

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

**WRIT PETITION (L) NO. 31702 OF 2024
WITH
INTERIM APPLICATION NO. 3341 OF 2024**

Jyoti Builders,	]	
A partnership firm, Having its office at 6,	]	
Dheeraj Plaza, Hill Road Bandra West,	]	
Mumbai – 400 050.	]	... Applicant
		](Org. Petitioner)

IN THE MATTER BETWEEN

Jyoti Builders,	]	
A partnership firm, Having its office at 6,	]	
Dheeraj Plaza, Hill Road Bandra West,	]	...Petitioner
Mumbai – 400 050.		

V/s

- | | | |
|---------------------------------------|---|--|
| 1. The Chief Executive Officer, |] | |
| The Slum Rehabilitation Authority, |] | |
| Administrative Building, |] | |
| Professor Anant Kanekar Marg, |] | |
| Bandra (East), |] | |
| Mumbai – 400 051. |] | |
| 2. The Slum Rehabilitation Authority, |] | |
| Administrative Building, |] | |
| Professor Anant Kanekar Marg, |] | |
| Bandra (East), |] | |
| Mumbai – 400 051. |] | |
| 3. Apex Grievance Redressal Committee |] | |
| The Slum Rehabilitation Authority, |] | |
| Administrative Building, |] | |
| Professor Anant Kanekar Marg, |] | |
| Bandra (East), |] | |
| Mumbai – 400 051. |] | |
| 4. Alchemi Developers Private Limited |] | |
| A company having its office at 7, |] | |

- Ground floor, Krishna Kunj,
S.V. Road, Malad (W),
Mumbai – 400064.]]]
5. Phuldai Ramsanehi Yadav,]
An adult of Mumbai Residing at]
Kanayapada, General Arunkumar]
Vaidya Marg, Goregaon (East),]
Mumbai-400 063.]
6. Gokuldharm Ekta SRA Co-Operative]
Housing Society Limited, a housing]
Society having its registered office at]
Building No.6, Bengali Compound,]
Gokuldharm, Off.A.K. Vaidya Marg,]
Goregaon (E), Mumbai-400063.]
7. Gokuldharm Saidham SRA Co-Op]
Housing Society Limited, a housing]
Society having its registered office at]
Building No.8, Bengali Compound,]
Gokuldharm, Off.A.K. Vaidya Marg,]
Goregaon (E), Mumbai-400063.]
8. Shree Gokuldharm Durgadevi Vikas]
SRA Co-Op Housing Society Ltd,]
a housing society having its]
registered office at Building No.5,]
Bengali Compound,]
Gokuldharm, Off.A.K. Vaidya Marg,]
Goregaon (E), Mumbai-400063.]
9. Gokuldharm Shree Durgadevi SRA]
Co-Op Housing Society Limited, a]
housing society having its registered]
office at Building No.7, Bengali]
Compound, Gokuldharm, Off.A.K.]
Vaidya Marg, Goregaon (E),]
Mumbai-400063.]... Respondents

Mr. Ravi Kadam, Senior Advocate a/w. Adv. Ashish Kamat, Senior Advocate,
Adv. Pooja Kane, Adv. Jitendra Jain, Adv. Laxman Jain, Adv. Rohit Bamne

i/by Adv. Yogesh Adhia for the Petitioners.

Ms. Ravleen Sabharwal for Respondent Nos.1 & 2-SRA.

Mr. Vijay D. Patil for Respondent No.3-AGRC.

Mr. Aspi Chinoy, Senior Advocate a/w. Adv. Karl Tamboly, Adv. Aadil Parsurampur, Adv. Bharat Jain, Adv. Romin Sangoi, Adv. Ishaan Choudhary i/by I.C. Legal for Respondent No.4.

Mr. Gautam Ankad, Senior Advocate, a/w Mr. Raj Patel for Respondent No.5.

Mr. Mayur Khandeparkar a/w. Adv. Arun Panickar for Respondent No.6.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 27th November, 2024.

PRONOUNCED ON : 18th December, 2024.

JUDGMENT (Per Kamal Khata, J.):

1) By this Petition under Article 226 of the Constitution of India, the Petitioner seeks a Writ of Certiorari, to quash and set aside the Respondent No.1's (CEO SRA) Order dated 3rd October 2022 and Respondent No.3's (AGRC) Order dated 7th October 2024 ("the impugned orders"). Additionally, the Petitioner seeks a Writ of Mandamus directing Respondent Nos.1 and 3 to implement the earlier Order dated 26th February 2015 passed by the CEO SRA.

2) This is the third round of litigation before us between the parties herein. Interestingly, the dispute pertains to a plot of land measuring 2005 sq. mts bearing CTS No.620/A/1A/ 1(pt.), now renumbered as CTS No 620/A/1A/1B/1 and 620/A/1A/1B/2 ("subject property").

2.1) It is undisputed that the property initially owned by

Respondent No. 4 Phuldai Ramsanehi Yadav (“Phuldai”) and was subsequently purchased by Respondent No. 5 Alchemi Developers Pvt Ltd. (“Alchemi”).

3) The first Petition was filed by the Petitioner – Jyoti Builders (“Jyoti”) a successor of Vikas Housing Ltd. (“Vikas”) who in turn was a successor of Harishree Enterprises (“Harishree”) – to challenge the SRA’s Order dated 3rd October 2022, which granted Alchemi, a successor of Phuldai, permission to implement the Slum Rehabilitation (SR) Scheme on the subject property. The second Petition was filed by Alchemi to challenge the AGRC Order dated 30th October 2023. The current, the third Petition has once again been filed by Jyoti, challenging the AGRC order dated 7th October 2024.

A brief backdrop:-

4) On 26th November 1987, seven parcels of land bearing CTS Nos.619, 620A1/A1, 620A1/A2, 620A1/3, 620A1/B, 620A1/C now given C.T.S. No. 619/A & 619/B, 620/A/1A/1A/2, 620/A/1A/1A/3, 620/A/1A/1A/4, 620/A/1A/1B/1, 620/A/1A/1B/2, 620/A/1A/1C situated at village Malad (East), off. General A.K. Vaidya Marg, Goregaon (East), Mumbai 400 063 (“larger property”) admeasuring 19,456.7 sq. mtrs. that were declared as Slum under Section 4 of the Slum Act, were purchased by one Harishree, a real estate developer.

4.1) On 9th February 1992 Phuldai who owned 2005 sq. mtrs., the subject property, entered into an MoU with Harishree. The MoU dated 9th February 1992 evinces that, an area of 1805 sq. mtrs. fell under BMC reservation for RG and 200 sq. mtrs. was reserved for Public Housing High Density (“HD”). Moreover, the MoU evinces that, an area of 1905 sq. mtrs. on the date of the MoU was vacant and the remaining 100 sq. mtrs. was occupied by structures. Under this document, Phuldai granted consent to Harishree to redevelop her property. It is based on this MoU that Harishree claims rights to develop the seven parcels of land totally admeasuring 19,456.7 sq. mtrs. the larger property.

4.2) In 1997 an Annexure-II was issued and certified in respect of the Larger Property. This Annexure-II also included 34 slum dwellers on the subject property belonging to Phuldai.

4.3) On 25th August 1997, the Slum Rehabilitation Authority (SRA) accepted the proposal of Harishree for implementation of the project on the Larger Property and prepared a report regarding the same. A portion admeasuring 978.80 sq. mtrs. was not declared as “slum”. Thus, LoI was issued in respect of the balance portion of 18,727.30 sq. mtrs. which also included the subject property belonging to Phuldai.

4.4) The Petition asserts that, the area admeasuring 978.80 sq. mtrs. did not form a part of the subject property and Phuldai had no right

to it. On 3rd September 1997 (1997 LoI) an LoI was issued in favour of Harishree in respect of the Larger Property.

4.5) Harishree entered into a joint venture agreement with one Vikas to implement the slum scheme on the Larger Property.

4.6) On 2nd August 1999 a revised LoI was issued in the name of Harishree.

4.7) On 16th February 2000 Phuldai filed a Suit No.1018 of 2000 seeking injunction against Harishree from carrying out construction on her property admeasuring 2005 sq. mtrs. – the subject property.

4.8) Phuldai also filed an Appeal on 7th March 2000 before the Slum Tribunal challenging the Notification declaring her property as slum under Section 4 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“Slum Act”). This Appeal was however withdrawn on 8th March 2001.

4.9) In the meantime there were disputes between Harishree and Vikas that were eventually settled by Consent Terms dated 3rd August 2000 filed in this Court.

4.10) On 4th June 2004 a revised LoI was issued in the name of Harishree. In clause No. 39 it stated that, it supersedes earlier approved LoI dated 2nd August 1999. The other two relevant clauses are extracted herein for ready reference:-

“23. That you shall get Reservation of R.G admeasuring 4781.00 sq.mt. Demarcated from A.E.(Survey)/D.P./T&C department of M.C.G.M. and handed over to M.C.G.M free of cost, free of encumbrances by changing the ownership in the name of M.C.G.M duly developed as per Municipal specification and certificate to the effect shall be obtained and submitted.

25. That the rehabilitation component of scheme shall include.

- (a) 574 Nos. of Residential tenements.
- (b) 06 Nos. of Balwadi.
- (c) 06 Nos. of Welfare Centre.
- (d) 06 Nos. of Society office.

35. That you shall not claimed FSI of plot adm. 2005.00 sq.mts. kept in abeyance till the dispute between Harishree and Smt. Phuldai Yadav is decided by Court.”

4.11) On 9th August 2005 another LoI was issued in the name of Vikas. It supersedes the earlier LoI dated 4th June 2004, as stated in clause

37. The other relevant clauses are extracted herein for ready reference:-

“9. That the separate PR. card of sub-divided plot and DP reservation shall be submitted before O.C.C.

21. That you shall get reservation of R.G. admeasuring 2700.06 sq.mt. demarcated from A.E. Survey/D.P./T&C. department of M.C.G.M. and handed over to M.C.G.M free of cost free of encumbrances by changing the ownership in the name of M.C.G.M duly developed as per Municipal specification and certificate to the effect shall be obtained and submitted.

23. That the rehabilitation component of scheme shall include.

- a. 472 Nos. of Residential tenements.
- b. 05 Nos. of Balwadi.
- c. 05 Nos. of Welfare Centre.
- d. 05 Nos. of Society office.

33. That you shall not claim FSI of plot adm. 2005.00 sq.mts. kept in abeyance till the dispute between M/s. Vikas Housing Ltd.

& M/s. Harishree Enterprises & Smt. Phuldai Yadav is decided by Court.”

4.12) On 19th October 2011 Phuldai obtained a Decree, restraining Harishree and Vikas from putting any construction on her property, i.e. the subject property. The Appeal preferred thereof is still pending. Pertinently Vikas’s application for staying the effect and implementation of the Decree was rejected and the challenge to it too was dismissed by the Supreme Court. Consequently, the benefit of the Decree continues in Phuldai’s favour.

4.13) On 2nd July 2012 Phuldai made an application to remove the subject property from Slum Rehabilitation Scheme in view of the Decree. Pursuant to a hearing an Order was passed by the CEO SRA on 26th February 2015. This Order is unchallenged.

4.14) On 28th September 2017 a revised LoI was issued.

4.15) On 31st May 2021 the Petitioner i.e. Jyoti purchased the property admeasuring 12606.7 sq. mtrs. from Vikas.

4.16) On 26th March 2022 Phuldai sold the subject property to Respondent No.4 i.e. Alchemi.

4.17) On 18th April 2022 Alchemi made an application for implementing a slum scheme on the subject property, that was granted on 1st June 2022.

4.18) Displeased with the NOC granted to the rival Alchemi, Jyoti

filed Writ Petition (L) No. 23703 of 2022. Upon hearing the rival contentions this Court passed an Order dated 2nd August 2022 directing the SRA to consider all contentions, requests and objections of the parties and decide the same. It further directed not to implement its Orders for further 10 days if adverse to Jyoti.

4.19) Accordingly, Jyoti filed an application before SRA seeking implementation of the Order dated 6th February 2015.

4.20) Upon hearing both parties CEO SRA passed Order dated 3rd October 2022 rejecting application of Jyoti to acquire the subject property and allowing application of Alchemi to develop the subject property.

4.21) For the sake of completeness of the record it is noted that, on 27th April 2023 Alchemi filed Suit No.103 of 2024 in this Court, inter alia challenging, the conveyance executed between Jyoti and Vikas. That Alchemi has not obtained any relief in the said suit.

4.22) On 30th October 2023 the AGRC allowed Jyoti's Appeal and rejected Alchemi's application challenging part OC granted to Jyoti. This Order was challenged by Alchemi in Writ Petition No.449 of 2024 and upon hearing the parties this Court passed an order dated 11th March 2024 and directed the AGRC to adjudicate upon the issues framed in the said order.

4.23) It is this Order of AGRC dated 7th October 2024, is challenged in this Petition.

5) Mr. Kadam for Petitioner impugns AGRC's Order dated 7th October 2024 on several grounds:

5.1) He contended that the AGRC could not have opined on title and Phuldai's right over the subject property and comment on whether she had lost or waived her right during the pendency of the Appeal.

5.2) That the successor, CEO SRA would have no right to ignore or refuse to implement the previous CEO SRA's Order dated 26th February 2015.

5.3) He further urged that the AGRC erred in permitting Alchemi to propound a new slum scheme in the absence of slums because the statutory obligation to rehabilitate the 34 slums dwellers on the subject property was already fulfilled by Jyoti as per SRA record on the subject property. That Jyoti accrued an indefeasible right to the benefit under the Slums Act including acquisition of the subject property for having undertaken implementation of the SR Scheme.

5.4) That only Jyoti was entitled to the benefit of rehabilitating the slums dwellers and the AGRC has clearly erred in granting an LoI of the subject property to Alchemi.

5.5) Mr Kadam then argued that the findings of the AGRC are self-contradictory. On the one hand, the AGRC has held that the slum dwellers of the subject property have been rehabilitated as per the SRA records and

on the other hand, has held that the CEO SRA should examine and inspect the factual position as to whether there are slum dwellers on the plot and directed them to take appropriate steps to determine as to whose claim is correct whether that of Jyoti or Alchemi in accordance with the SRA norms.

5.6) According to him, once the AGRC's record evinced that, the slum dwellers have already been rehabilitated, then it ought to have conclusively held that Alchemi cannot propound a slum scheme under Regulation 33(10) of the DCPR 2034. Thus, the two findings are mutually destructive and the issuance of LoI renders the contest in the pending proceedings futile.

5.7) Mr. Kadam argued that prayer clause (b) of the Petition is to implement the Order of the SRA dated 26th February 2015. That the Order dated 26th February 2015 has attained finality and Alchemi who substitutes Phuldai is estopped from challenging it as Phuldai had not challenged it. That, on the Larger Property there were around 498 slum dwellers, who have been rehabilitated by Jyoti. That as per the order of 2015, Alchemi is only entitled to monetary compensation upon acquisition of the subject property and none else.

5.8) Referring to the list of hutment dwellers attached with Alchemi's scheme, Mr. Kadam submits that, it evinces that 10 out of 34 belong to Phuldai's family itself. He reiterates that the original 34 slum

dwellers on the subject property were already rehabilitated by the Petitioners in 2022 on the larger property. Thus, in the absence of slum no slum scheme can be proposed. He therefore submits that, the list of slum dwellers attached by Alchemi is a bogus list.

5.9) Mr. Kadam submits that the CEO SRA could not have reviewed the earlier order of 2015, nor could it have given a go-by whilst considering the slum scheme of Alchemi. In support of this contention he referred to the Supreme Court's judgment in the case of *Kapra Mazdoor Ekta Union Vs/ Birla Cotton Spg. And Weaving Mills Ltd. & Anr. reported in (2005) 13 SCC 777*. Referring to paragraph No.19 of the said judgment he submitted that review was not permitted unless it was statutorily backed.

5.10) Mr. Kadam referred to the Supreme Court's decision in the case of *Deoki Nandan Parashar vs. The Agra Distt. Co-Operative Bank, Agra and Others reported in (1973) 2 SCC 303* to submit that, a successor to a quasi-judicial post simply cannot withdraw or ignore or review his predecessor's order, whether it be right or wrong, unless empowered by Statute.

5.11) Mr. Kadam referred to *Murlidhar Teckchand Gandhi & Ors. V/s. State of Maharashtra & Ors.* to submit that Section 14 is not conditional upon Chapter I-A from Section 3A to 3W of the Slums Act which contains provisions as to Slum Rehabilitation Scheme. He submitted that under Chapter I-A the Slum Rehabilitation Scheme has a totally different object

and pertains to procedure in respect of Slum Rehabilitation. He submitted that provisions of Chapter III do not deal with the acquisition at all and do not contain any express or implied stipulation with regard to acquisition under Section 14. He therefore submitted that the Court cannot impose stipulations under Chapter III to the step of acquisition taken by competent authority under Section 14 as it would be against the legislative intent. Referring the Notice dated 23rd May, 2022 he submitted that the same would not be applicable to Alchemi since the facts in this case were different.

5.12) Mr. Kadam then referred to case of *Rajesh G. Jain Vs. State of Maharashtra & Ors.* and submitted that, the principles laid down in the case of *Indian Cox Pvt. Ltd.* was not applicable to Jain's case as in this case the 34 slum dwellers were part of Annexure-II were already rehabilitated by Jyoti in the rehabilitation component constructed by them. Therefore, as in Jain's case there was no question of considering preferential right of Alchemi for the redevelopment of the subject property.

5.13) Mr. Kadam then referred to case of *Deena Pramod Baldota V/s. State of Maharashtra & Ors.* to submit that there is no statutory provision in the Slum Act which provided for a notice to be issued by the SRA for acquisition proceedings. It held that the acquisition proceedings initiated by SRA would not be rendered bad in law for want of notice to the owners. He

submitted that as in the case of *Deena Baldota* (Supra) even in the present case, the owner Phuldai had ample knowledge of the consequences of declaration of the subject property as a slum and slum rehabilitation area.

5.14) Mr. Kadam then referred to Apex Court's decision in the case of *Chiranjilal Shrilal Goenka V/s. Jasjit Singh & Ors. [(1993) 2SCC 507]* to submit that the characteristic attribute of a judicial act is that it binds whether it be right or wrong. He submitted that the Supreme Court laid down an authority to proposition of law that the jurisdiction could be conferred by statute and the Court cannot confer jurisdiction on any Authority or Tribunal. He thus submitted that by directing the SRA to look into the matters contended by Jyoti and Alchemi was an inherent error and therefore could not be done as it would mean conferring jurisdiction on an authority that was not conferred by statute.

5.15) Mr. Kadam submits that, both Jyoti and the Alchemi agree that the subject property is declared a slum under Section 4. That the AGRC has failed to deal with the proposition as to whether Phuldai did have a preferential right and if yes did she waive it. Instead of rendering a finding on the aforesaid proposition it decided on the basis of title which has no co-relation with the above contentions. He argues that it is undisputed that by virtue of the Memorandum of Understanding executed on 9th February 1992 it is evident that Phuldai had waived or rather chosen to give up

her preferential right to develop the property to Harishree.

5.16) Mr. Kadam submits that, whilst on the one hand the AGRC proceeds on the basis that the title to the subject property is in dispute and subjudiced before the High Court on the other hand, it holds that Alchemi has a preferential right based on the deed of conveyance executed between them and Phuldai. Thus, he submits that, the two findings of the AGRC are mutually contradictory. That the finding of the AGRC in paragraph No.152 evinces that the AGRC has taken contradictory stance. He submits that similarly in paragraph 154 the AGRC observes that Phuldai and Alchemi appear to be owners of the subject property and on the other hand has concluded that since they had shown the willingness to redevelop the property in accordance with the SRA norms, claiming preferential right, the same could not be taken away from them. Mr. Kadam submits that on a plain reading of these findings, the AGRC Order cannot be sustained and deserves to be set aside.

5.17) Regarding Phuldai's contention that, she was unable to propound a slum rehabilitation scheme due to the operation of the City Space Order dated 31st July 2002 he submits that, there was no explanation tendered by Phuldai as to what she did after acquiring the rights in the subject property for a decade from 1992 to 2002. He argues that the contention of City Space Order being a hurdle to propounding the slum scheme is clearly an

afterthought. According to him Phuldai has rendered no explanation as to why no application was made to the Court seeking permission to develop the property as per the High Court Orders in City Space. He argues that this contention is taken up for the first time by Alchemi in rejoinder to this Writ Petition challenging the first AGRC order.

5.18) Mr. Kadam then submits that the AGRC has not dealt with the contention of the Petitioners about the SRA's power to review. He submits that the AGRC has failed to deal with the said submission. With regards to the notification dated 23rd May 2022 he submitted that on 23rd May 2022 all the slum dwellers on the subject property were rehabilitated and therefore preferential right stood extinguished. He therefore submitted that even if the notification would be applicable it would not help Phuldai and Alchemi. He submitted that the reliance on the notification by Phuldai and Alchemi is misconceived and unmeritorious. He submitted that the notification does not apply to slum schemes where rehabilitation was fully implemented which in this case, as per the records of the SRA, the slum dwellers were rehabilitated by the Petitioners prior to the Notification.

5.19) In view of the aforesaid Mr. Kadam submits that the Order of the AGRC dated 7th October 2024 deserves to be set aside and the SRA be directed to proceed with the acquisition of Alchemi's property in accordance with the SRA's Order dated 26th February 2015.

6) Mr. Chinoy representing Alchemi asserted that, they are owners of the subject property by virtue of a duly registered Deed of Conveyance from Phuldai whose name was recorded in the Record of Rights. He submitted that on 9th February 1992 since Harishree had failed to perform its obligations under the MoU and Phuldai had terminated the same. He submitted that the Hon'ble Court by its order dated 28th April 1995 in the Notice of Motion No.146 to of 1995 in Suit No.1514 of 1995 has held that, the Court was not satisfied about the existence of the agreement and the possession of the Plaintiff (Harishree) in respect to the subject property. He submitted that on 6th April 2000 the Suit filed by Harishree against the Phuldai for specific performance of the MoU was dismissed for default. He therefore contended that Harishree had wrongfully included the subject property in the SR scheme for a larger area and on which basis the first Letter of Intent was issued. He argued that even as early as on 9th March 2000 Phuldai had addressed several correspondences to the SRA pointing out that she was the owner of the said subject property and had sought details with regard to the SR scheme. On 17th April 2000 in one such correspondence the SRA had replied to Phuldai Yadav that the subject plot that she was claiming was excluded from the SR scheme and hence the copies of the SR scheme could not be supplied to her. He submitted that since Phuldai was apprehending a forcible entry into her property by Harishree, she filed a suit bearing 108 of 2000 before the City Civil Court,

Dindoshi and sought an injunction restraining them from constructing a compound wall and/or erecting any construction on the subject property. He submitted that by virtue of all the representations by Phuldai the subject plot was kept in abeyance since it was also affected by the RG reservation. Mr. Chinoy relied upon the LoI dated 4th June 2004 to submit that Phuldai's property was separated out and was kept in abeyance which was evinced by the LoI. He relied upon the clauses 23 and 35 of LoI dated 4th June 2004 and clauses 12, 21, 23, 25, 33 & 37 of LoI dated 9th August 2005 in support of his contention.

6.1) He submitted that the LoI issued on 9th August 2005 expressly deducted Phuldai's subject property by keeping it in abeyance. The clauses 21 and 25, evinces and substantiates his contention that, Phuldai's subject property was not considered in the slum scheme. Mr. Chinoy relied upon the observation by the Court in Suit No.1018 of 2000 where it held that:

“the correspondence, oral and documentary evidence on record is specific to prove that this property is excluded from SRA Scheme.”

6.2) He submitted that this clearly evinced that the subject property belonging to Phuldai Yadav was excluded from the SR scheme and that she was in possession of the said plot. He referred to the various observations made by the CEO SRA in its order dated 26th February 2015 and stated that it clearly evinced that the subject property was owned by Phuldai Yadav,

and the developer was required to carve out the RG plot for this said SR scheme before applying for Occupation Certificate for the sale building. He further submitted that even as per the latest revised LoI dated 28th September 2017 the area of the subject property was kept in abeyance. Mr. Chinoy laid emphasis on the deed of conveyance between Vikas and Harishree which was rectified to state that there was no deed of conveyance dated 9th February 1992 between Harishree and Phuldai. He therefore submitted that Harishree has all throughout misrepresented that they were owners of the subject property to the SRA as well as Vikas which had been eventually rectified by a Deed of Rectification dated 1st February 2023. He submitted that, all this clearly evinces that the entire exercise of Jyoti before the SRA was based on a misrepresentation. Mr. Chinoy submitted that pursuant to the purchase of the property from Phuldai, Alchemi had applied for an SR scheme before the SRA. The Petitioners on the other hand filed a Writ Petition (L) No.23703 of 2022 in the Court seeking directions to the SRA to initiate acquisition proceedings as per the SRA's order of 2015 apart from other reliefs. Since Alchemi opposed those directions in the Petitioners' Writ, the Court directed the SRA to consider both claims of Jyoti as well as Alchemi and if there was any order adverse to Jyoti, the same should not be implemented for a period of 10 days. He submitted that it was only after the Order passed by the Hon'ble High Court dated 2nd August 2022 that the SRA made an Order dated 3rd October 2022. Mr. Chinoy

submitted that by an Order dated 30th October 2023 the AGRC set aside the CEO SRA's Order dated 3rd October 2022 and directed the SRA to initiate acquisition proceedings in respect of the said land. By a Writ Petition No.449 of 2024, Alchemi sought to set aside the AGRC's order. This Court by its order dated 11th March 2024 called upon the AGRC to decide the questions stated in the said order. The AGRC after considering the contentions of both parties has upheld the Order of the SRA.

6.3) The mandatory Notice under Section 14(1) required under the Slums Act has not been issued to Phuldai. The Notification too gives rise to a preferential right for the owners to opt for development under an SR Scheme. He further submitted that the judgments do not bear out the issue in the case and therefore are not worth commenting on. Mr. Chinoy also submitted that the AGRC Order is adequate to sustain, though it may not be happily worded, as no part of the Order is illegal. He therefore submits that the Petition must be dismissed.

7) Mr. Ankad for Phuldai concurs with the arguments of Mr. Chinoy. In addition to those he adds that Phuldai's rights are established under registered document since 1991. He submits that the documents evince that the rights in the property were neither transferred to Harishree or Vikas or any other person other than Alchemi. He submitted that on account of objections raised by her before the SRA, all the LoI's evince that

her land was kept in abeyance. He reiterated that her land could not be developed on account of the judgement in the City Space case. He submits that Harishree and Vikas were developing the adjoining land to which he does not have any dispute. But by the dismissal of Harishree's Suit, its claim came to an end and attained finality. Phuldai through her injunction suit had succeeded to stall the encroachment or usurpation of their land by Harishree and Vikas.

8) Mr. Khandeparkar representing Respondent No. 6 contended that the LoI at pages 114, 121 and 123 would evince that the LoI had included the subject property and thus the consequences of acquisition were necessary to follow. He referred to page 241 to state that the persons shown in the list were persons of Phuldai family and thus not slum dwellers.

9) Mr. Kadam in rejoinder submits that the 2015 Order clearly gives the FSI benefit to the Jyoti.

9.1) He submits that the title is not clear since the Appeal which is a continuation of the Suit is still pending before this High Court. He raised the question that, whether Alchemi can get any benefit of the land if the issue of Alchemi's title was pending for decision before the High Court. He submits that under these circumstances, on the face of it, would not permit to the AGRC to derive a conclusion in any manner whatsoever or to grant any benefit to Alchemi. Thus the contention that the subject property is

excluded based on the letter should not accepted. He next submitted that the letter at page 945 is a bogus and fabricated letter because it is signed by the City Survey Officer who obviously has no Authority to sign on the letter of the letterhead of SRA. He next submitted that the Authority has taken no decision on Vikas's Application of 22nd August 2022. He then submitted that the Order of the CEO SRA is a quasi-judicial Order since it has a trapping of a Court, it must be backed by statute if it is to be reviewed. He argues that the Order of 2022 passed by the CEO SRA was erroneous as he had no power to again look into the predecessor's Order and thereby review the same.

9.2) He submits that, in any event Alchemi cannot develop the land as there is no slum scheme possible because these slums that were on the said land have been relocated and the concerned persons have been rehabilitated. He submits that it does not matter whether the dwellers were rehabilitated in a PAP tenement. He submitted that much was to be said about the list of slum dwellers in Phuldai/Alchemi Application before the SRA. Out of the 34 slum dwellers he submitted that serial Nos.1 to 20 were already a part of their scheme and were rehabilitated and almost 10 of them were belonging to the earlier owners that is Phuldai Yadav. Thus since there was no slum, the owners Alchemi would not be in a position to get any benefit of the slum scheme. He submitted that once a person is

declared as a slum dweller and recognized as an eligible slum dweller in an Annexure-II Alchemi can have no say about their being rehabilitated in PAP or otherwise. He therefore submitted that the Petition deserves to be made absolute.

10) We have considered arguments of the counsels and perused entire record.

11) We are in respectful disagreement with Mr. Kadam's arguments.

Reasons & Conclusion:

12) First of all, it was a co-ordinate bench of this Court which, by its Order dated 11th March 2024, formulated specific questions to be addressed by the AGRC. Those questions were clearly set out as issues and adequately answered by the AGRC. Upon a careful examination of the AGRC's Order dated 7th October 2024, we find no error or illegality in the AGRC's findings that would warrant setting them aside, as argued by Mr. Kadam. We concur with the findings of the AGRC.

13) We briefly analyze the said Order as under:

13.1) Regarding the issue no.1, the AGRC has rightly observed that section 14(1) of the Slum Act is applicable and in our view there is no ambiguity in this finding. However, compliance with the conditions of section 14 of the Slums Act is mandatory. The section is being reproduced

herein below for ready reference:-

“14. Power of State Government to acquire land

(1) Where on any representation from the Competent Authority it appears to the State Government that, in order to enable the Authority [to execute any work of improvement or to redevelop any slum area or any structure in such area, it is necessary that such area, or any land] within adjoining or surrounded by any such area should be acquired the State Government may acquire the land by publishing in the *Official Gazette*, a notice to the effect that the State Government had decided to acquire the land in pursuance of this section:

Provided that, before publishing such notice, the State Government, or as the case may be, the [Competent Authority] may call upon by notice the owner of, or any other person who, in its or his opinion may be interested in, such land to show cause in writing why the land should not be acquired with reasons therefor, to the [Competent Authority] shall, with all reasonable despatch, forward any objections so submitted together with his report in respect thereof to the State Government and on considering the report and the objections, if any, the State Government may pass such order as it deems fit.]

[1(A) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.]

(2) When a notice as aforesaid is published in the *Official Gazette*, the land shall, on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances.”

[Emphasis supplied]

13.2) A co-ordinate bench of this Court in the case of *Indian Cork*

Mills Private Limited vs State of Maharashtra reported in 2018 SCC OnLine Bom 1214 specifically held in paragraph 101 that the proviso to section 14 of the Slums Act places an obligation on the State Government to consider the SRA's reports as well as the objections raised by the owner to the acquisition. Based on such material, the State Government must then pass an appropriate order as it deems fit. Even the judgement in the case of *Murlidhar Teckchand Gandhi* (supra) relied upon by Mr. Kadam, specifically held in the unnumbered paragraph at page 16:

“The State can make acquisition subject to conditions prescribed in provisions contained under section 14 of the Act.”

It is evident that the steps contemplated under section 14 (1) have not been undertaken to date despite the Order dated 26th February 2015.

13.3) With reference to issue no.2 – whether Alchemi was entitled to submit a scheme for the subject property – the AGRC has rightly observed that, since Phuldai's rights to the subject property have not been rejected by any Court, they remain entitled to submit a scheme redevelopment. The AGRC has also rightly clarified that this entitlement is subject to the outcome of pending proceedings before the Hon'ble High Court.

13.4) Regarding issue no.3, – whether the subject property was included in the slum scheme – the AGRC has correctly concluded that the subject property is not included, based on the correspondence with Jyoti.

13.5) With respect to issues nos. 4 to 8, the AGRC has rightly held that Phuldai/Alchemi would have a preferential right, and this right was not waived. Mr Kadam's argument, relying on the judgements in the cases of *Deena Pramod Baldota* (supra) and *Rajesh G Jain* (supra), that Phuldai had knowledge of the situation but took no steps, is of no assistance to the Petitioner. This is because Phuldai had consistently asserted her rights over the subject property.

14) Additionally, even as per Jyoti the benefits of subject property were excluded. Furthermore, in light of *Citispac vs. State of Maharashtra* ("*Citispac*") Order dated 31st July 2002 in Writ Petition No 1152 of 2002 read together with the Order dated 25th July 2014, no new scheme could be implemented on the land reserved for garden. This was the view of the CEO SRA in Order dated 26th February 2015 where he noted the following:

“ Further with regard to the land owned by Respondent No 2 viz. Shrimati Phuldai R Yadav, the record shows that the said land is reserved for recreation ground and therefore the same cannot be developed in view of the order dated 31-7-2002 passed by the Honourable High Court at Bombay in Writ Petition No 1152 of 2002 [*Citispac v State of Maharashtra*]. However since the land is occupied and encroached by the Slum Dwellers, they are required to be rehabilitated as Project Affected Persons and it is the responsibility of the developer to handover the RG plot of land to MCGM.”

It was only after 1st March 2022 that an owner could propose a

scheme for such property. Therefore, the question of Phuldai attempting to propound a scheme post SRA's order of 26th February 2015 does not arise.

15) Regarding the contention of Mr. Kadam that, the CEO SRA whilst passing the Order dated 3rd October 2022 had reviewed the Order dated 26th February 2015, – we reject it outrightly. We clarify that the CEO SRA acted solely in compliance with the Court's directive to examine the contentions raised by Jyoti and Alchemi in Jyoti's Petition itself, which opposed the implementation of S R Scheme on the subject property by Alchemi. The CEO SRA's role was limited to addressing the rival contentions and did not involve reopening or reconsidering the earlier decision. Therefore Mr Kadam's claim that the CEO SRA "reviewed" the matter is unfounded and is hereby rejected. Consequently, the judgements of *Kapra Mazdoor Ekta Union* (supra), *Deoki Nandan Parashar* (supra) and *Chiranjilal Shrilal Goenka* (supra) cited by Mr. Kadam will render no assistance to the Petitioner.

16) We agree with Mr. Chinoy's argument that Jyoti has already benefitted from accommodating the slum dwellers under the scheme by receiving necessary FSI under the Rules. Therefore, the cost of relocation has effectively been compensated to Jyoti.

17) The AGRC has rightly asked the SRA to 'look into' the matter. We now expect that the SRA will not adopt a contrary stance, especially

after recording that the slum dwellers on Phuldai's plot have been already allocated apartments.

18) Considering the case from another perspective, in our view, first Harishree and now Jyoti's intent appears on usurping Phuldai's land in some form or manner and to deprive her of her legitimate benefit under the law.

18.1) It is undisputed that prior to the slum scheme proposed by Harishree, a MoU was entered into between Phuldai and Harishree with the intent to purchase Phuldai's land for consideration. For reasons unknown, that MOU failed. However, Harishree proceeded with the slum scheme, assuming they would acquire Phuldai's land at a later stage. A significant portion of the plot (approximately 1905 sq. mtrs.) remained vacant, as evidenced by the MOU. The LoI's issued from time-to-time further confirm this fact.

19) A comparison of LoI dated 4th June 2004 and 9th August 2005 reveals that not only was the area of the plot reduced, but the number of slum dwellers slated for rehabilitation was also reduced from 574 to 472. It is undisputed that the conditions outlined in the LoIs required Harishree - and later Vikas – to produce title documents and clear the land concerning Phuldai Yadav's plot. Since this was not accomplished, the utilization of the FSI was kept in abeyance.

20) Pausing here for a moment, we ask ourselves: what remained on the plot apart from FSI? There were only 34 slum dwellers on a specific portion of the subject property that needed rehabilitation. It is undisputed that this plot was reserved for garden and HD purposes, meaning that the land had to remain open and vacant. The FSI was, therefore, the only component to be utilised – either on the same plot or elsewhere.

21) As the FSI of the said plot was kept in abeyance, it raised a significant question about the land's inclusion in the scheme. The LOIs clearly demonstrate that the SRA was not convinced about Harishree's or Jyoti's title to the subject property. Even the CEO SRA's order dated 26th February 2015 noted that Jyoti will have to give clear title to MCGM. In our view it meant that Jyoti was required to acquire it and that which its predecessors had intended and based on which proposed the scheme.

22) We believe that Harishree and now Jyoti, assumed they would purchase the land from Phuldai and, in anticipation relocated the slum dwellers. However, the critical question is, if someone decides to relocate and clear the slum dwellers from someone else's plot, can they subsequently claim beneficial rights of the plot? In our view, the answer is in the negative. Notably, Phuldai was never called upon to develop the subject property as per Section 14(1) of the Slums Act. There is an inexplicable delay in enforcing the 26th February 2015 Order.

23) What Jyoti did during seven years between 2015 to 2022? In our opinion, seeking acquisition now appears to be an attempt at a backdoor entry. If Jyoti intended to acquire the property, they could have purchased it. They did not and Alchemi did. Therefore, any benefit or loss concerning the property rightfully belongs to Alchemi alone.

24) Jyoti cannot claim a right over the property simply because they rehabilitated the slum dwellers. At best, they are entitled to compensation, which, in our view, has already been provided by granting them an equivalent and/or adequate area for sale.

25) We reiterate that we find no error or illegality in the AGRC's findings that would warrant setting them aside. We thus concur with the findings of the AGRC. In view of the above deliberation, we find no merits in the Petition and therefore dismiss it.

26) In view of disposal of Writ Petition, Interim Application No.3341 of 2024 does not survive and the same is accordingly disposed off.

27) At this stage, learned counsel for the Petitioner submitted that the Petitioner intends to challenge the present judgment and Order before the Hon'ble Supreme Court and therefore seeks continuation of the ad-interim relief granted in favour of the Petitioner since 2nd August, 2002 for a period of four weeks from today.

28) Learned counsel appearing for Respondent No.4 vehemently

opposed the said application and submitted that now that the Petition has been adjudicated on merits, there is no need to stay the effect and implementation of present Order.

29) Since our Order does not trigger any immediate action by any Authority, we find no reason to grant stay to the effect and implementation of the present judgment and Order. The said request is accordingly rejected.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)