting redevelopment of a building, which came to be demolished being dilapidated. The ingenuity of the petitioners to raise issues under the Development Control and Promotion Regulations 2034 is what falls for consideration.

3. Writ Petition No. 2329 of 2019 is argued as the lead petition. The relevant facts are required to be noted:-

4. The petitioner is a tenant in respect of a building 'Haji Manzil' situated on a Plot bearing CTS Nos. A/645M A/646 & A/647, Village Bandra-A at 91, Chinchpokli Road, Off Hill Road, Bandra (W.), Mumbai – 400 050 (for short, "the said building").

5. It is the case of the petitioner that the building was constructed in the year 1968 which consists of 28 tenements. The said building is a structure of ground plus two floors. Respondent no.1-Swarna Highrise Constructions is the owner/landlord of the said building. Respondent no.1 is undertaking the redevelopment of the said building, as the same was dilapidated. The Technical Advisory Committee ("TAC") of the Municipal Corporation in its report dated 17 November, 2018 declared the said building as dilapidated/C-1 category and accordingly, it was

ordered to be demolished.

6. It is not in dispute that at the time of filing of these petitions, all the tenants residing in the said building have vacated the said building without prejudice to their rights and contentions to have a temporary accommodation. It also appears to be not in dispute that vacating of these tenements by the tenants was in pursuance of notices issued by the Municipal Corporation of Greater Mumbai (for short “**MCGM**”) under Section 354 of the Mumbai Municipal Corporation Act (for short, “**MMC Act**”) which were issued between the period 11 April, 2018 to 07 August, 2018. In fact, one of the tenants had approached this Court in Writ Petition (L.) No. 3347 of 2018 assailing the notices issued under Section 354 of the MMC Act. Such petition came to be dismissed by the Division Bench of this Court by an order dated 27 November, 2018. It is stated by the petitioners that there were further proceedings before the Supreme Court and in view of the liberty granted by the Supreme Court while dismissing the Special Leave Petition No. 32198 of 2018, the present petitions came to be filed.

7. The lead petitioner has averred that she was inducted as a tenant in respect of Room No.2, on the 2nd floor and her tenement is admeasuring 250 sq. ft. The grievance of the petitioner is that respondent no.1 intends

to undertake redevelopment of the said building by utilizing the 2.7 Floor Space Index as per the Development Control and Promotion Regulation, 2034 (for short, “DCPR”) in force, which was noticed from the letter dated 02 September, 2016 of respondent no.1’s architect Shirish Sukhatme. The feasibility report of the architect, according to the petitioner, proceeds on the basis of respondent no.1 consuming the full development potential of 2.7 FSI on the said plot. As a part of the redevelopment being undertaken, it is the petitioner’s case that respondent no.1 had forwarded a draft Permanent Alternate Accommodation Agreement (for short, “PAAA”) to the petitioner purporting to allot alternate accommodation admeasuring 300 sq. ft. in lieu of existing area of 250 sq. ft. as occupied by the petitioner. The petitioner had grievances in regard to the clauses of the PAAA.

8. It is the case of the petitioner that PAAA would not only entitle the petitioner to a permanent alternate accommodation of a minimum carpet area of 300 sq. ft., but in addition thereto, a benefit of fungible FSI whereunder the petitioner’s share would entitle her to a tenement admeasuring a carpet area of 405 sq. ft. which needs to be made available to the petitioner. The petitioner in paragraph 4(i) of the petition has stated that the premises are lying vacant and the MCGM could proceed with the demolition as contemplated under Section 354 of the MMC Act.

9. It is in these circumstances, this petition has been filed. The petitioner has raised grounds (A) to (O) in support of the reliefs as prayed for. The primary grievance of the petitioner in all these grounds is to the effect that respondent no.1 is seeking benefits under the DCPR, however it is not passing on the benefits as legally permissible to the tenants under the rules. It is not appropriate for respondent no.1 to offer an area of 300 sq. ft. under the PAAA to the petitioner, as also the PAAA would not satisfy the requirements of law. It is contended that respondent No. 1 has a moral and contractual obligation to provide to the tenants of the said building with temporary accommodation until the period of handing over of the respective flats of the tenants. It is on such premise, in the lead petition, the following relief is prayed for :-

“(a) that this Hon’ble Court be pleased to issue a Writ of Mandamus with a direction to Respondent no.1 and 2 to execute an agreement with the Petitioner and all tenants residing in the said building in compliance with the regulations under the Development Control Regulations and provide permanent alternate accommodation, temporary alternate accommodation and corpus fund as per the Development Control Rules, in the proposed redevelopment project.”

10. Following are the companion writ petitions:-

- i. Writ Petition No. 2411 of 2019 - Ali Akbar Lakhani v/s. Swarna Highrise Constructions & Anr.
- ii. Writ Petition No. 2096 of 2019 - Nasim Banu Shabbir Ali Nayabi & Anr. v/s. Swarna Highrise Constructions & Anr.

- iii. Writ Petition No. 2097 of 2019 - Domnie Iimon Nazareth vs. Swarna Highrise Constructions & Anr.
- iv. Writ Petition No. 2107 of 2019 - Anandi Anvekar & Ors. Vs. Swarna Highrise Constructions & Anr.
- v. Writ Petition No. 2104 of 2019 - Vilas Shankar Sawant v/s. Swarna Highrise Constructions & Anr.
- vi. Writ Petition No. 2206 of 2019 - Anisha Imtiyaz Shaikh v/s. Swarna Highrise Constructions & Anr.

11. The petitioners in the above petitions intend to pursue similar issues as in the lead petition. It is interesting to note that in all these petitions, there is a specific averment that the petitioners in these petitions have filed a declaratory suit against respondent no.1 praying that they be declared as tenants and that they are entitled to the tenancy rights in respect of the tenements occupied by them. Illustratively, the said averment as made in paragraphs 4(i) and (j) in Writ Petition No. 2107 of 2019 is required to be noted which reads thus:-

“i. The Petitioners state that they have filed a Declaratory Suit against Respondent no.1 seeking to be declared as tenants and entitled to tenancy rights in respect of the said room.

j. The Petitioners submit that the said room is lying vacant and Respondent no.2 is at liberty to proceed with permissible demolition contemplated under Section 354 of the MMC Act and as per the law.”

12. Also, the prayers in these companion petitions are common. Illustratively, prayers in Writ Petition No. 2104 of 2019 (Vilas Shankar Sawant v/s. Swarna Highrise Constructions & Anr.) are required to be noted which read thus:-

- “a. that this Hon’ble Court be pleased to issue a Writ of Mandamus with a direction to Respondent no.2 not to sanction any plans, with respect to the said building known as ‘Haji Manzil’ situated on plot bearing CTS Nos. A/645M A/646 & A/647, Village Bandra-A at 91, Chinchpokli Road, Off Hill Road, Bandra (W), Mumbai 400 050, which are contrary to the Development Control Rules 33(7)(A) of 2034 for providing temporary alternate accommodation, perm alternate accommodation, and corpus fund in the proposed redevelopment project;
- b. that this Hon’ble Court be pleased to issue a Writ of Mandamus with a direction to Respondent no.1 to execute an agreement with Petitioners and all tenants residing in the said building known as ‘Haji Manzil’ situated on plot bearing CTS Nos. A/645M A/646 & A/647, Village Bandra-A at 91, Chinchpokli Road, Off Hill Road, Bandra (W), Mumbai 400 050 in accordance with the Development Control Rules 33(7)(A) of 2034 for providing temporary alternate accommodation, permanent alternate accommodation, and corpus fund in the proposed redevelopment project;
- c. for ad-interim and interim reliefs in terms of prayer clauses (a) and (b) above be granted;
- d. for costs of this Petition.”

Reply of the Respondents

13. A composite reply affidavit has been filed on behalf of respondent No.1 opposing these petitions. At the outset, it is submitted that insofar as the petitioner – Estella Fernandes is concerned, she is a tenant and the respondent is a landlord, hence the relationship between the parties is that of a landlord and tenant. It is next contended that respondent No.1 is a

partnership firm and is a private entity, hence, it is neither a State nor an instrumentality of the State, hence, a prayer for writ of mandamus against respondent No.1 would certainly be not maintainable. Thus the petition is not maintainable. It is further contended that there are several disputes questions of facts which cannot be gone into by this Court in its extraordinary jurisdiction under Article 226 of the Constitution and on such count also the petitions also deserve to be dismissed. It is next contended that respondent No.1 is the owner and landlord of the building in question known as “Hazi Manzil” which had in all 29 tenants including the petitioner Estella Fernandes and six others who have filed companion petitions. It is stated that the building had become dilapidated and was categorized as C-1 category and in these circumstances, respondent No.1 proposed to all tenants that respondent No.1 shall demolish the existing building and reconstruct the same, in which all the tenants would be accommodated, and would be allotted premises in lieu of the existing tenanted premises on ownership basis. It is stated that 22 out of 20 tenants have vacated the building as it has become dilapidated. These 22 tenants also executed agreements for permanent alternate accommodation in lieu of the existing tenanted premises, which were registered in the year 2018. However, the petitioner – Estella Fernandes and six others (petitioners in other companion petitions) refused to vacate, although a

notice was issued by respondent No.2-Municipal Corporation under Section 354 of the MMC Act. The building being categorized under the 'C-1' category has attained finality, not only in view of the TAC report but also a challenge to such report of the TAC having failed before this Court as Writ Petition (L) No.3347 of 2018 filed by the petitioner – Estella Fernandes being dismissed on 27 November 2018, by a coordinate Bench of this Court. It is stated that in such judgment the Court observed that the petitioner was not cooperating with the redevelopment of the property and more than 70% of the occupants have already vacated the building. It is contended that the petitioners being the minority tenants, cannot maintain this petition which is against the interest of respondent No.1 and the majority of tenants who are awaiting redevelopment to progress and allotment of permanent alternate accommodation. It is contended that the present petitioners have, from the beginning, adopted the approach of non-co-operation and the building could be demolished only with the assistance of police authorities.

14. It is contended that the order dated 27 November 2018 passed on Writ Petition (Lodg) No.3347 of 2018 filed by Estella Fernandes was assailed by her before the Supreme Court. The Supreme Court refused to interfere in the orders passed by this Court and dismissed the Special Leave Petition, however, permitted the said petitioner to approach this

Court with regard to the prayer for the execution of the agreement. In regard to the execution of the permanent alternate accommodation agreement (PAAA) is concerned, it is stated that respondent No.1 has already executed and registered the agreements with 22 tenants, as also respondent No.1 offered to execute the agreements with all the tenants except three tenants against whom eviction suits are pending before the Small Causes Court. It is stated that the petitioner – Estella Fernandes and three other petitioners, did not join the other majority tenants in signing the PAA Agreements and refused to cooperate in the redevelopment of the building.

15. Respondent No.1 had contended that the existing building had become dilapidated and having being demolished, respondent No.1 to undertake redevelopment has obtained an IOD in the year 2015 itself, however, due to non-co-operation by the petitioner and other similarly placed tenants, the project has got delayed. It is stated that there was a delay on account of the outbreak of the COVID-19 pandemic to progress with the re-development, however, now respondent No.1 is in a position to complete the project. It is stated that respondent No.1 has agreed to provide, to each of the tenants, a tenement of an area of 300 sq. ft plus 8% additional carpet area totaling 324 sq. ft. carpet area in the redeveloped premises. It is further stated that the property has an approach road which

is less than 9 meters and in view of the size of the plot and the plinth of the approach road, there are constraints on the vertical height of the building, hence respondent No.1 would not be in a position to give fungible compensatory area to any of the tenants. It is stated that the IOD was already issued in the year 2015, whereas the Development Control and Promotion Regulations for Greater Mumbai, 2034 (for short '**DCPR 2034**') have come into effect only in June 2018.

16. It is stated that respondent No.1 can execute an agreement in favour of the petitioner – Estella Fernandes similar to the agreements executed with the existing tenants and such agreement can also be entered with the other tenants, barring three tenants against whom eviction proceedings are pending before the Small Causes Court and their entitlement shall be subject to the outcome of the eviction suit filed by respondent No.1. It is submitted that insofar as the petitioner in Writ Petition No.2097 of 2019 (Domnie Iimon Nazareth vs. Swarna Highrise Constructions & Anr.) is concerned, he is not the original tenant and the original tenant was one Xavier Nazareth. It is stated that Domnie is not the son of the original tenant and the father of the petitioner, one Veris was never the tenant, and no document was produced to show the alleged tenancy of the father of the petitioner namely Iimon Nazareth. Hence, the claim of the said petitioner cannot be considered as he is not a tenant

even on the record of the municipal corporation. It is stated that the proceedings before the Supreme Court were only at the behest of the petitioner - Estella Fernandes. It is, therefore, contended that the petitioners being the minority occupants, cannot stall the redevelopment by making demands which are not tenable. Accordingly, the petition needs to be dismissed.

17. There is a rejoinder affidavit filed by one Elton Andhony D'Souza who claims to be the son of Estella Fernandes, who does not appear to have any power of attorney issued by the petitioner – Estella Fernandes permitting him to pursue the present proceedings or to file the present affidavit. Such affidavit denies the case of respondent No.1 in the reply affidavit. The contention as, interalia, urged in the affidavit is that there was a renewed IOD dated 9 July 2021 issued to respondent No.1 as also a fresh commencement certificate was issued on 30 August 2021, and from such permission what was expected was the compliance of the DCPR by respondent No.1. It is thus, submitted that reliance on the first IOD of 2015 is not relevant. The case of respondent No.1 that respondent No.1 is not in a position to give the benefit of the fungible area to the petitioner, for the reason that the approach road is less than 9 meters, creating constraints of vertical height, is misleading for the reason that respondent No.1 has given the benefit of fungible FSI to some selected favourite

tenants, and list of seven tenants has been annexed in support of such contention. It is contended that it is incumbent upon respondent No.2 to grant the benefit of fungible FSI to the petitioner in the light of the guidelines issued by the Municipal Corporation for declaring private and municipal buildings as the “C-1” category dated 15 November 2017.

18. There is a reply affidavit filed on behalf of the Municipal Corporation of Mr.Sanjiv Pandhare, Assistant Engineer (Building Proposal) H/Ward, contending that the petitioners are not entitled to any reliefs against the Municipal Corporation. It is interalia contended that the proposal for redevelopment on the plot of land occupied by the building in question, was submitted by respondent No.1, and considering such proposal and on approval of the Municipal Commissioner by considering the requisite concessions, the Municipal Commissioner on 30 June 2015 issued Intimation of Disapproval (IOD). It is stated that the said proposal was put forth by respondent No.1 through its Architect. Such IOD was not revalidated by Respondent No.1 in time, and further upon coming into force the DCPR 2034, the IOD so granted to Respondent No.1 had lapsed. Respondent No.1, accordingly, had appointed a new Architect Mr.Mukesh Bahadur through whom respondent No.1 had applied to the office of the Municipal Corporation by Online Application on 14 June 2021 whereby seeking Zero Floor Space Index (FSI) IOD as per the

relevant clauses of Ease of Doing Business Manual (EODB), published by the office of the Municipal Corporation, and as per the DCPR 2034. It is stated that the clause providing for the issuance of Zero FSI IOD under EODB is Clause III which reads thus:-

“III. Intimation of Disapproval (IOD) and Commencement Certificate (CC) upto plinth stage:

1. IOD up to plinth and CC up to plinth:

In case of vacant plot or property with vacant structure to be demolished, the Developer/Owner may at his option, apply for IOD up to plinth and C.C. up to plinth, pending approval of concessions, HRC, MOEF (for construction area up to 20,000 sq. mt.) on submission of undertaking as per the Form 6 of Section I-E of the manual, such application can only be made after approval of layout.

The concerned E.E. (B.P) shall issue IOD up to plinth and CC up to plinth for construction area up to 20,000 sq. mt. within 7 days of such application and submission of undertaking. The IOD up to plinth shall be issued subject to the condition mentioned in the registered Undertaking, from the owner/developer, as per Form 6 of section IE of the Manual submitted by the architect/L.S. (copy of EODB manual is attached at page 61 to 81).”

19. It is stated that accordingly, on receipt of the proposal from the Architect of Respondent No.1, the Municipal Corporation has scrutinized the proposal as per the EODB Manual and since the earlier IOD had lapsed, such proposal is considered under the provisions of the DCPR 2034. It is stated that accordingly, the office of the Municipal Corporation had issued a Zero Floor Space Index IOD on 9 July 2021 and a plinth Commencement Certificate on 30 August 2021. It is stated

that the plinth Commencement Certificate was issued by the Municipal Corporation only after the conditions of Zero FSI IOD were complied by respondent No.1. It is further stated that the building, which was of ground plus two upper floors, has already been demolished as per the orders issued by the Assistant Engineer (B&F), H/W Ward under Section 354 of the MMC Act, and on 4 January 2020 a demolition completion certificate to that effect was issued by the Designated Officer. It is stated that as regards the applicability of Regulation 33(7)(A) of the DCPR 2034 to the redevelopment in question, is concerned, the parameters of the same and the conditions put forth to the owner/Architect would be determined once such proposal is actually submitted by the owner/Architect for availing the benefit under the Regulations and, if such proposal is received, it would be scrutinized on its own merits. It is next contended that the redevelopment in question is on a plot of land which is a private plot and respondent No.1 is therefore, bound to issue permission based on the proposal submitted to it by the owners or their Architect. It is submitted that no case is made out by the petitioner against the Municipal Commissioner.

20. There is a rejoinder affidavit filed by the petitioner – Estella Fernandes against the affidavit filed by the Municipal Corporation. It is contended that the affidavit filed on behalf of the Municipal Corporation

does not address the grievance of the petitioner in regard to the grant of fungible compensatory area/fungible FSI as per the Development Control Regulations. It is contended that there is a statutory benefit entitlement to the petitioner by award of a fungible FSI and such statutory benefits have not been shared by Respondent No.1 with the petitioners. It is contended that the policy of respondent No.2 – Municipal Corporation is that unless the agreements are entered with the tenants, no commencement certificate should be granted, and hence, unless the agreements are entered, respondent No.1 ought not to be permitted to carry the development any further.

Submissions on behalf of the petitioners:-

21. Mr.Anturkar, learned Senior Counsel for the petitioners in support of the reliefs as prayed for in the petition, has made the following submissions:

(I) It is submitted that the entitlement of the petitioners would be to a proportionate share in the fungible FSI which would be available to respondent No.1 in undertaking the redevelopment. This would entitle the petitioners to a tenement of higher area than a tenement of 324 sq. ft. as offered by respondent No.1. It is submitted that this is an obligation

enforceable against respondent No.1 in the proceedings of Writ Petition, despite the fact that Respondent No.1 had already entered into a PAA Agreement with 22 tenements.

(II) It is submitted that respondent No.1 is also under a statutory mandate to adhere to the provisions of Regulation 33(7)(A) and more particularly Clause 19 thereof to grant a permanent alternate accommodation in the redeveloped premises on ownership basis. The contention is to the effect that in the redeveloped premises by virtue of Clause 19 of Regulation 33(7)(A), the petitioners tenements would form a part of the cooperative society being formed, which according to Mr. Anturkar, would provide a membership of the society to the petitioners and consequent to the petitioners becoming the members of a cooperative society, the landlord and the tenant relationship would cease to exist by operation of law, hence the petitioners would become owners of their tenements. In such context, in a brief note as submitted by Mr. Anturkar, the following submissions have been made:-

“The developer is not giving anything more, than what has been provided by the provisions of DCPR 33(7)(A) of 2034, The said provisions provides i.e. Clause (19) of 33(7)(A) of DCPR 2034 that ultimately, the flat will be given as a member of the Co-operative Society, which will be constituted and thereafter, whatever restriction have been provided, as a member of the Co-operative Society would apply. Those restriction would include, the restriction, such as the flat cannot be transferred to any other person, without the permission of the Society, without payment

of Transfer Fee and without the purchaser, becoming the member of the society. In other words, it is not as if the DCPR provision provides only for giving the premises on tenancy basis and the Respondent No. 1 - Developer is giving something by way of gratis or by way of mercy, something more than what is the statutory requirement. Therefore, in this case the Developer is not giving anything more by way of gratis. By following the same provisions the Developer, with all other tenants have already, given on the ownership basis.”

22. The next contention of Mr.Anturkar is that Respondent No.1 cannot proceed with the redevelopment unless PAA Agreements are executed by Respondent No.1 with the petitioners and in such context, the decision of this Court in the case *Raj Ahuja & Anr. Vs. The Municipal Corporation of Gr.Mumbai & Anr.* (Writ Petition No.5130 of 2022, Order/Judgment dated 20 March 2023), as also the decision in *G.M.Heights LLP vs. Municipal Corporation of Gr.Mumbai & Ors.* (Writ Petition No.5302 of 2022, Judgment dated 29 March 2023), would not be applicable.

23. It is next submitted that by virtue of the provisions of DCPR 33(7)A), Clause (13) read with the provision of DCPR 31(3) the Municipal Corporation needs to give fungible FSI to the extent of 35%, i.e, the benefit which is statutorily entitled to the tenants, and non-grant of such benefit is failure to comply with the public duties by the Municipal

Corporation.

24. It is submitted that even assuming that the relief in the present proceedings is sought against respondent No.1, such relief would be entitled in the proceedings under Article 226 of the Constitution against a private person considering the decision of the Supreme Court in *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*¹.

25. It is submitted that the Municipal Corporation is colluding with respondent No.1 in not providing for 35% of fungible FSI to respondent No.1. The contention of respondent No.1 that on account of height restriction, it is not possible for them to avail of the entire fungible FSI, is not correct and that it is actually possible to avail the benefit. It is submitted that the petitioners have prepared a building plan which would demonstrate that without changing the design as made by the developer namely two staircases and four lifts and without a change in sale flat design and by following all requirements, it is possible to give the benefit of the fungible FSI to the seven petitioners (8 units). It is submitted that the benefit of fungible FSI as stated in Clause No.13 of the DCPR 33(7)(A) is over and above the basic entitlement of 324 sq. ft. and it is also required to be granted as it is the statutory duty of the Corporation to provide the same. It is urged that on such submissions, the petitions deserve to be

allowed.

Submissions on behalf of respondent no.1:-

26. On the other hand, Mr. Kanetkar, learned Counsel for respondent No.1 in opposing the petitions would submit that these petitions *per se* are not maintainable as they canvass totally untenable pleas and that too at the behest of minority of tenants. It is submitted that majority of the tenants i.e. 22 numbers have already entered into Permanent Alternate Accommodation Agreements (PAA agreements) with respondent No.1 accepting all terms and conditions as discussed and offered to them under which they would now become entitled to permanent alternate accommodation on ownership basis, although their basic rights are merely as tenants. It is submitted that however, the petitioners are opposed to be such beneficiaries and to have such rights and are insisting for the benefits which cannot be granted by respondent No.1 undertaking the redevelopment in question.

27. It is submitted that the plea as urged by the petitioners is opposed to the decision of this Court in *Raj Ahuja & Anr. Vs. The Municipal Corporation of Gr.Mumbai & Anr.* (supra) and *G.M.Heights LLP vs. Municipal Corporation of Gr.Mumbai & Ors.* (supra) wherein this Court

has held that the minority occupants/tenants cannot stall the redevelopment on the condition as contained in the IOD that the owner/developer should enter permanent alternate accommodation agreements with 100% of the occupants/tenants, which was held by the Court to be not legal and valid. It is submitted that this Court has also held in G.M.Heights (supra) that the tenants cannot dictate the owner on issues pertaining to redevelopment.

28. It is submitted that the petitioner - Estella Fernandes right from inception has caused innumerable hurdles in not only dragging the entire project and redevelopment being taken up expeditiously. Also the petitioners in the companion petitions are obstructing the course of redevelopment, opposite to the majority interest of the other tenants by raising untenable pleas.

29. It is submitted that respondent No.1 has set out valid grounds as to why the contention of the petitioners for additional fungible FSI cannot be considered which is rightly not insisted by the other majority tenants, considering the nature of the project. It is, therefore submitted that the petitions do not call for any interference on any of the counts and deserve to be dismissed with costs.

Submissions on behalf of Municipal Corporation:-

30. Mr. Patil, learned Counsel appearing for the Corporation has opposed the petitions to submit that the petitions against the Municipal Corporation are not maintainable. It is his submission that the dispute between the petitioners and respondent No.1 is a private dispute. He submits that Municipal Corporation is bound to consider the plans submitted and as per the Rules and Regulations approve such plans, as per the requirement of law. Thus, his submission is that all actions taken by the MCGM are in accordance with law.

Analysis and conclusion:-

31. Having heard the learned Counsel for the parties and having perused the record, we may at the outset observe that respondent No.1 is undertaking redevelopment of the building which came to be demolished on 4 January 2020. The building had total of 29 tenants out of which these are 7 petitioners, barring 3 petitioners who are stated to be tenants of respondent No.1-landlord, who would be the beneficiaries of the redevelopment on the same terms and conditions as offered to the majority of the tenants, who are 22 in number and who have already executed Permanent Alternate Accommodation Agreements (PAAA) with respondent No.1.

32. As seen from the facts noted above, the petitioners intend to assert rights that were not asserted by the majority of the tenants who are not opposing the redevelopment as sought to be asserted by the petitioners. The petitioners are opposed to the majority consensus on redevelopment.

33. We may at the threshold observe that we put it to Mr. Anturkar that the petitioners-tenants are being offered permanent alternate tenements on ownership rights in the redeveloped premises, hence, considering such fair stand taken by respondent No.1 to offer ownership apartments, would it be tenable for the petitioners to foist upon respondent No.1 and/or to dictate the course of redevelopment, in petitioners' capacity as tenants. Mr. Anturkar, on instructions and for taking such instructions, the proceedings were adjourned, submits that the petitioners are not interested to have ownership tenements and are interested to get the benefits of the redevelopment only as tenants. Mr. Anturkar submits that such a stand of the petitioners is in any event, justified taking into consideration the benefit as provided by Clause 19 of Regulation 33(7)(A) which reads thus:-

“Regulation 33(7)(A)

“19. Restriction on transfer of tenements shall be governed by provision of Rent Control Act till Cooperative Society is formed and after that the same shall be governed by the provision of Maharashtra Cooperative Society's Act.”

34. It needs to be stated that Regulation 33(7)(A) pertains to the reconstruction or redevelopment of dilapidated/unsafe existing authorized tenant-occupied buildings in Suburbs and extended Suburbs and existing authorized non-cessed tenant-occupied buildings in Mumbai City. It would be appropriate to note the contents of Regulation 33(7)(A) along with Appendix which read thus:-

“33(7)(A) Reconstruction or redevelopment of dilapidated/unsafe existing authorized tenant occupied building in Suburbs and extended Suburbs and existing authorized non-cessed tenant occupied buildings in Mumbai City.

For reconstruction/redevelopment of existing authorized tenant-occupied buildings, which have been declared unsafe for human habitation by or are to be demolished for the same reason under a lawful order by the Municipal Corporation of Greater Mumbai and duly certified as such, undertaken by landlord/s or Cooperative Housing Societies of existing tenants, the permissible FSI prescribed under these regulations and Appendix below, shall be admissible as under: -

- a) In case of the plot consisting of only tenant occupied building, the F.S.I. shall be equal to F.S.I. required for rehabilitation of existing lawful tenant plus 50% incentive F.S.I.
- b) In case of composite development i.e. the plot consisting of tenant occupied building along with non-tenanted building such as owner occupied building/existing Co-op Housing Society buildings etc., the FSI available shall be equal to FSI required for rehabilitation of existing lawful tenant plus 50% incentive FSI plus FSI that has already authorisedly been utilized/consumed by the non-tenanted buildings/ structures.

Appendix

1. The F.S.I. permissible for the new building shall be as given in sub-regulation (7) (A) of Regulation No.33.

2. (a) A new building may be permitted to be constructed in pursuance of an irrevocable written consent by not less than 70 51 per cent of the tenants of the old building.

(b) All the tenants of the old building shall be re-accommodated in the redeveloped building.

3. Each tenant shall be rehabilitated and given the carpet area occupied by him for residential purpose in the old building subject to the minimum fixed carpet area of 27.88 sq. m (300 sq. ft) and/or maximum carpet area up to 70 sq. m (753 sq. ft) free of cost. In case of non-residential occupier the area to be given free of cost in the reconstructed building shall be equivalent to the area occupied in the old building.

Provided that if carpet area for residential purpose exceeds 70.00 sq. m (753 sq. ft.) the cost of construction shall be paid by tenant to the developer. The cost of construction shall be as per ready reckoner rate of that year. However, the carpet area exceeding 70.00 sq. m (753 sq. ft.) shall be considered for rehab FSI but shall not be considered for incentive FSI. Provided further that each eligible residential cum commercial occupant shall be entitled to a tenement of minimum carpet area of 27.88 sq. m (300 sq. ft.).

4. No new tenancy created after 13/6/96 shall be considered. Further, unauthorized construction made in buildings for creating new tenancy in the existing tenancies shall not be considered while doing computation of existing FSI. A certified inspection extract of the Municipal Corporation for the year 1995-96 or Court Order proving the existence of tenements prior to 13/6/96 shall be considered adequate evidence to establish the number of tenements. However, the Govt. may issue comprehensive guidelines for determination of eligibility of occupiers and tenants therein.

5. The list of tenants and area occupied by each of them in the old building and the irrevocable written consent as specified in 2 (a) above shall be certified by the Municipal Corporation of Greater Mumbai.

6. The tenements in the reconstructed building shall be allotted by landlord/s or Cooperative Housing Societies of existing tenants to the tenants as per list certified by the Municipal

Corporation of Greater Mumbai.

7. The entire FSI available under this regulation shall be allowed to be utilized on plot/plots under redevelopment scheme.

8. Reconstruction of a new building on the plot should strictly conform to the provisions of the development plan and these Regulations.

9. No construction or reconstruction shall be permitted on set-back areas or areas required for road-widening and such areas shall be handed over to the Municipal Corporation.

10. For the purpose of calculating the FSI for tenanted building, the entire area of the plot/layout including Development Plan roads and internal roads but excluding the land under the reservation of public amenities shall be considered.

11. New building shall be reconstructed in accordance with these Regulations and all other Regulations and orders as applicable from time to time. The Municipal Commissioner may exercise his powers under Regulation No 6 for condonation of minor variations in respect of such reconstruction.

12. 20% of the incentive FSI can be used for non-residential purposes otherwise permissible as per the DCPR.

13. The fungible compensatory area admissible on rehab component shall be granted without charging premium and such fungible compensatory area 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.

14. For smooth implementation of the redevelopment scheme undertaken by landlord/s or Co-operative Housing Societies of existing tenants, temporary transit camps may be permitted on the same land or land situated elsewhere belonging to the same landlord/s with the concessions permissible under SRS project under Regulations 33(10) of these Regulations. Such transit camps should be demolished within one month from the date of occupation certificate granted by the Corporation for the

reconstructed buildings.

15. An amount of Rs.5000/- per sq. m shall be paid by the landlord/s or Co-operative Housing Societies of existing tenants, as additional development cess for the built-up area over and above the F.S.I. permissible as per table 12 under Regulation 30, for the rehabilitation and free sale components. This amount shall be paid to the Municipal Corporation in accordance with the time schedule for such payment as may be laid down by the Municipal Commissioner, MCGM, provided the payment of instalments shall not go beyond the completion of construction. This amount shall be used for Scheme to be prepared for the improvement of off-site infrastructure in the area around the development. The above development cess shall be enhanced @ 10% every three years.

16. As per the provision of clause 3, each residential/non-residential tenant shall be rehabilitated only for carpet area mentioned in the said clause 3 and such areas shall be clearly shown on the building plan submitted to the Municipal Corporation.

17. The landlord/s or Co-operative Housing Societies of existing tenants shall commence the reconstruction or redevelopment work within the period of one year from the date of demolition of the building and complete it within a period of five years. In the meantime the landlord/s or Co-operative Housing Societies of existing tenants shall make arrangement of alternate accommodation of tenants.

18. A corpus fund is to be created by the landlord/s or Co-operative Housing Societies of existing tenants which will take care of the maintenance of the building for a period of 10 years.

19. Restriction on transfer of tenements shall be governed by provision of Rent Control Act till Co. Op. Society is formed and after that the same shall be governed by the provision of Maharashtra Co-Op. Society's Act.

20. The State Government/ Municipal Commissioner shall prescribe the guidelines for better implementation of the scheme in respect of model agreement, alternate accommodation of

existing tenants, eligibility criteria for tenants etc. separately.

21. If the rehab plus incentive as per this regulation is less than the permissible FSI as per regulation 30, then the owner may opt for development up to permissible FSI by availing TDR/ Additional FSI on payment of premium as per Regulation 30.”

(emphasis supplied)

35. In our opinion, Mr. Anturkar’s contention that Clause (19) of the Appendix under Regulation 33(7)(A) be interpreted to mean that the petitioners/tenants are deemed to receive tenements on an ownership basis in the redeveloped premises, is untenable. Regulation 33(7)(A) along with paragraphs (1) to (21) of the Appendix below it, are required to be read holistically. The DCPR is a subordinate legislation framed in the exercise of powers conferred under sub-section (1) of Section 31 of the Maharashtra Regional and Town Planning Act, 1966. It is misconceived for the petitioners to contend that Clause (19) under the Appendix below Regulation 33(7)(A) would change the nature and character of the rights of the petitioners from that of the ‘tenants’ to be the ‘owners’ if they become members of the proposed co-operative society, also cannot be accepted. It is difficult to accept Mr.Anturkar’s submission that these tenants would become members of the co-operative society when they have limited rights of tenancy. Under no law and none shown to us, supports the petitioners’ contention that even if a cooperative society is

formed of the redeveloped premises, a tenant would become a member of a cooperative society. Regulation 33(7)(A) merely pertains to the reconstruction or redevelopment of dilapidated/unsafe existing authorized tenant-occupied buildings in Suburbs and extended Suburbs and existing authorized non-cessed tenant-occupied buildings in Mumbai City, which per-se cannot be read to mean that it changes the basic legal rights between the landlord and tenants so as to bring about a consequence to the imagination of the petitioners that after the redevelopment is complete under the provisions of Regulation 33(7)(A), the tenants become deemed owners of their tenanted tenements on mere formation of the society. We accordingly, reject Mr. Anturkar's contention that the petitioners having decided not to enter into PAA Agreements they would be entitled to the ownership rights of their respective tenements by virtue of the membership of the co-operative society. We may thus, observe that the petitioners being not interested to enter the PAA Agreements, their entitlement would be to occupy the redeveloped premises as tenants recognizing all rights of respondent No.1 as the landlord, under the relevant laws.

36. Insofar as Mr. Anturkar's contention in regard to respondent No.1 being under a mandatory obligation to make available only to the petitioners' benefit of the fungible FSI, we are far from being persuaded to

accept such contention. It may be observed that the redevelopment scheme not only concerns the minority of the tenants, but all the tenants who are 29 in number. In the present case, majority of the tenants have agreed to whatever has been provided for in the PAA agreements as entered by respondent No.1 with such majority members. It is not possible to accept such contention of the minority members that only for their benefit the building plans are required to be changed and special adjustments are required to be made. This would disturb the entire redevelopment scheme that too at the behest of such handful of tenants who are putting up a case opposed to the majority interest in the redevelopment. In this view of the matter, it is not possible for us to accept the petitioners' contention that barring other tenants who have already entered into the PAA agreements with respondent No.1, special treatment needs to be accorded by respondent No.1 to the petitioners by changing the plans and giving the benefit of fungible FSI, which in fact on respondent no.1's showing cannot be utilized in the manner as desired by the petitioners.

37. We may also observe that it is for respondent No.1 owner to undertake redevelopment as may be permissible in law. The contention as urged by the petitioners militates against what has been provided for in the regulations that each tenant shall be rehabilitated and given the carpet

area occupied by him for residential purposes in the old building subject to the minimum fixed carpet area of 27.88 sq. m (300 sq. ft) and/or maximum carpet area up to 70 sq. m (753 sq. ft) free of cost. It is not the case that respondent No.1 is confining the permanent alternate accommodation being offered to the tenants to a lesser area than the stipulated of 300 sq. ft. in fact respondent no.1 is offering an area of more than 300 sq. ft. In this view of the matter, it cannot be conceived that Clause 13 of the Appendix below Regulation 33(7)(A) can be pressed into service by the petitioners to canvass that their entitlement would be to avail of tenements having 35% more area. Certainly, such is not the purport of Clause 13 of the Appendix below Regulation 33(7)(A). As to what extent respondent No.1 would offer the benefit of fungible FSI to all the tenants considering the other technical parameters, is completely the lookout of respondent No.1. This more particularly when respondent No.1 is on record to submit that it is not possible for respondent No.1 to use the full fungible FSI given the restrictions not only whereby the height of the building is required to be restricted due to limited access, but there are other issues as set out in the reply affidavit which appears to be not in dispute. Be that as it may, these are all technical issues and certainly cannot be the subject matter of adjudication in the proceedings of the present writ petition.

38. We may also observe that on the pleas as raised by the petitioners as noted above, certainly, the redevelopment project cannot be stalled. In the event, the petitioners are of the opinion that some of the tenants have been given larger areas, all these are the contentions that are required to be proved based on the evidence and which certainly cannot be adjudicated in the proceedings of a writ petition.

39. Considering the facts of the case that the petitioners who are minority tenants who are insisting on implementing the conditions in the IOD of a PAAA to be entered with them by respondent no.1 as per the petitioners wishes, to have more area than the other/majority tenants, Mr. Kanetkar would be correct in placing reliance on the decision of this Court in *Raj Ahuja & Anr.* (supra) wherein this Court has observed that the Municipal Corporation cannot insist on the landlord to enter into permanent alternate accommodation with 100% of the tenants/occupants and for such non-compliance withhold the grant of commencement certificate. This Court has observed that Clause 1.15 of the Guidelines issued by the MCGM for declaring private and municipal buildings as C-1 category (dangerous/unsafe) cannot mandate obtaining consent agreements with all 100% tenants/occupants and consent of 51% to 70% of the occupants/tenants of the building shall amount to sufficient compliance. In granting reliefs to the petitioners, this Court had also taken

into consideration the rights of minority occupants/tenants. It would be appropriate to extract the relevant observations of the Court and the operative order, which read thus:-

“20. In our opinion, there is much substance in the contention as urged on behalf of the petitioners, that Clause 1.15 cannot be interpreted to mean that the consent of all the occupants/tenants or 100% consent of the tenants/occupants in the manner as suggested in Clause 1.15 would be necessary for a commencement certificate to be issued. This for more than one reason. Firstly, it cannot be countenanced that once the majority of the occupants / tenants are agreeable to vacate the building and/or to accept the permanent alternate accommodation being offered by the owner, by protecting their occupancy rights as they stood at the time the building was demolished, it cannot be heard from minority of such tenants/occupants, for whatever reasons, that they are not agreeable to a settlement in this regard or resist a permanent alternate accommodation as offered by the owner to the majority of the tenants /occupants, for a reason that a permanent alternate accommodation does not suit their requirements, or for some other reasons they are not agreeable to enter into a PAAA, as in the present case. This would amount to few tenants/ occupants bringing the entire redevelopment to a standstill, by not consenting to a permanent alternate accommodation or by raising disputes.

... ..

28. It is a settled position in law that the interest of the minority occupants/tenants cannot be opposed to the interest of the majority occupants, as also such persons cannot foist on the owners a delay in commencement of the redevelopment work, resulting in the project cost being increased, which would be seriously prejudicial to the owners/developers and above all the majority of the occupants. (See: **Girish Mulchand Mehta & Anr. Vs. Mahesh S. Mehta & Anr.**²; the judgment of this Court in **Kamla Homes and Lifestyle Pvt.Ltd. Vs. Pushp Kamal Co-op. Hsg.Society Ltd. & Ors.**³, **Westin Sankalp Developers Vs. Ajay Sikandar Rana & Ors.**⁴; **Sarthak Developers Vs.**

2 2010(2) MhLJ 657

3 2019 SCC OnLine Bom 823.

4 2021 SCC OnLine Bom 421.

**Bank of India Amrut Tara Staff Co-op. Hsg. Society Ltd. & Ors.⁵;
Choice Developers Vs. Pantnagar Pearl CHS Ltd. & Ors.⁶**

30. In the light of the above discussion, in our opinion, Writ Petition No.5130 of 2022 is required to be allowed in the following terms:-

ORDER

(i) It is declared that Clause 1.15 of the 2018 Guidelines “*Guidelines issued by the MCGM for declaring private and municipal buildings as ‘C-1’ category (Dangerous, Unsafe)*” do not mandate consent/agreement to be obtained from all (100%) tenants/occupants, as consent of 51% to 70% of the occupants/tenants of the building, as applicable to the proposals made under the relevant regulations DCPR-2034 as noted above, shall amount to sufficient compliance for processing development/ redevelopment proposal, for a commencement certificate to be issued, including in respect of buildings covered under Section 354 of the MMC Act.

(ii) Consequent to the directions in (i) above, the MCGM is directed to accept the consent of 32 unit-holders / occupiers as sufficient compliance of Clause 1.15 of the 2018 Guidelines and Condition No.A-39 and Notes 20 and 21 of the Intimation of Disapproval (IOD) dated 16 June 2022.

(iii) The petition is accordingly allowed in the above terms. No costs.”

40. We are of the firm opinion that once the landlord has guaranteed that the tenants would not be deprived of permanent alternate accommodation in lieu of their original premises, the tenants or occupants including the minority or majority tenants would not have any legal rights to dictate and/or foist on the landlord the nature of the development to be undertaken by the landlord, in the event the old dilapidated building is demolished. If such a right of the tenants/occupants is recognized, it is likely to bring about a situation that the corporeal rights of the owners of

5 2012 SCC OnLine Bom 525.

6 2022 SCC OnLine Bom 786.

the property would stand fully defeated. In any event the tenants/occupants cannot assert any higher rights being conferred on them in relation to redevelopment, unless expressly provided by the provisions of law. The nature and character of the rights of the tenants do not change merely because redevelopment of the existing building is taking place. As a sequel to this, the tenants/occupants cannot dictate their notions and any facet in that regard on the redevelopment being undertaken, unless the law recognizes such rights or any say of the tenants. In any event, it cannot be accepted as a proposition of law that the rights of the owners to undertake development depends on the dictate of the tenants, when the basic right of providing an alternate tenement as per law is protected by the landlord.

41. In *G.M.Heights LLP* (supra), the Court was considering the question as to whether tenants (it was only one tenant in the said case) can dictate the nature of the redevelopment to be undertaken by the landlord, by insisting that the redevelopment of the building necessarily should be, as the building originally stood, prior to its demolition illustratively that residential premises should be redeveloped only as residential and not as commercial or vice-versa.' The Court held that it would not be within the rights of the tenants to foist upon the owner to dictate the nature of the redevelopment. It would be necessary to extract the relevant observations

of the Court which read thus:-

“18. It may be observed that respondent no.3 in his capacity as a tenant has limited rights. Respondent No.3 within the ambit of such rights cannot dictate the petitioner-owner, as to the nature of redevelopment. If such contention, as urged on behalf of the respondent no.3, is accepted, it would amount to recognizing rights which are certainly not conferred by law on the tenants. Recognizing such rights would infact take away and/or obliterate the legal rights of the owners of property to undertake redevelopment in a manner as may be permissible in law, including under the DCPR 2034.

19. Thus, tenants cannot take a position to foist, dominate and/or dictate to the owner the nature and the course of redevelopment the owner desires to have. The rights of the owners of the property to undertake redevelopment of the manner and type they intend, cannot be taken away by the tenants, minority or majority. Tenancy rights cannot be stretched to such an extent that the course of redevelopment can be taken over by the tenants, so as to take away the basic corporeal rights of the owner of the property, to undertake redevelopment of the owners choice. The only rights the tenants have, would be to be provided an alternate accommodation of an equivalent area occupied by them before the building was demolished.

20. Before us, was a similar situation in the case of Raj M. Ahuja (supra), wherein an industrial building was demolished and the owner had taken recourse to residential development. Thus, there are situation and situations, as to why a particular type of redevelopment is intended by the owner. Such inherent rights of the owners to have a redevelopment of their choice cannot be questioned by the occupants/ tenants, when the owner is ready and willing to protect the rights of the tenants, by providing alternate accommodation in the redeveloped premises. We have not been pointed out any legal rights and rights so overwhelming of the tenants, which would override the legal rights of the owners, to undertake redevelopment as per the choice of the owners of the land, as in the present case.”

42. We may also observe that Regulation 33(7)(A) is required to be

read in the context of what Part VI of the DCPR 2034 provides. Part VI provides for an 'additional floor space index', under which Regulation 33 provides for an additional floor space index (FSI) which may be allowed to certain categories. The categories are as under:-

33. Additional Floor Space Index (FSI) which may be allowed to certain categories:

33 (1) Additional FSI to Religious building

33(2) Buildings of Medical and Educational Institutions and Other Institutional Buildings covered under Regulation (2) (IV) (16 17) (g)

33(3) Buildings of Government/MCGM/Statutory Bodies, Semi-Government and PSU Offices:

33(3) (A) Development/Redevelopment for construction of staff quarters of Govt. or its statutory bodies (including CISF) or MCGM or its statutory bodies, on lands belonging to such Public Authorities.

33(3) (B) Development/Redevelopment for construction of staff quarters of Govt. or its statutory bodies (including CISF) or Municipal Corporation of Greater Mumbai or its statutory bodies on private lands.

33(4) Building of Residential Hotels on independent plot:

33(5) Development/Redevelopment of Housing Schemes of Maharashtra Housing & Area Development Authority (MHADA)

33(6) Reconstruction of buildings destroyed by fire or which have collapsed or which have been demolished under lawful order

33(7) Reconstruction or redevelopment of cessed buildings in the Island City by Co-operative Housing Societies or of old buildings belonging to the Corporation:

33(7)(A) Reconstruction or redevelopment of dilapidated/unsafe existing authorized tenant occupied building in Suburbs and extended Suburbs and existing authorized non-cessed tenant occupied buildings in Mumbai City.

33(7)(B) Additional FSI for Redevelopment of existing residential housing societies excluding cessed buildings:

33(8) Construction of Affordable Housing in Special Development Zone (SDZ)

33(9) Reconstruction or redevelopment of Cluster(s) of Buildings under Cluster Development Scheme(s)(CDS)”

43. Thus, once the above Regulations pertain to FSI for specific purposes, the scheme under each head of the Regulation is required to be read holistically and not in the manner, the petitioners intend to interpret, picking up one clause so as to interpret the same purporting the same to be of their benefit. This would be an erroneous reading of the scheme of Regulation 33 and 33(7)(A). In fact on a comprehensive reading of Regulation 33(7)(A), we are not persuaded to accept the contention that such regulation carves out any special rights for a certain category of tenants in the building to be redeveloped as opposed to the other category of tenants and in the present case, the majority of the tenants being the other category. We are thus of the opinion that the petitioners have failed to point out any legal rights which can be enforced only *qua* the petitioners and leaving aside the majority of the tenants, much less any overwhelming rights, that they need to discard the rights of the majority

tenants/occupants.

44. In any event, once the petitioners have taken a stand that they intend to continue to possess the rights as tenants in the redeveloped premises, it would not lie in the mouth of the petitioners to dictate the course of redevelopment to respondent No.1, as petitioners have limited rights as tenants as opposed to the others majority tenants who have preferred to accept the tenements in the redeveloped buildings as owners. It may be observed that in these circumstances the petitioners having limited rights as tenants, cannot assert any further better rights which are not available to the tenants even under the provisions of the Maharashtra Rent Control Act, 1999, governing the relationship between the landlord and tenants. The contentions of the petitioners apart from being totally unreasonable, are wholesomely opposed to law. By raising such contentions, the petitioners cannot cause any impediment, obstruction, and hurdles in respondent No.1 pursuing the redevelopment.

45. We find much substance in the contention of Mr.Kanetkar that in fact the reliefs in the present petitions filed under Article 226 of the Constitution are primarily against respondent No.1 who is a private entity. A writ petition for any reliefs against a private party is certainly not maintainable. In such context insofar as the petitioners' reliance on the

decision in *Shalini Shyam Shetty* (supra) to support a proposition that a writ petition under Article 226 of the Constitution is maintainable against respondent No.1 although respondent No.1 is a private party, in the facts of the case is not well founded. In our opinion, undertaking redevelopment and re-housing of the tenants by the landlord does not amount to discharge of a public duty by the landlord. Further taking benefit of the incentives if any as available under the rules and regulation as may be available also would not create any enforceable legal right for the tenants to dictate to the landlord course of the redevelopment once the statutory minimum area of the tenement to be provided to the tenant as per the redevelopment scheme is being made available to the tenants/occupants of the building, which came to be demolished.

46. In the light of the above discussion, the petitions are wholly misconceived. The petitioners are not entitled to any relief. The petitions are accordingly rejected. No costs. Interim orders, if any, stand vacated.

47. Interim application would not survive. It is accordingly disposed of.

48. All contentions of the parties in the pending suits, if any, are expressly kept open. Such pending proceedings be decided on their own merits.

49. At this stage, a request is made for continuation of the ad-interim

order. The entire redevelopment at the behest of minority tenants cannot be stalled. This is a case that the petitioners intend to prejudice the interest of the majority of the tenants as also of the landlords. We are thus not inclined to accept such request. It is accordingly rejected.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]