

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3970 OF 2024

Bhavani Shankar CHSL (Proposed) & Anr.	...Petitioners
<i>Versus</i>	
Slum Rehabilitation Authority & Ors.	...Respondents

Mr. S.U. Kamdar, Senior Advocate a/w Mr. Naushad Engineer, Senior Counsel, Mr. Shrey Fatterpekar, Ms. Mehak Shah, Mr. Ameet Mehta, Mr. Nirav Marjadi, Ms. Rebha Dogra, Mr. Sanil Gada, Mr. Kushal Harnesha i/by Solicis Lex for Petitioners.

Mr. Vineet Naik, Senior Advocate a/w Ms. Madhura Shah, Ms. Disha Parekh, Mr. Miheer Jayakar i/by Neha Bhosale for Respondent Nos. 1 to 3.

Mr. Mayur Khandeparkar, Advocate a/w Mr. Aditya Miskita, Ms. Netra Jagtap i/by Tanuja Murudkar for Respondent No.4.

Mr. Aseem Naphade, Advocate a/w Mr. Sanjeel Kadam i/by Kadam & Company for Respondent No.5.

Mr. Vijay D. Patil, Senior Advocate i/by Mr. Yogesh Patil, Mr. Abhijeet Patil for Respondent No.6-AGRC.

CORAM: MADHAV J. JAMDAR, J.
DATED : 28th April 2025.

JUDGMENT :

1. Heard Mr. Kamdar, learned Senior Counsel for the Petitioner, Mr. Vineet Naik, learned Senior Counsel for Respondent Nos.1 to 3, Mr. Mayur Khandeparkar, learned Counsel for Respondent No.4, Mr. Aseem Naphade, learned Counsel for Respondent No.5 and Mr. Vijay Patil, learned Senior Counsel for Respondent No. 6- AGRC.

[I] CHALLENGE :

2. By the present Writ Petition filed under Article 226 of the Constitution of India, the challenge is to the legality and validity of the Order dated 27th June 2024 (Exh A/Pages 25 to 33) passed by the Apex Grievance Redressal Committee, Government of Maharashtra in Application No.44 of 2024 as well as the Order/letter dated 11th January 2024 of the Executive Engineer-3, Slum Rehabilitation Authority (“SRA”) (Exh I/Pages-126).

3. By the impugned Order dated 11th January 2024 of the Executive Engineer-3, Slum Rehabilitation Authority, Mumbai, the proposal submitted by the Petitioner No.2 for slum redevelopment of subject property has been rejected on the ground that although the Petitioner No.2 has been directed to comply with several formalities, the Petitioner No.2 has not complied with the same and therefore, Petitioner No.2 is not interested in undertaking the scheme. Another ground given for the rejection is that the necessary NOCs have to be obtained from Town Planning Department, District Superintendent of Land Records Department, Deputy Collector Department, Co-operation Department and Finance and Controller

Department, however, only the NOC from Town Planning Department was obtained and in effect the proposal submitted by the Petitioner is not complete. The said Order passed by the Respondent No.3-Executive Engineer No.3, SRA has been confirmed by the Apex Grievance Redressal Committee (“AGRC”) by the impugned Order dated 27th June 2024.

[II] SUBMISSIONS OF MR. KAMDAR, LEARNED SENIOR COUNSEL ON BEHALF OF THE PETITIONERS :-

4. Mr. Kamdar, learned Senior Counsel raised following submissions :

(i) The impugned Order dated 11th January 2024 passed is in breach of the principles of natural justice. As the Petitioner’s proposal was under scrutiny, the Respondent No.3- Executive Engineer-3, SRA was required to issue show cause notice. The Scheme for Slum Rehabilitation was submitted by Petitioner No.2 on 5th March 2020. It is submitted that on 11th January 2024, the Petitioner’s proposal was pending before the Respondent No.1 for scrutiny. He pointed out letter dated 21st November 2023 (Page-118)

addressed by the Head Clerk of Respondent No.1-SRA to the Deputy Director of Land Records (City Survey Department) forwarding the documents submitted by the Petitioner No.2 and requesting the Deputy Director of Land Records to forward opinion of the Department of Director of Land Records in respect of the same. He submitted that in fact the Deputy Director of Land Records issued opinion/NOC in favour of the Petitioners on 5th February 2024 (Page-130) i.e. immediately after rejection of the Petitioner's proposal by Respondent No.3.

(ii) Learned Senior Counsel relied on the Judgment of the Division Bench of this Court in the case of **Atesham Ahmed Khan Vs. Lakadawala Developers Pvt. Ltd.**¹ and submitted that the Slum Rehabilitation proposal cannot be recorded by Respondent No.1 without complying with the principles of natural justice, even when the proposal was at the scrutiny stage. Learned Senior Counsel also relied on the Judgment of Division Bench of this Court in the case of **Adarsh Estate Sahakari Griha Nirman Sanstha Maryadit (Proposed)**,

1 (2011) SCC OnLine Bom 239

Mumbai Vs. State of Maharashtra². Learned Senior Counsel further submitted that although the contention raised by the Respondents is that the show cause notice is required to be given only when the proposal was accepted by the Respondent No.1 and not before that, as the said contention was raised on the basis of Circular No.144, it is submitted that both the judgments of the Division Bench cited above were passed prior to issuance of the Circular 144. Learned Senior Counsel submitted that the procedure followed by Respondent No.1 was that when a proposal was submitted by a prospective developer, a number was assigned to it and scrutiny fees were accepted from such prospective developer and the proposal was sent for scrutiny thereafter. It is in this context, this Court has used the word “acceptance” in the two judgments. He submitted that under Circular 144, scrutiny fees is required to be paid after completion of such scrutiny. It is submitted that merely because the stage at which scrutiny fees is payable is changed, the law laid down by this Court would not cease to be applicable. He submitted that, the contention raised by the Respondents that Circular 144 does

2 2014 SCC OnLine Bom 87

not provide for issuance of a show cause notice or hearing to be provided to the Petitioner has no basis as the law in that regard is laid down by the above Division Bench judgments.

(iii) Learned Senior Counsel relied on the decision of the Supreme Court in the case of **State Bank of India Vs. Rajesh Agarwal**³ and submitted that when an action results in civil consequences, it is mandatory to provide an opportunity of being heard even when the regulations or rules in question do not specifically provide for such hearing to be given.

(iv) Learned Senior Counsel submitted that the impugned Order dated 11th January 2024 has been passed recording the proposal of the Petitioner in a *malafide* manner and only to favour the Respondent No.5. He submitted that the factual position that the Petitioner's proposal was recorded by the impugned Order dated 11th January 2024 and the Respondent No.5 submitted its proposal on the very next day i.e. on 12th January 2024 clearly shows that the impugned Order has been passed for the *malafide* purpose of favouring

3 (2023) 6 SCC 1

the Respondent No.5. Learned Senior Counsel pointed out that even the Respondent No.1 has entertained another proposal of one M/s Suraj Developers during pendency of the Petitioner's proposal and same was also contrary and in the teeth of the law laid down by the Division Bench of this Court in the case of **Awdesh Vasistha Tiwari Vs. Chief Executive Officer, Slum Rehabilitation Authority**⁴. The processing of M/s Suraj Developer's proposal is also contrary to Circular 144, which in categorical terms prohibits the Head Clerk from even receiving a proposal, if a previous proposal for the same slum plot is pending. He submitted that the said action of SRA is also contrary to the law laid down by this Court in the case of **Vilas Rambhau Chaudhari Vs. Slum Rehabilitation Authority**⁵ He submitted that it is the settled legal position that even when one proposal is at the stage of scrutiny i.e. pre-acceptance, under Circular 144 the Respondent No.1 cannot entertain another proposal i.e. two proposals simultaneously at one time cannot be entertained even at the stage of scrutiny as the same would be contrary to the

4 2006 SCC OnLine Bom 481

5 2024 SCC OnLine Bom 1432

provisions of Circular No.144 itself and the judgment in the case of **Awdesh Tiwari** (supra). He pointed out paragraph 5.2 (page-1024) of Affidavit dated 22nd October 2024 of Mr. Dinesh Mahajan, Executive Engineer of S.R.A. filed on behalf of Respondent Nos. 1 to 3 contending that there is no prohibition on two proposals being entertained at one time and that therefore, the proposal of the Respondent No.5 could have been entertained even prior to 11th January 2024. Learned Senior Counsel submitted that thereafter the Respondent Nos.1 to 3 during submissions admitted that had the Petitioner's proposal was not recorded on 11th January 2024, they could not have accepted Respondent No.5's proposal on 12th January 2024. Thus the stand taken in said Affidavit dated 22nd October 2024 also clearly shows that the impugned Order dated 11th January 2024 has been passed for the *malafide* purpose of favouring Respondent No.5. The illegal actions of Respondent No.5 can be seen from the fact that when the Respondent No.5 has submitted a proposal on 5th March 2021 and when the said proposal was pending for scrutiny, the Respondent No.5 continued to obtain necessary consents for his proposal, by taking on its side the very same

persons who had given consent to the Petitioners. It is submitted that the proposal of the Petitioner and said Suraj Developers have been rejected after Respondent No.5 obtained requisite consents. Learned Senior Counsel submitted that *mala fide* manner in which the Respondent Nos.1 to 3 acted can be seen from the fact that by identical letters, the proposal submitted by the Petitioner and proposal submitted by said Suraj Developers have been rejected i.e. on the very day i.e. on 11th January 2024. Learned Senior Counsel submitted that the factual position on record clearly shows that the Petitioner No.2's proposal was only recorded to facilitate submission of a fresh proposal by the Respondent No.5.

(v) Learned Senior Counsel submitted that the Respondent No.1 has acted in a manner favourable to the Respondent No.5 even after the proposal of the Petitioner has been recorded. Learned Senior Counsel submitted that in the Appeal filed by the Petitioner an Order dated 11th March 2024 was passed by the Respondent No.6 directing parties to maintain status-quo in the matter, however, in breach of the

same, Respondent No. 1's Financial Controller issued NOC in favour of the Respondent No.5 on 15th March 2024. He submitted that therefore the entire action taken by Respondent Nos. 1 to 3 is *malafide* and to benefit Respondent No.5.

(vi) Learned Senior Counsel submitted that the order dated 11th January 2024 has been passed without application of mind on the ground that the Petitioner had not obtained required NOCs as required in the Circular No.144. He relied on letter dated 21st November 2023 and submitted that reference to the letter dated 15th March 2022 in the impugned letter/Order dated 11th January 2024 is entirely misconceived. He submitted that by the letter dated 21st November 2023 of the Head Clerk of Respondent No. 1 *inter alia* forwarded the documents submitted by the Petitioners to the Dy. Director of Land Records and requested for an opinion in respect of the same. Importantly, this letter refers to the earlier letter dated 15th March 2022 and records that the Petitioner No.2 had requested that their proposal be reassessed by the Dy. Director of Land Records. It is thus

evident that the letter dated 15th March 2022 was no longer relevant as the relevant documents had been submitted by the Petitioners and the proposal was being scrutinized by the Dy. Director of Land Records. The same is also evident from the fact that the Dy. Director of Land Records in fact issued its NOC on 5th February 2024. Learned Senior Counsel submitted that the impugned Order dated 11th January 2024 is passed arbitrarily without application of mind and in *malafide* manner.

(vii) Learned Senior Counsel submitted that the Respondent Nos.1 to 3 have filed Affidavit-in-Reply and thereafter filed four additional affidavits, by which the Petitioner's proposal further scrutinized raising new grounds for objection. He therefore submitted that the Respondent Nos. 1 to 3 were progressively improving their case and supplementing the original rejection order with new and further grounds. He submitted that this process is contrary to well- settled law, as laid down by the Supreme Court in the case of **Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi**⁶

6 1978 1 SCC 405

and **State of Punjab Vs. Bandheep Singh**⁷. He submitted that apart from that, the action of the Respondent Nos. 1 to 3 to keep on further scrutinising the Petitioner's proposal even after the rejection order, demonstrates the *malafides* on the part of Respondent Nos. 1 to 3 and their intention to favour Respondent No.5.

(viii) Learned Senior Counsel submitted that the assumption of Respondent No.3 that the Petitioner's proposal was incomplete as all NOCs were not obtained is erroneous and contrary to Circular No.144. He submitted that as per Circular No.144, the requirement is that the prospective developer has to submit the application in the prescribed format to the Respondent No.1 and then the Head Clerk of Respondent No.1 has to forward the same to the respective departments for scrutiny and recommendations. He submitted that as the Head Clerk of Respondent No.1 had forwarded Petitioner No.2's proposal to the respective departments, the application of the Petitioner No.2 was found to be in the prescribed form. He therefore submitted that the

7 2016 1 SCC 720

contentions raised by the Respondent Nos.1 to 3 that the Petitioner No.2's application was incomplete has been raised belatedly for the malafide purpose of favouring Respondent No.5. He submitted that in any case, as per Circular No.144, the prospective developer is not required to obtain all NOCs at the time of submission of its application. He pointed out paragraph No.5.1 (c) of Affidavit-in-Reply of Respondent No.1- SRA (Page-1022) and that the stage for obtaining NOCs arises only after the proposal is forwarded to the respective departments and documents sought by such departments are submitted. He submitted that the reasoning given the by Respondent No.3 that the Petitioner No.2's proposal was incomplete as it has not obtained all the NOCs is erroneous and contrary to the Circular No.144. He submitted that the contention raised by the Respondents that the Petitioner No.2 cannot be permitted to continuously improve their proposal is totally misconceived and contrary to the procedure followed by Respondent No.1. He pointed out Affidavit dated 22nd October 2024 filed by Respondent Nos. 1 to 3 wherein it is averred that once the proposal forwarded to the respective departments for scrutiny, the prospective

developer has to coordinate with each of the departments and furnish requisite documents for obtaining the NOC. He therefore submitted that while documents are requisitioned by each department, the same does not mean that the proposal submitted by the Petitioner No.2 is incomplete and is being improved as is sought to be contended by the Respondents. He submitted that the Respondent Nos. 1 to 3 have unlawfully entertained a second proposal during pendency of the Petitioner No.2's proposal and that the Respondent No.1 illegally entertained the proposal of Suraj Developers during pendency of the Petitioner No.2's proposal.

(ix) Learned Senior Counsel submitted that although contention is raised by the Respondents that there is considerable delay by the Petitioner in pursuing its proposal, however, the same will have to be seen in the context of factors which were beyond its control. The proposal of the Petitioner was submitted on 5th March 2020 and within a period of 15 days, restrictions were imposed on account of COVID-19 pandemic in two phases in 2020 and 2021. He submitted that for a period from March 2020 to March 2022

for a large period, there were restrictions. He submitted that therefore there was considerable delay. He submitted that by Order dated 3rd June 2022, the Supreme Court imposed a prohibition on construction activities within an ecologically sensitive zone of a national park. He submitted that as the subject property is adjacent to the Sanjay Gandhi National Park, the processing of the Petitioner's proposal was further delayed. He submitted that in view of said decision of the Supreme Court dated 3rd June 2022, no proposals for development in the affected areas were being processed by all Planning Authorities including Respondent No.1. He submitted that in fact the State Government Authorities by a letter dated 24th August 2022 directed that no construction would be carried out in such areas in cases where permissions were already issued and no further permissions were to be issued.

(x) Learned Senior Counsel submitted that there are about 1872 slum structures on the subject land. The Petitioners submitted the proposal in respect of land bearing CTS No.469/3 in respect of 1000 slum structures, out of which the

Petitioner No.2 had consent of 750 slum structures. It is submitted that one of the terms set out in the NOC of the Town Planning Department is that the Petitioner No.2 ought to include the remaining slums in the future. Therefore, the Petitioner No.2 was required to obtain consent of the remaining 800 odd slum structures as well for which a General Body meeting would have to be convened and a formal resolution be passed. The same was not possible during Covid pandemic related restrictions and in view of the Hon'ble Supreme Court's Order imposing a prohibition on construction activities. It is submitted that when said restrictions were eased in September 2023, the Petitioners convened a meeting of the remaining 800 odd members. In the same meeting held on 26th October 2023, about 450 members out of total 800 slum dwellers provided their consent in favour of Petitioner No.2. Thereafter immediately on the next day i.e. on 27th October 2023, the Petitioners submitted certain documents to various departments of Respondent No. 1 and accordingly NOC dated 5th February 2024 was issued by the Deputy Director of Land Records for a larger area encompassing all 1800 odd slum structures.

Learned Senior Counsel submitted that there is no basis for the contention that for a period of about three years, no steps taken by the Petitioners. It is submitted that the period of said three years will have to be assessed in the context of the factors set out hereinabove. Thus, Mr. Kamdar, learned Senior Counsel submitted that there is no inordinate delay on the part of the Petitioner No.2. Learned Senior Counsel therefore submitted that reliance on the judgments in the case of **Mulchand Savla Vs. Chief Executive Officer, SRA.**⁸, and **Galaxy Enterprises Vs. State of Maharashtra**⁹, has no application to the facts of the present case.

(xi) Learned Senior Counsel submitted that in the Affidavit dated 22nd October 2024 filed by Respondent Nos. 1 to 3, various false statements on oath were made. He submitted that in Paragraph No.7.2 in the said Affidavit details of various documents not submitted by the Petitioner No.2 are set out. Learned Senior Counsel submitted that documents at Serial Nos.1 to 11 pertaining to the Department of Respondent No.1 have never been requisitioned from the

8 2024 SCC OnLine Bom 1042

9 2019 SCC Online Bom 897

Petitioner No.2. He submitted that in fact as the Engineering Department has to process proposal only after the other 5 NOCs are obtained and thus the same stage never arose in the present case. He submitted that as regards the document at Serial No. 12, Respondent Nos. 1 to 3 in their Additional Affidavit pertaining to Annexure II have admitted that this was submitted by the Petitioner No.2. Thus the said statement is admittedly false. It is stated that the said document is not submitted. He submitted that the documents at Serial Nos. 13 to 16, pertains to the Finance Department of Respondent No. 1 and document at Serial No.13 is already submitted along with letter dated 27th October 2023. A statement made in the said Affidavit that the documents not submitted is totally false. He submitted that the documents at Serial Nos. 17 to 21 are concerning City Survey Department and the said documents are submitted and in fact City Survey Department has issued issued NOC dated 5th February 2024. Thus the statement that the documents at Serial Nos. 17 to 21 are not submitted is also a false statement. As far as documents at Serial Nos. 22 and 23 are concerned, the same pertain to the Assistant Registrar, SRA and said documents

were provided along with letter dated 27th October 2023. Learned Senior Counsel submitted that when the matter was being argued, Respondent No.1 filed four further Affidavits, which admitted receipt of documents which were earlier allegedly not to have been provided and setting out new documents which were purportedly not provided by the Petitioners. He submitted that the said conduct of the Respondent Nos.1 to 3 shows that the Respondent Nos.1 to 3 were further scrutinizing the proposal of the Petitioner and raised fresh objections for the first time in the said four Affidavits in order to justify their unlawful rejection of the Petitioner No. 2's proposal. Learned Senior Counsel further submitted that thus the contentions raised in the said Affidavits are totally false and misleading. Learned Senior Counsel submitted that it is well settled that the validity of an Order must be tested on the grounds set out therein and the reasons cannot be supplemented by way of Affidavits. To substantiate the said contention, he relied on the Supreme Court judgment in the case of **Mohinder Singh Gill** (supra) and **Bandeep Singh** (supra).

(xii) Learned Senior Counsel submitted that by filing additional Affidavit in respect of Annexure-V, Respondent No.1 contended that the Petitioner No.2 does not enjoy majority consent. He submitted that such contention can not be raised for the first time in the Affidavit. The same is not mentioned in the impugned Order. He submitted that in any case, the said objection is totally false. He relied on two resolutions passed by the Petitioner No.1- Society dated 23rd December 2018 and 26th October 2023 showing that the Petitioner possessed consents of about 1200 slum structures.

(xiii) Learned Senior Counsel submitted that assuming whilst denying that there is delay on the part of the Petitioners, it is submitted that this Court ought to still allow the present Writ Petition in as much as the impugned Order has been passed in a malafide manner and in contravention of law. He relied on the decision of the Division Bench of this Court in the case of **Sushmita Sen Vs. Municipal Corporation of Greater Mumbai**¹⁰. He submitted that the Petitioners have filed the present petition *inter alia* alleging that the action of Respondent Nos.1

10 (2007) SCC OnLine Bom 936

to 3 and the order passed by Respondent No.6 are in breach of settled law and smacked with *mala fides*. He submitted that in any case, the Order passed by Respondent No.6 is arbitrary, perverse and suffers from non-application of mind. He submitted that although specific ground is raised regarding violation of the principles of natural justice before the Respondent No.6, the same has not been considered by Respondent No. 6 in the impugned Order dated 27th June 2024. He submitted that the Respondent No.6 upheld the validity of Respondent No. 3's Order dated 11th January 2024 without assessing the correctness thereof. Learned Senior Counsel submitted that the Respondent No.6 passed the impugned Order entirely for extraneous reasons and on the basis of facts which transpired after the Order dated 11th January 2024 was passed and therefore the same is impermissible in view of the decision of the Supreme Court in the case of **Mohinder Singh** (supra) and **Bandeep Singh** (supra).

(xiv) Learned Senior Counsel submitted that the Respondent No.6 in the impugned Order recorded that the Petitioner No.1

has purportedly lost faith in Petitioner No.2. However, the same finding rendered by Respondent No.6 is contrary to the law laid down by this Court in the case of **Lokhandwala Infrastructure Vs. State of Maharashtra**¹¹. He submitted that as per the settled legal position, slum rehabilitation is a matter concerning public interest. Therefore the dispute between the slum society and a developer do not lie purely in the realm of a private contractual dispute and therefore, the Respondent Nos.1 and 6 should have independently assess the issues before them.

(xv) Learned Senior Counsel submitted that although the Respondent No.5 has relied upon judgment of this Court in the case of **Gopi Gorwani Vs. Ideal Co-operative Housing Society**¹², however, said decision was passed in the context of a dispute between a Co-operative Housing Society and a developer in respect of its re-development. He submitted that however, the considerations applicable for a slum rehabilitation scheme are different and therefore the said

11 2011 3 Mh. L.J. 469

12 A.I.R. 2013 Bom 133

judgment in the case of **Gopi Gorwani** (supra) has no application to the present case.

(xvi) As far as the contention raised by Respondent No.4 regarding maintainability of the Petition on the ground that the same is affirmed by one Rajaram Anant Veer, who is not the Chief Promoter of the Petitioner No.1, Mr. Kamdar, learned Senior Counsel relied on resolution dated 26th October 2023 of the Petitioner No.1, by which Mr. Rajaram Anant Veer has been elected as its Chief Promoter. As far as contention that the Petitioner No. 1 has merged with Respondent No.4 and therefore the Petition is not maintainable, it is submitted that said contention is without any merit in as much as Petitioner No. 1 has passed resolutions in favour of Petitioner No.2 even after its purported merging with Respondent No.4 and has always asserted its rights independently.

(xvii) Mr. Kamdar, learned Senior Counsel submitted that in the facts and circumstances and in view of above submissions,

the reliefs sought in the Writ Petition are required to be granted.

[III] SUBMISSIONS OF MR. VINEET NAIK, LEARNED SENIOR COUNSEL ON BEHALF OF THE RESPONDENT NOS.1 TO 3 :-

5. **Mr. Vineet Naik**, learned Senior Counsel appearing for the Respondent Nos.1 to 3 *inter alia* advanced the following submissions:-

(i) At the outset, Mr. Vineet Naik, learned Senior Counsel submitted that reliance by Mr. Kamdar, learned Senior Counsel on the decision of **Awdesh Tiwari** (supra) is totally misplaced. Learned Senior Counsel submitted that as far as the present case is concerned, the proposal submitted by the Petitioner No.2 was not accepted since the scrutiny was not completed. The Petitioner No.2 failed to get all the necessary NOCs, which is an admitted position. The proposal of the Petitioner No.2 was considered and held to be incomplete. It is only after considering and rejecting the proposal of the Petitioner No.2, on the ground that the same is incomplete, the proposal of the Respondent No.5 was considered. He

submitted that the decision in the case of **Awdesh Tiwari** (supra) is concerned, in that case, scrutiny fees has been accepted and when the proposal dated 8th November 2004 was being scrutinized, another proposal came to be filed claiming to have consensus of 70% slum dwellers, both the proposals were considered and the SRA accepted later proposal. In that context, Division Bench of this Court held that after the decision of the first application, the second application made by another Society can be considered depending upon result of the first application. He submitted that therefore the issue in the case of **Awdesh Tiwari** (supra) was 'consideration' of second proposal while first proposal was pending and not 'submission' of second proposal while the first proposal is pending. He submitted that in the case of **Awdesh Tiwari** (supra), the Court held that simultaneous consideration of the applications is impermissible to avoid unhealthy competition. He therefore submitted that the decision in the case of **Awdesh Tiwari** (supra) is not at all applicable to the facts of the present case.

(ii) As far as the Judgment of this court in the case of **Atesham Ahmed Khan** (supra), on which reliance is placed by Mr. Kamdar, learned Senior Counsel of the Petitioners, it is submitted by Mr. Vineet Naik, learned Senior Counsel that this Court has observed that the 'acceptance' of first application excludes all other applications from 'scrutiny'. Hence, it is the bounden duty of the first applicant that the proposal is complete in all respects. He further submitted that in any case, the decisions of **Awdesh Tiwari** and **Atesham Ahmed Khan** (supra) were delivered when the procedure to process the applications/proposals under the DCR 33(10) was different and in fact in view of these two judgments, Circular No.144 was issued and there is substantial change in the procedure. He submitted that now the proposal filed with the SRA is not accepted without verification. He submitted that as per the procedure laid down in said Circular No.144, the proposal is to be processed and is scrutinised at various levels and then either the same is accepted or filed i.e. refused by the Executive Engineer, which is the final authority concerning the same.

(iii) Learned Senior Counsel submitted that thus the said decisions in the case of **Awdesh Tiwari** (supra) and **Atesham Khan** (supra) are not applicable in view of issuance of Circular No. 144. He submitted that reliance by the Petitioners on the decision of **Vilas Rambhau Chaudhari** (supra) is also not relevant as what has been held in that case is that it would be impermissible for the SRA to consider a subsequently filed proposal till the earlier proposal is rejected.

(iv) Mr. Naik, learned Senior Counsel also submitted that although reliance is placed on the judgment of this Court in the case of **Lokhandwala Infrastructure** (supra), however, observations in the said case that the dispute between the society and the developer does not lie purely in the realm of a private contractual dispute since it has a direct bearing on the scheme and thus overruled the decision of the CEO. In that case, the Chief Executive Officer of SRA passed an Order directing the SRA to process Letter of Intent in favour of the Respondent No.6 in the said case i.e. new developer without verifying as to whether Respondent No.6 did as a matter of fact have valid consents or agreement with more than 70% of

the slum dwellers and in that case, the Chief Executive Officer has passed the Order completely ignoring that the Petitioner in the said case has consent of about 95% of the slum dwellers. Learned Senior Counsel submitted that even the Petitioners have also admitted that when the Order dated 11th January 2024 was passed, the proposal submitted by the Petitioner No.2 was not complete and admittedly three documents were not produced. He submitted that the contention raised by Mr. Kamdar, learned Counsel that if any show cause notice would have been issued to the Petitioners, then the documents would have been provided to the SRA clearly shows that the Petitioners have not complied with all the documents. He submitted that therefore there was no necessity to issue show cause notice as the proposal submitted by the Petitioner No.2 is filed on record i.e. “rejected being incomplete, hence could not be processed”. He submitted that there is no provision of issuing a show cause notice either under Circular No.144 or any of the judgments cited by the Petitioners, while considering such incomplete proposals by the SRA. He submitted that officers of the SRA at various levels undertake the administrative function of scrutinizing these proposals and

said administrative act cannot be equated to a quasi-judicial function that requires a hearing to the Applicant. He submitted that while conducting the scrutiny of the proposals filed under Regulation 33(10) of Development Control Regulations for Greater Mumbai, 1991/ Development Control and Promotion Regulation, 2034 no hearing is contemplated. The only obligation on the SRA is to communicate the rejection to the Applicant and nothing more. He submitted that as per the procedure, when the Applicant secures 5 NOCs from different departments of SRA, these NOCs are then required to be placed before the Executive Engineer for final assessment. If the proposal is complete with all necessary five permissions, and in that case, if the Executive Engineer is of the opinion that the proposal deserves to be rejected, then hearing would be justified. He submitted that in this case, admittedly the Petitioner No.2 failed to take any steps to obtain three mandatory permissions. He submitted that if the proposal of the Petitioner No.2 was otherwise not eligible to be accepted by the SRA, then there is no substance in the submissions raised on behalf of the Petitioners. He submitted that the position on record shows the Petitioners were granted ample

opportunities to rectify the defects in their proposal, which the Petitioners have failed to do so. He submitted that the impugned Order is passed after a careful consideration of material available on record and thus, requires no interference. He submitted that the Petitioners have availed the statutory remedy of approaching the AGRC. He submitted that the Petitioners' contention has been considered by the AGRC and therefore, it cannot be said that the principles of natural justice are not followed. He submitted that the requirement of an application/proposal being 'complete' in every sense is to avoid constant improvement. He submitted that the failure of the Petitioner No.2 to provide necessary documents/ annexures at the time of submitting proposal and even thereafter for a period of 3 years 10 months, to enable respective departments of the SRA to scrutinise and grant their NOC turns fatal to the case of the Petitioners. He submitted that therefore, the contention that the impugned Order has been passed for malafide purpose is of no consequence as the Petitioner No.2's proposal came to be rejected due to the Petitioner No.2's non compliance. Learned Senior Counsel submitted that admittedly the Petitioner No.2 has not fulfilled

the mandatory requirements and therefore the impugned Order is correctly passed. He submitted that if the relief is granted to the Petitioners, the consequence is that the Petitioner No.2 will get benefit of own lacunae and slum rehabilitation scheme will be affected.

(v) Learned Senior Counsel submitted that the contention that the proposal of Respondent No.5 lodged on the next day i.e. 12th January 2024 of passing of the impugned Order on 11th January 2024 and was processed at a lightning speed is unfounded and baseless. The proposal of Respondent No.5 was also processed by SRA in the same manner by following the procedure laid down in the Circular No.144 and there is no exceptional treatment given to the Respondent No.5. He submitted that since the proposal of the Respondent No.5 was complete, all NOCs were procured and therefore the proposal of Respondent No.5 was accepted by the SRA in the month of July 2024. He submitted that as far as the proposal of Respondent No.5 is concerned, the same is composite proposal for the entire area under slums admeasuring 33,085.80 sq.

mtrs. as against the Petitioner No.2's proposal with respect to 18,365 sq. mtrs. area.

(vi) Learned Senior Counsel submitted that the contention raised that the proposal of M/s Suraj Developers was considered simultaneously, is entirely misconceived as said M/s Suraj Developers submitted the proposal two years later i.e. on 7th March 2022 from the proposal of the Petitioners and M/s Suraj Developers failed in any manner to pursue the proposal. In any case, the proposal submitted by M/s Suraj Developers is also came to be recorded to file i.e. rejected on 11th January 2024. He submitted that the ratio laid down in **Awadesh Tiwari, Atesham Khan** (supra) and **Vilas Chaudhari** (supra) would not apply to the facts of this case. He submitted that after rejection of the proposal of the Petitioner No.2 for want of necessary NOCs, the SRA was duty bound to consider subsequent proposal.

(vii) Mr. Vineet Naik, learned Senior Counsel submitted that the Petitioners has alleged that the Petitioner No.2 was unaware of the requirement of documents to be submitted to

the respective departments since he was never called upon to do so. In the Affidavit in Reply, the Executive Engineer of SRA has brought on record the “Checklist” which is given to every proposed society applicant/ developer which categorises the documents required to be submitted. As such every applicant is at the outset made aware about the details of documents required to be submitted by them for processing of their proposal. Hence, such submission of the Petitioners does not hold any ground.

(viii) Learned Senior Counsel relied on the Judgment of the Supreme Court in the case of **Central Council for Research in Ayurvedic Sciences Vs. Bikartan Das**.¹³. He submitted that it is well settled principle of law that if some action or order challenged in the Writ Petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction can refuse to upset it with a view to doing substantial justice between the parties. He submitted that in this particular case, the legal principle of weighing balance of convenience is required to be applied. He submitted that in the

13 (2023) 16 SCC 462

case in hand, the issue involved is that of a redevelopment of a slum scheme. The slum scheme is for the benefit and betterment of slum dwellers. It is only because of the Petitioners that the redevelopment has been delayed considerably. It is an admitted position that the Petitioner No.2 did not and even today does not have requisite NOCs. In any case, the Petitioner No.2 does not even qualify the criteria of 51% consents of slum dwellers, which is one of the threshold requirement. It is also not in dispute that all the NOCs of Respondent No.5 are in place. In this scenario, the balance of convenience lies in favour of the slum dwellers to have the rehabilitation scheme commenced and completed. Taking into account the overwhelming public interest, the instant Petition deserves to be dismissed. He therefore submitted that the impugned Orders are well within the four corners of the law and requires no interference at the hands of this Court.

**[IV] SUBMISSIONS OF MR. MAYUR KHANDEPARKAR,
LEARNED COUNSEL FOR THE RESPONDENT NO.4 :-**

6. Mr. Khandeparkar, learned Counsel for Respondent No.4 raised following contentions:-

(i) Mr. Khandeparkar, learned Counsel submitted that there is inordinate delay in responding to the requisitions raised by the SRA by the Petitioner No.2. He pointed out certain details regarding the same and submitted that there is delay in compliance of more than 3 years and 7 months. He submitted that in fact there are certain documents/ requirements which the Petitioner has never complied with including ten documents to be submitted to the Executive Engineer, one document to be submitted to the Tahsildar, six documents to be submitted to the Finance Department and that even the consents are also only of 376 out of 838 slum dwellers, which equates to only 45% consents. He submitted that in fact till date, proposal of the Petitioner No.2 is not complete and therefore the impugned Orders are correctly passed. He submitted that in fact due to the inaction of the Petitioner No.2, the Respondent Nos.2 to 4 Society and its Members have been adversely affected. He submitted that the scope of interference under Article 226 of the Constitution of India is

an extraordinary and discretionary and therefore, no interference in the facts and circumstances of this case is warranted. He relied on judgment of this Court in the case of **M/s East and West Builders Vs. State of Maharashtra**¹⁴, **Chandra Singh Vs. State of Rajasthan**¹⁵, and **Kekoo Maneckji Vs. Union of India**¹⁶. He pointed out certain judgments of this Court where the proposal has been rejected for delay. He therefore submitted that no interference in the impugned Orders is warranted.

(ii) Mr. Mayur Khandeparkar, learned Counsel submitted that the proposal of Petitioner No.2 has been rightly rejected on account of same being incomplete proposal. To substantiate said contention, he has relied on the judgment of **Atesham Ahmed Khan** (supra) and decision in the case of **Vilas Rambhau Chaudhari** (supra). He pointed out various factual aspects on record and submitted that the proposal of the Petitioner No.2 is incomplete and therefore, no illegality or irregularity is committed by the Respondent No.3-Executive

14 [WP (L) No. 38609 of 2022] (Para-29)

15 (2003) 6 SCC 545 (Paras 43-45)

16 1979 SCC OnLine Bom 257 (Paras 10 & 17)

Engineer, SRA or by the Respondent No.6-AGRC while passing the impugned orders.

(iii) Learned Counsel relied on the decision in the case of **Shailesh Mulchand Savla Vs. Chief Executive Officer, SRA**¹⁷. He submitted that the Petitioner No.2 is not entitled to show cause notice and or hearing under Section 13(2) of the Slum Act prior to rejection of its proposal. To substantiate said contention, he relied on Circular No.144 as well as on the decisions of this Court in the case of **Vilas Rambhau Chaudhari** (supra), **Atesham Ahmed** (supra), **Adarsh Estate** (supra).

(iv) Learned Counsel submitted that the Writ Petition is not maintainable at the behest of Petitioner No.1 on account of the fact that the Petitioner No.1 Society does not exist anymore as the Petitioner No.1 and its members have merged with the Respondent No.4 Society on 9th September 2023. He also pointed out various other factual aspects. Learned Counsel therefore submitted that the Writ Petition be rejected.

17 (2024) SCC OnLine Bom 1042 (paras 25 & 48)

[V] SUBMISSIONS OF MR. ASEEM NAPHADE, LEARNED COUNSEL FOR THE RESPONDENT NO.5 :-

7. Mr. Naphade, learned Counsel raised following contentions on behalf of the Respondent No.5:

(i) Mr. Naphade, learned Counsel submitted that the position on record shows that no real or effective steps were taken by the Petitioner No. 2 for the progress of slum redevelopment. He submitted that in fact prior to passing of the impugned Order, several letters were sent to the Petitioner No.2 and therefore, there is compliance with the principles of natural justice. He submitted that although there is no document titled as “show cause notice”, however, the correspondence on record shows that the principles of natural justice has been adhered to in substance. Learned Counsel relied on following judgments to substantiate the said contention :-

(i) **Chairman Board of Mining Examination Vs. Ramjee¹⁸,**

(ii) **Shiv Sagar Tiwari Vs. Union of India¹⁹**

18 (1977) 2 SCC 256

19 (1997) 1 SCC 444

(iii) Learned Counsel submitted that there is delay of 3 years and 10 months by the Petitioner No.2 to obtain even one NOC and the Petitioner No.2 has failed to obtain other NOCs and therefore has failed to take any real or effective steps towards the progress of redevelopment. He submitted that in fact AGRC when passing the impugned Order has taken into consideration that the Society has lost confidence in the developer. He relied on the judgment of this Court in the case of **Gopi Gorwani** (supra) and submitted that the Society has lost confidence in the Petitioner No.2. Learned Counsel therefore submitted that no interference in the impugned Orders are warranted.

[VI] POINTS FOR DETERMINATION:-

8. In view of the contentions raised by the parties, the following points arise for consideration:-

(I) Whether the impugned Order dated 11th January 2024 passed by Respondent No.3 is bad and illegal as it has been passed in violation of the principle of natural justice ?

(II) Whether the impugned Order dated 11th January 2024 is passed for malafide purpose of favouring Respondent No.5?

(III) Whether the impugned Order dated 27th June 2024 passed by AGRC is perverse ?

(IV) Whether in the facts and circumstances and in view of Circular No. 144, show cause notice is required to be issued to the Petitioner No.2 before passing the impugned Order dated 11th January 2024 ?

(V) Whether in the facts and circumstances, any interference under Article 226 of the Constitution of India is warranted ?

[VII] REASONING :-

9. Before setting out the reasons, at the outset, it is necessary to state that as the merits concerning all the points which arise for consideration are overlapping therefore, all the points are considered together.

10. Before consideration of the points which arises for determination, it is necessary to set out the factual position in detail :-

[VIII] FACTUAL MATRIX :-

- i. City Survey No.469/3 situate at Mouje Nahur, Tal. Kurla is the subject property on which subject slums are situated. The slum structures are on an area admeasuring about 34,288 sq.mt.
- ii. On 7th December 2018, the Petitioner No.1- Bhavani Shankar Co-op. Housing Society Limited (Proposed) passed Resolution in Special General Body Meeting appointing Petitioner No.2 - Sudhanshu Infrastructure Pvt. Ltd. as Developers to undertake a slum rehabilitation scheme on the subject property. (Page-853-909) The Petitioner No.1 also executed several documents in favour of the Petitioner No.2 including the Development Agreement.
- iii. On 5th March 2020, Petitioners submitted a proposal to the Respondent No.1 under Regulation 33(10) of DCPR, 2034 and Circular 144 issued by the Respondent No.1. The said proposal of the Petitioner No.2 dated 5th March 2010 was for area of 18,368 sq. mtrs. The same was forwarded by the Chief Clerk, SRA vide his letter dated 5th March 2020 to the relevant departments of the SRA namely Executive Engineer (SRA), Deputy Collector (L and Rs), Finance Controller (SRA), District Superintendent of Land Records (SRA), Assistant Registrar (SRA) and City Survey Department (SRA)

for their scrutiny, submission of their remarks and issuance of NOCs (Page 917).

iv. On 12th March 2020, Deputy Director of Town Planning, SRA sent letter to the Petitioner No.2 calling upon Petitioner No.2 to submit documents for NOC of the Regional Town Planning (Sectorial Planning) by Town Planning Department (Page-16 of the Compilation).

v. On 13th March 2020, Finance Controller of SRA sent letter to the Petitioner No.2 calling upon Petitioner No.2 to submit documents for FC NOC to be issued by the Finance Controller. The Finance Controller sought various documents including copy of MOA and AOA, audited financial statement for the past three years, financial statement (provisional balancesheet) of current month with cash value necessary for the said scheme, the net capital amount in the financial statement of the current month submitted by the Chartered Account, Chartered Accountant Certificate, list of Directors, Certificate regarding amount balance in the bank account held in the name of the developer, PAS-2 regarding the share capital, Pan Card of Ms. Pinky Dubey, director, Indemnity Bond and entire financial statement and document be certified by the Chartered

Accountant and any two directors and the remaining documents should be certified (self attested) by the authorized Director.

vi. On 23rd March 2020, the State Government notified that all workplaces except essential services and transport will remain closed due to the onset of Covid-19 pandemic. On 24th March 2020, the Central Government ordered a nationwide lock-down on account of Covid-19 pandemic. Till 31st May 2020, complete lock-down imposed by the Government was in force. Limited functioning of offices was permitted in a phase-wise manner from June 2020 onwards.

vii. On 9th July 2020, letter addressed by the Deputy Superintendent, Land Records, SRA, directing Petitioner No. 2 to submit various documents concerning the ownership rights of the Subject Property (Page-1002).

viii. On 10th July 2020, letter addressed by the Town Planning Department to the Engineering Department stating that the Proposal of the Petitioner No. 2 has been recorded. The letter states that, as Petitioner No. 2 has not submitted the required documents and Maps and has failed to contact the said Department, it is not possible to provide any remarks concerning NOC. Hence, the proposal is recorded. (Page-18 of Compilation).

ix. On 21st August 2020, letter addressed by the Asst. Registrar, Co operative Department to the Petitioner No. 2 and their Architect, regarding inspection of documents. The letter informs the Petitioner No.2 that, the concerned officer would visit the Society premises on 24.08.2020 at 3.00 p.m. and at that time, the Members of the Managing Committee of the Society shall remain present and the documents mentioned in the letter be kept ready for the officer for inspection. (Pages 35 to 36 of Compilation).

x. On 24th September 2020, the Petitioner No. 2 addressed a letter to the Executive Engineer, SRA *inter alia* requesting the said department to direct the Town Planning department of SRA to issue their NOC. and that the Petitioner No. 2 stated that they would submit the requisite documents (Pages 20-21 of compilation).

xi. On 7th October 2020, a letter addressed by Chief Clerk, SRA to Town Planning Department of SRA forwarding Petitioner No.2's Architect's letter dated 21.09.2020 for further necessary action. [Page 22 of the Compilation].

xii. On 21st October 2020, a letter addressed by Town Planning Department of SRA to Petitioner No. 2 and their Architect calling upon them to submit the documents set out therein including D.P Plan showing boundary of the plot, boundary of the slum i.e. slum

plan, boundary of the entire plot as per the Google map and Superimposed colour D.P. plan plus CTS plan plus slum plan.

xiii. On 30th December 2020, a letter addressed by the Town Planning Department of SRA to Chief Clerk, SRA giving NOC for the said Slum Scheme on the condition that certain requirements are to be complied with (Pages 25 to 31 of Compilation).

xiv. Three Reminder Letters dated 7th January 2021, 8th April 2021 and 1st November 2021 respectively addressed by the District Superintendent, Land Records, SRA, to Petitioner No. 2 calling upon Petitioner No. 2 to submit the relevant documents concerning the ownership rights of the Subject Property and further informing that failing which a report regarding non- acceptance of the proposal would be submitted to the Engineering Department, SRA. The documents sought are as follows:

- “1. The original copy of the property card of the property included in the scheme which is issued latest within three months, should be submitted.*
- 2. The property card of cts no.469/3 is not showing the name of land holder on the property card and since the original holding is agriculture as per the entry, KJP related to this property, original copy of 7/12 Extract of Survey No./Hissa No. of related property, copy of inquiry register extract, original copies of relevant Mutation Entries should be submitted.*

3. *Registered documents/papers (e.g. Conveyance Deed, Development Agreement, Power of Attorney etc.) evidencing ownership rights/development rights of the property (attested or notarized).*
4. *Site map (Scale 1:500) of the scheme of the slum showing the boundaries of the city survey number included in the scheme.*
5. *Architect's certificate regarding the area as per city survey number involved in the scheme and location wise map of the area.*
6. *As per Circular No.144B, Data CD of ETC/GPS calculated GIS survey should be submitted with reference to the outer boundary of Bhavani Shankar cooperative housing society over the property involved in slum rehabilitation scheme."*

xv. On 5th April 2021, the State Government announced a gradual implementation of a second lock-down on account of increase in cases of Covid-19.

xvi. On 13th January 2021, Petitioner No. 2 received No Objection Certificate from the Town Planning Department of SRA by imposing certain conditions. One of the condition was that although slums are existing on entire city survey No.469/3, however the slum scheme is proposed on only part of the slum plot (Page – 62 fo 68).

xvii. On 20th September 2021, a letter addressed by the Finance Controller to the Petitioner No.2 *inter alia* recording that the documents sought have not been submitted and the proposal is pending with the said department, thereby calling upon the

Petitioner No.2 to submit the documents within 15 days. It is further stated in the said letter that on the failure to do so, the proposal shall be recorded. (Page-40 of the Compilation).

xviii. On 15th March 2022, a Report submitted by the Deputy Superintendent, Land Records, SRA, to Respondent No.3- Executive Engineer SRA, informing him that the Petitioner No.2 has failed to fulfill the necessary requirements viz. submission of relevant documents concerning ownership of the Subject Property, and that the acceptance of its proposal would not be appropriate in view of the same. (Pages 1014 to 1015).

xix. On 8th August 2022, a Notice issued to Petitioner No. 2 by Petitioner No.1-Society, calling upon Petitioner No.2 to provide all permissions and sanctions issued to it by Respondent No. 1. In the said letter, it is also stated that the Petitioner No.2 had not proceeded with the development activities as promised. (Pages 253 - 254).

xx. On 24th August 2022, a Circular has been issued by the Deputy Forest Conservator, Thane *inter alia* prohibiting the grant of any permissions for constructions in the Eco Sensitive Zone around the Sanjay Gandhi National Park. The said Circular was issued pursuant to the Order dated 3rd June 2022 passed by the Supreme

Court. The subject land is situated in the vicinity of said Park and was thus affected by this Circular. The restrictions set out in the circular remained in force for over 10 months. (Page-98-99).

xxi. On 29th October 2022, the Reply addressed by the Petitioner No.2 to the notice issued by the Petitioner No.1 *inter alia* informing that although the proposal was submitted to the SRA Authorities, there is no progress due to Covid Pandemic and as area around Sanjay Gandhi National Park has been affected by the restrictions (Pages- 255-256).

xxii. On 23rd February 2023, Petitioner No.1 issued Notice to the Petitioner No. 2, terminating appointment of the Petitioner No. 2 as developer of the Subject slum, on account of the Petitioner No.2 failing to take any effective steps to have its proposal accepted and commencing development of the Subject Slum. (Pages 257-261).

xxiii. In September 2023, Five Societies, being Petitioner No. 1- Bhavani Shankar Co-op. Housing Society Ltd. (Proposed), Amar Nagar Hari Om SRA CHS (proposed), Shri Ganesh CHS (proposed), Ganesh Mitra Mandal, Jan Jagruti CHS (proposed), whose members are residing on property admeasuring 33,085.80 square meters, came together and formed one society i.e. Respondent No.4- Amar Nagar Co-op. Housing Society Ltd. (proposed). The said Respondent

No. 4-Society consists of 1872 members. Out of which more than 800 members of the Petitioner No. 1 society, along with other society members have come together and merged with/formed Respondent No. 4- society (Page 263-381).

xxiv. On 9th September 2023, Special General Body Meeting held by Respondent No. 4-Amar Nagar Co-Op. Hsg. Society (Proposed), wherein it was unanimously resolved by the members present and voting, to cancel appointment of Petitioner No.2 as developer and to appoint Respondent No. 5 as the developer to undertake a slum rehabilitation scheme upon the land on which the members of Respondent No. 4 Society reside. 1217 members were present at the said SGBM (Page 268-381)

xxv. On 27th October 2023, the Petitioner No.2 addressed a letter to the Finance Controller forwarding certain documents sought by the Finance Controller. The said letter dated 27th October 2023 of the Petitioner No.2 makes reference to the letter dated 13th March 2020 of the Finance Department. By said letter dated 27th October 2023, copy of 3 years ITRs, provisional balance-sheet, C.A. Membership Certificate and PAN Card of Smt. Pinky Dubey was forwarded (Page-116).

xxvi. On the same day, i.e. on 27th October 2023, letter addressed by the Petitioner No.2 to the Assistant Registrar of Co-operative Societies, S.R.A. forwarding certain documents sought by the Co-operative Department namely copy of notarised General Body Resolutions, Copy of Draft Annexure-II and copy of notarised common Consents (page-117).

xxvii. On 21st November 2023, a letter addressed by the Chief Clerk, SRA to Deputy Director Land Records stating that although the Department of Land Records by letter dated 15th March 2022 has informed that as the Petitioner No.2 has failed to submit the ownership documents as sought by various letters and therefore, it is not appropriate to accept the proposal, however, the Developer has submitted requisite documents alongwith letter dated 27th October 2023 and therefore fresh opinion of the Deputy Director of Land Records was sought (Page-50-compilation).

xxviii. On 23rd December 2023, the Respondent No.4-Society executed development Agreement with Respondent No.5- Developer pursuant to their appointment as the Developer in the Special General Body Meeting dated 9th September 2023.

xxix. On 11th January 2024, Respondent No. 3, issued letter/order whereby Petitioner No. 2's proposal came to be rejected on the

grounds that despite frequently being informed to comply with the necessary formalities concerning the proposal, Petitioner No. 2 has not complied with the same and that the Petitioner No. 2 is not interested in undertaking the scheme; It was necessary to obtain No Objection Certificates of the Town Planning Department, District Superintendent, Land Record Department, Dy. Collector Department, Co-operation Department and Finance and Controller Department, however, only NOC was obtained from the Town Planning Department, and NOC has not been obtained from other departments. (Page-126).

xxx. On 12th January 2024, Respondent No.5 submitted the proposal to Respondent No.1 for the purpose of undertaking a slum rehabilitation scheme on the land admeasuring 34, 288.50 sq.mtrs. upon which the members of Respondent No.4 society reside (page-187).

xxxi. On 5th February 2024, the Deputy Director of Land Records issued NOC in favour of Petitioner No.2 (Pages 130-132).

xxxii. On 9th February 2024, a letter addressed by Petitioner No. 2 to Respondent No. 2- CEO, SRA, requesting him to keep Respondent No. 5's proposal in abeyance and not to process the same. (Pages 143 – 146).

xxxiii. As far as the proposal dated 12th January 2024, submitted by the Respondent NO.5, following NOCs were issued :

(a) 20th February 2024:- NOC received from the Assistant Registrar, Co-operative Societies.

(b) 22nd February 2024:- NOC received from the Dy. Collector (Special Cell). SRA.

(c) 29th February 2024:- NOC received from the Town Planning Department, SRA.

(d) 11th March 2024:- NOC received from the Dy. Director of Land Records, SRA.

(e) 15th March 2024:- NOC received from the Finance Controller, SRA.

xxxiv. On 28th February 2024, Appeal, being Application No. 44 of 2024, was filed by the Petitioners, before Respondent No.6-AGRC, challenging the rejection of the proposal by letter/order dated 11th January, 2024. (Pages 147- 160).

xxxv. On 11th March 2024, Order passed by Respondent No.6- AGRC directing that status-quo be maintained. (Page-161).

xxxvi. Respondent No.6- AGRC passed impugned Order dated 27th June 2024 dismissing the Appeal filed by the Respondent No.6. Resultantly, the letter/Order dated 11th January 2024 passed by the Respondent No.3- Executive Engineer- 3, SRA has been upheld (Page 25-33).

xxxvii. On 23rd July 2024, letter addressed by Respondent No. 3 to Respondent No.5, accepting the proposal submitted by the Respondent No.5. (Page-214)

xxxviii. On 2nd August 2024, the present Writ Petition has been filed.

11. Various contentions raised by both the parties are required to be analysed in view of the above factual aspects in the context of the points raised for the determination as set out hereinabove.

12. The nature of the slum scheme implemented on the slum plot is discussed by the Division Bench of this Court in the case of Lokhandwala Infrastructure Pvt. Ltd. (supra). Paragraph Nos.9, 10 and 15 of the said decision are relevant, which reads as under:

“9. A Slum Rehabilitation Scheme which is implemented under DCR 33(10) read with Appendix IV does not lie in the realm of a purely private contractual agreement. Undoubtedly, the scheme postulates a co-operative housing society of slum dwellers. Appendix IV of DCR 33(10) clarifies that the provisions will apply to redevelopment/construction of accommodation for hutment/pavement dwellers through owners/developers/co-operative housing societies of hutment/pavement dwellers or by public authorities or by nongovernmental organisations within the limits of Brihan Mumbai. The Scheme regulates the rights of hutment dwellers, the grant of building permission for a Slum Rehabilitation Project, rehabilitation and freesale components in the total floor space index, the construction of temporary transit camps, the relaxation in building and other requirements, development plan reservations and payments to be made inter alia to the Slum Rehabilitation Authority. The Development Control Regulations, it is well settled, constitute subordinate legislation enacted with reference to the provisions of section 22(m) of the Maharashtra Regional Town Planning Act, 1966. Slum Rehabilitation Schemes have a public law element.

10. The execution of Slum Rehabilitation Schemes is impressed with a public character. The lands on which the Scheme is sought to be sanctioned and implemented may be lands belonging to the Municipal Corporation or to the State of Maharashtra or, for that matter, its instrumentalities such as the Maharashtra Housing and Area Development Authority. The title to the land does not vest in the society or in its members at the stage when the Scheme is propounded and subjected for sanction. Where it

owns the land, the Municipal Corporation of Greater Mumbai is the authority responsible for issuing a certification of Annexure II containing the list of eligible occupants who can participate in the Scheme. The interest of the Municipal Corporation as the owner of the land is recognized by conferring upon the Municipal Corporation the role of verifying and authenticating who are the actual and genuine occupants of the land as on 1 January, 1995. *Public land is sought to be utilized in order to further the object of providing dignified accommodation to those living in slums. The co-operative societies of slum dwellers and developers through whom the Slum Rehabilitation Scheme is sought to be implemented facilitate the implementation of the Scheme. The agreements or arrangements that may be arrived at between them cannot be treated at par with purely private or contractual agreements entered into in respect of land belonging to private individuals. The State as the owner of the and upon which a slum is situated has a vital public interest in ensuring that the object for which the land is utilized subserves the purpose of rehabilitation of the slum dwellers. It is in that context that diverse provisions are made by the Development Control Regulations to regulate every stage of the Slum Rehabilitation Scheme, from the submission of the proposals, the evaluation of proposals, scrutiny and verification, grant of sanctions and the actual implementation of the Scheme. Though a dispute between the co-operative society and its developer has a private element, it is not as if that a recourse to private law remedies is the only available form of redress. The Slum Rehabilitation Authority as the authority which is vested with the power to regulate the implementation of the Scheme and the owners of the land such as the Municipal Corporation or, as*

the case may be, the State Government are vital components in the implementation of the Slum Rehabilitation Scheme. Their statutory powers to ensure that the Scheme is not misused and is utilized to subserve the public purpose underlying the Scheme is not trammelled by private contractual arrangements.”

“15. Now undoubtedly, a developer who has been appointed by a co-operative society is required to fulfil the mandate of DCR 33(10) by securing the implementation of the scheme. Where a developer fails to implement the scheme, that would not preclude the society which represents the interests of hutment dwellers from proceeding to terminate the contract with the developer. The act of termination may, as in the present case, give rise to a private dispute to which a remedy may be available in accordance with the rights which the contractual arrangement creates between the parties. But, where the society seeks to appoint a new developer, it would be necessary that a proper verification and scrutiny is made of the authenticity of the proposal and of the grounds on which the society seeks to enter into a new contractual arrangement. Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 inter alia contemplates that where the Slum Rehabilitation Authority is satisfied that the land has not been developed within the time, if any, specified under such conditions as have been prescribed, the authority may determine to develop the land by entrusting it to any agency recognized by it for the purpose. It was urged on behalf of the co-operative society that section 13(2) operates where a letter of intent is issued to the developer and would have no application where as in the present case a letter of intent was

yet to be issued. We are not prepared to accept the submission which has been urged on behalf of the society that a proposed society of slum dwellers is entitled without any scrutiny or regulation of its activities by the statutory authorities to enter into and terminate development agreements at its own whim and fancy without any application of mind by the authorities concerned. To accept such a submission would only lead to a situation of chaos in the implementation of Slum Rehabilitation Schemes. Members of the managing committees of the societies which are still proposed societies would then be at liberty to pursue their own private ends and to switch loyalties between rival builders on considerations of exigency. Once the proposal has been submitted to the authority under DRC 33(10), the authorities are entitled to scrutinize whether a proposal involving the change of a developer is in the interest of the slum dwellers; whether the developer would fulfil the needs and requirements of the scheme and has the necessary capacity to do so and whether the new developer has the consent of 70% of the slum dwellers. There is absolutely no merit in the submission that while the initial proposal needs to have the consent of 70% of the slum dwellers, a proposal for a change or substitution of a developer need not possess the requisite majority. The acceptance of such a submission would only defeat the object and purpose of the provisions made in DCR 33) and Appendix IV and would result in rendering the schemes subject to misuse. Such an interpretation cannot be accepted. We are clearly of the view that the dispute between a society and the developer does not lie purely in the realm of a private contractual dispute. The dispute has an important bearing on the proper implementation of the Slum Rehabilitation Scheme. The dispute has consequences which go

beyond the private interests of the society and the developer. The scheme involves other stakeholders in the process including the land owning public bodies and the slum dwellers whose interests are sought to be protected by the scheme.”

(Emphasis added)

The Division Bench in said decision of Lokhandwala Infrastructure Pvt. Ltd. (supra) has *inter alia* held as under:

- i. Slum Rehabilitation Scheme which is implemented under DCR 33(10) read with Appendix IV does not lie in the realm of a purely private contractual agreement. Slum Rehabilitation Schemes have a public law element.
- ii. The execution of Slum Rehabilitation Schemes is impressed with a public character. The lands on which the Scheme is sought to be sanctioned and implemented may be lands belonging to the Municipal Corporation or to the State of Maharashtra or, for that matter, its instrumentalities such as the Maharashtra Housing and Area Development Authority. The title to the land does not vest in the society or in its members at the stage when the Scheme is propounded and subjected for sanction.
- iii. Public land is sought to be utilized in order to further the object of providing dignified accommodation to those living in slums. The co-operative societies of slum dwellers and developers through whom the Slum Rehabilitation Scheme is sought to be implemented facilitate the implementation of the Scheme. The agreements or arrangements that may be arrived at between them cannot be treated at par with purely private or contractual

agreements entered into in respect of land belonging to private individuals. The State as the owner of the and upon which a slum is situated has a vital public interest in ensuring that the object for which the land is utilized subserves the purpose of rehabilitation of the slum dwellers. It is in that context that diverse provisions are made by the Development Control Regulations to regulate every stage of the Slum Rehabilitation Scheme, from the submission of the proposals, the evaluation of proposals, scrutiny and verification, grant of sanctions and the actual implementation of the Scheme.

iv. Though a dispute between the co-operative society and its developer has a private element, it is not as if that a recourse to private law remedies is the only available form of redress. The Slum Rehabilitation Authority as the authority which is vested with the power to regulate the implementation of the Scheme and the owners of the land such as the Municipal Corporation or, as the case may be, the State Government are vital components in the implementation of the Slum Rehabilitation Scheme. Their statutory powers to ensure that the Scheme is not misused and is utilized to subserve the public purpose underlying the Scheme is not trammelled by private contractual arrangements.

v. Undoubtedly, a developer who has been appointed by a co-operative society is required to fulfil the mandate of DCR 33(10) by securing the implementation of the scheme. Where a developer fails to implement the scheme, that would not preclude the society which represents the interests of hutment dwellers from proceeding to terminate the contract with the developer. The act of termination may, as in the present case, give rise to a private dispute to which a remedy may be available in accordance with the rights which the contractual arrangement creates between the parties. But,

where the society seeks to appoint a new developer, it would be necessary that a proper verification and scrutiny is made of the authenticity of the proposal and of the grounds on which the society seeks to enter into a new contractual arrangement.

vi. The dispute between a society and the developer does not lie purely in the realm of a private contractual dispute. The dispute has an important bearing on the proper implementation of the Slum Rehabilitation Scheme. The dispute has consequences which go beyond the private interests of the society and the developer. The scheme involves other stakeholders in the process including the land owning public bodies and the slum dwellers whose interests are sought to be protected by the scheme.

Thus, the factual aspects of this case are required to be examined on the touchstone of the above principles. The most important object of the slum scheme is providing dignified accommodation to those living in slums expeditiously and in time bound manner.

13. The factual position set out herein above clearly show that the Petitioner No.2 delayed submission of documents for considerable period of about 4 years and shown some urgency only after the Respondent No.4-society of about 1800 members terminated the appointment of the Petitioner No.2 as developer, appointed Respondent No.5 as developer and the Respondent No.5 started taking expeditious steps.

14. In the present case, admittedly the Petitioner No.1- Society appointed Petitioner No.2- Developer to undertake slum rehabilitation scheme by passing Resolution dated 7th December 2018, in the Special General Body Meeting. The Petitioner No.1 submitted a proposal to the Respondent No.1 on 5th March 2020 under Regulation 33(10) of DCPR 2034 and Circular 144 issued by Respondent No.1. By the impugned Order dated 11th January 2024 of the Respondent No.3- Executive Engineer, SRA, the said proposal dated 5th March 2020 of the Petitioner No.2 came to be rejected. The impugned Order reads as under:

“ उपरोक्त संदर्भित प्रस्तावाची छाननी केली असता जिल्हा अधिक्षक भूमि अभिलेख, झोपुतरा यांनी त्यांचे पत्र क्र. SRA/CTSO/OW/२०२२/१३६५/दि. १५/०३/२०२२ अन्वये अर्जदार यांना आवश्यक बाबींची पूर्तता करणेकामी वारंवार कळवून सुध्दा इकडील विभागाकडे आवश्यक बाबींची पूर्तता केलेली नसल्याने प्रकरणी अर्जदार यांना स्वारस्य नसल्याचे गृहित धरून, मौजे-नाहूर, तालुका-कुर्ला येथील न.भु.क्र. ४६९/३ या मिळकतीवरील भवानी शंकर सह. गृह.संस्था (नियो.) संस्थेचा झोपडपट्टी पुनर्वसन योजनेचा प्रस्ताव तुर्तास स्विकारणे उचित होणार नाही, असे कळविलेले. आहे. तसेच सदर प्रस्ताव स्विकृत करण्यासाठी नगररचना विभाग, जिल्हा अधिक्षक भूमि अभिलेख विभाग, उपजिल्हाधिकारी विभाग, सहकार विभाग आणि वित्त व नियंत्रक विभाग या विभागाचे ना हरकत प्रमाणपत्र आवश्यक आहे. परंतु आजमितीस नगररचना विभागाचे ना हरकत प्रमाणपत्र प्राप्त झाले असून इतर विभागांचे ना हरकत प्रमाणपत्र अप्राप्त आहेत. त्याअनुषंगाने आपण सादर केलेला प्रस्ताव हा त्रोटक

असून परिपूर्ण नाही यास्तव आपला प्रस्ताव दफ्तरी दाखल करण्यात येत आहे.

तसेच आवश्यक ना हरकत प्रमाणपत्र व झोपडपट्टी पुनर्वसन प्राधिकरणाचे परिपत्रक क्र. १४४ नुसार सदर गृहनिर्माण संस्था झोपडपट्टी पुनर्वसनासाठी नव्याने प्रस्ताव सादर करू शकते याची कृपया नोंद घ्यावी ”

(Emphasis added)

English translation of the same as provided by the Petitioner is as follows :

“When scrutinized the above referred proposal it is found that the Dist. Supdt., Land Records, SRA had informed to the applicant vide letter No. SRA / CTSO / OW / 2022 /9365 dated 15.03.2022 that it is not just and proper to accept the proposal of SRA scheme of Bhawani Shankar Coop. Society (Proposed) on the property bearing CTS No. 469 / 3, situated at Village Nahur, Tal. Kurla with immediate effect by considering that it was frequently informed to the applicant for complying with necessary formalities but inspite of this, the necessary formalities were not complied with to this department and hence, it was considered that in the said case the applicant don't have any interest. Also, it is necessary to have no objection certificates of the Town Planning Department, District Supdt., Land Records Department, Dy. Collector Dept., Cooperation Department and Finance and Controller Department for accepting the said proposal. But till date the No Objection Certificate was received from the Town Planning Department and No Objection Certificates from

other departments were not received. In this connection, your submitted proposal is incomplete and not satisfactory and hence, your proposal is submitted to the office.

Also, please take a note that, the said housing society can submit new proposal for redevelopment of slums as per Circular no 144 of the SRA authority and necessary no objection certificates.”

Thus, the impugned Order specifically records that although it has been communicated to the Petitioner No.2 from time to time, the Petitioner No.2 has not complied with the requirements and therefore as the proposal submitted by the Petitioner is not complete proposal and therefore, the same is rejected.

15. In the context of the reasons given in the impugned Order, it is necessary to set out contentions raised in paragraph Nos.2 to 6 in the Additional Written Note of Submissions filed on behalf of the Respondent No.4, which reads as under:

“2. Petitioner No. 2's proposal from its inception was an incomplete proposal. Despite being given several opportunities through various requisitions being raised by the SRA calling upon Petitioner No. 2 to complete its proposal, Petitioner No. 2 has failed and neglected to facilitate completion of the same. The delay in furnishing documents is as follows:

Sr. No.	Date of Requisitions Raised	Date of Petitioner No.2's Reply	Delay in Compliance
1.	Finance Department (Annexure – III): 13th March, 2020: (@Pg. 38 of Petitioner No. 2's Compilation of Documents) Requisitions raised by the Finance Controller, SRA, whereby the Petitioner No. 2 was directed to furnish 12 documents for the purpose of issuance of NOC qua Annexure - III. 20th September, 2021: (@Pg. 40 of Petitioner No. 2's Compilation of Documents) Reminder Letter issued by the Finance Controller, SRA, to Petitioner No. 2 calling upon Petitioner No.2 to furnish the requisite documents.	27th October, 2023: (@Pg. 41 of Petitioner No. 2's Compilation of Documents) Letter addressed Petitioner No. by 2, whereby the Petitioner only submitted 4 of the 12 required documents to the Finance Controller, SRA, viz. Copy of 3 yrs ITR, Copy of provisional balance sheet, Copy of CA membership certificate and Copy of PAN card for Smt. Pinky Dubey.	
2.	City Survey Department	05th February, 2024: 3 (@Pg. 59	3 years 07 months. NOC granted was

	(Annexure - IV): 09th July, 2020: (@Pg. 42 of Petitioner No. 2's Compilation of Documents) Letter addressed by DSLR, SRA calling upon the Petitioner No.2 to furnish 06 documents. 07th January, 2021, 08th April, 2021 and 01st November, 2021: (@Pg. 43, 44 & 45) of Petitioner No. 2's Compilation of Documents) Reminder letters addressed by DSLR, SRA calling upon the Petitioner No.2 to comply with its requisition letter of 09th July 2020.	of Petitioner No. 2's Compilation of Documents) NOC issued by the City Survey Department after rejection of the Petitioner No.2's proposal.	conditional.
3.	Assistant Registrar (Annexure V): 21st August, 2020: (@Pg. 35 of Petitioner No. 2's Compilation of documents) Letter addressed by Assistant Registrar, SRA calling upon Petitioner No.2 to furnish 05 documents.	27th October, 2023: (@Pg. 37 of Petitioner No. 2's Compilation of Documents) Letter addressed by Petitioner No.2 to the Assistant Registrar, SRA submitting only 03 out of 05 documents.	03 years 02 months.

(Emphasis added)

14. In view of above contention that the Petitioner No.2 has failed to submit the complete proposal even after a period of 3 years and 7 months, it is necessary to examine the contention raised by Mr. Kamdar, learned Senior Counsel for the Petitioners. Mr. Kamdar, learned Senior Counsel has tendered a Chart to demonstrate that the Petitioner has substantially complied with the requirements. The relevant portion of the said Chart is as follows:

Sr. No	Date	Particulars	Page No.
3		Correspondence between various Departments of SRA and Petitioner No.2.	
A.		Town Planning Department	
	12.03.2020	a Letter addressed by Town Planning Department to Petitioner no. 2 for submission of certain documents as set out therein period of 2 weeks	16-17
	10.07.2020	b Letter addressed by Town Planning Department erroneously recording Petitioners' proposal on the ground that the petitioners have failed to submit the necessary documents.	18-19 (Petr. Ex. C/pg. 54)
	24.09.2020	c Letter addressed by petitioner no 2 to executive engineer interalia requesting Executive Engineer to direct Town Planning Department to issue its NOC as soon as possible.	20-21
	07.10.2020	d Letter addressed by Chief Clerk, SRA to Town Planning Department Architect forwarding Petitioners' Architect statement submitted on 21st September, 2020.	22
	21.10.2020	e Letter addressed by Town Planning Department to Petitioner no. 2 calling upon them to submit the documents set out there within a period of 2 weeks.	23-24

	30.12.2020	f	Letter addressed by Town Planning Department to Chief Clerk, SRA feedback in respect of Petitioner no. 1's regarding sectoral planning.	25-34
B			Asst. Registrar Department	
	29.08.2020	a	Letter addressed by the Registrar department to Petitioner no. 2 calling upon them to submit the documents set out therein.	35-36
	27.10.2023	b	Letter addressed by Petitioner No. 2 to the Registrar forwarding certain documents sought by them.	37 (Petn. Ex. F/pg. 116)
C			Finance Controller	
	13.03.2020	a	Letter addressed by the Finance Controller inter alia requesting the Petitioners to provide the documents set out therein within 10 days.	38-39 (Petn. Ex. B/pg. 36)
	20.09.2021	b	Letter addressed by the Finance Controller to the Petitioners inter alia recording that the documents sought earlier were still not submitted and calling upon the Petitioners to submit the same within 15 days.	40
	27.10.2023	c	Letter addressed by the Petitioner No. 2 to the Finance Controller forwarding certain documents sought by the Finance Controller.	41 (Petn. Ex. F/pg. 116)
D			City Survey Department (CTSO)	
	09.07.2020	a	Letter addressed by Deputy Director of Land Records to Petitioner no. 2 inter alia calling upon Petitioner no. 2 to submit certain documents as set out therein.	42 (R4 addln. Aff. Ex. B/Pg (1002))
	07.01.2021	b	Letter addressed by Deputy Director of Land Records to Petitioner no. 2 inter alia calling upon Petitioner no. 2 to submit certain documents as set out therein.	43 (R4 addln. Aff. Ex. C/Pg. 1005)
	08.04.2021	c	Letter addressed by Deputy Director of Land Records to Petitioner no. 2 inter alia calling upon Petitioner no. 2 to submit certain documents as set out	(R4 addln. Aff. Ex. D/Pg. 1008)

			therein.	
	01.11.2021	d	Letter addressed by Deputy Director of Land Records to Petitioner no. 2 inter alia calling upon Petitioner no. 2 to submit certain documents as set out therein.	45-47 (R4 addln. Aff. Ex. E/Pg. 1011)
	15.03.2022	e	Letter addressed by Chief Clerk of SRA to District Superintendent of land records to the Chief Clerk, SRA inter alia recording that the Petitioners had not submitted the necessary documents.	48-49 (R4 addl Aff. Ex. F/Pg. 1014)
	21.11.2023	f	Letter addressed by Chief Clerk, SRA to Deputy Director of Land Records inter alia recording that since the Petitioners had not submitted documents sought by the letter dated 15.03.2022, the Chief Clerk was of the opinion that the) Petitioners were not interested in pursuing their proposal. Since, however, by a letter dated 27.10.2023, the Petitioner had submitted the necessary documents and requested for reconsideration of their proposal, the Chief clerk sought the Deputy Director's opinion as to what should be done in this case.	50 (Petrn. Ex. G/Pg.118)
4			NOC's received by the Petitioners	
	13.01.2021	a	NOC by Town Planning Department.	51-58 (Petrn. Ex. D/pg. 61)
	05.02.2024	b	NOC by City Survey Department (Deputy Director of Land Records).	59-62 (Petrn. Ex. J/pg. 130)

(Emphasis added)

16. Thus to appreciate the contention of learned Counsel appearing for the respective parties, it is necessary to consider said Circular No.144 concerning the manner in which the Slum Redevelopment proposals shall be considered. The procedure which

is to be followed by the SRA is set out in said Circular No.144 dated 31st August 2013. The said procedure reads as under :

आता खालील प्रमाणे कार्यपद्धती निश्चित करण्यात येत आहे.

१. नियो. संस्थेचे मुख्य प्रवर्तक / विकासक / वास्तुविशारद हे विहीत नमुन्यातील अर्ज परिशिष्ट I ते VI आवश्यक कागदपत्रांसह, दोन प्रतीत (दोन संच) मुख्य लिपीक, अभियांत्रिकी विभाग, झोपुप्रा यांचे कडे समक्ष सादर करतील.

२. मुख्य लिपीक, अभियांत्रिकी विभाग, झोपुप्रा हे अर्जात नमुद भूखंडावर पुर्वी प्राधिकरणाकडे योजना दाखल आहे अगर कसे याबाबत छाननी करून तसा शेरा अर्जावर नमुद करतील. यापुर्वी योजना दाखल असल्यास अर्ज तेथेच नाकारण्यात येईल.

३. मुख्य लिपीक, अभियांत्रिकी विभाग यांना दाखल करून घ्यावयाचा अर्ज योग्य आढळल्यास अर्जावर स्विकारण्यास योग्य असा शेरा नमुद करून अर्ज, अर्जदार यांना समक्ष परत देतील.

४. सदर अर्ज अर्जदार हे संबधित कार्यकारी अभियंता यांना हाताहात सादर करतील

५. कार्यकारी अभियंता अर्ज स्वतः स्विकारतील. अर्जासोबत परिशिष्ट निहाय आवश्यक कागदपत्रे असल्याची स्वतः खात्री करतील. तदनंतर अर्ज स्विकारून तो नियमित टपालामार्फत नोंदवून घेतील. अपूर्ण अर्ज नाकारण्यात येईल.

६. टपालाने नोंदवून अर्ज कार्यकारी अभियंता यांचे कडे आल्यानंतर परिशिष्ट निहाय अनुक्रमणिकेच्या प्रती सह कागदपत्र खालील विभागाकडे पाठवितील. एक संच त्यांच्याकडे कायम स्वरुपी ठेवतील.

अ. क्र	परिशिष्ट	संबंधीत विभाग
१	परिशिष्ट - I	अभियांत्रिकी विभाग
२	परिशिष्ट - II	उपजिल्हाधिकारी विभाग
३	परिशिष्ट - III	वित्त विभाग
४	परिशिष्ट - IV	नगर भूमापन विभाग

५	परिशिष्ट - V	सहकार कक्ष
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७. परिशिष्ट - 1 चा विहीत नमुना व त्यासोवत प्राप्त कागदपत्रांची छाननी करून संबंधित कार्यकारी अभियंता हे आपले स्वयंस्पष्ट अभिप्राय तयार करतील.

८. परिशिष्ट II सांवत प्राप्त कागदपत्रांची छाननी करून उपजिल्हाधिकारी, झोपुप्रा हे आपले स्वयंस्पष्ट अभिप्राय कार्यकारी अभियंता, झोपुप्रा यांना पाठवतील.

९. परिशिष्ट - III सोचन प्राप्त कागदपत्रांची छाननी करून वित्त नियंत्रक, झोपुश हे आपले स्वयंस्पष्ट अभिप्राय कार्यकारी अभियंता, झोपुप्रा यांना पाठवतील.

१०. परिशिष्ट - IV सोबत प्राप्त कागदपत्रांची छाननी करून नगर भूमापन अधिकारी, झोपुन हे आपले स्वयंस्पष्ट अभिप्राय कार्यकारी अभियंता, झोपुप्रा यांना पाठवतील.

११. परिशिष्ट - V सोवत प्राप्त कागदपत्रांची छाननी करून सह. निबंधक, झोपुप्रा वा सहा. निबंधक, झोपुप्रा हे आपले स्वयंस्पष्ट अभिप्राय कार्यकारी अभियंता, झोपुप्रा यांना पाठवतील..

१२. वरील प्रमाणे सर्व विभाग प्रमुखांचे स्वयंस्पष्ट अभिप्राय संबंधित विभागाच्या कार्यकारी अभियंता, अभियांत्रिकी विभाग, झोपुप्रा यांचे कडे प्राप्त झाल्यानंतर प्राप्त प्रस्तावांची छाननी करून कार्यकारी अभियंता प्रस्ताव स्विकारणे / नाकारणे याचातूरत आवश्यक कार्यवाही करतील.

१३. प्रस्ताव स्विकारणे बाबतच्या निर्णयानंतर कार्यकारी अभियंता स्विकृती शुल्क (**Acceptance Fees**) वसूल करतील. :

१४. प्रस्ताव नामंजूर झाल्यास कार्यकारी अभियंता, झोपुप्रा हे अर्जदार यांनी तसे लेखी कळवितील.

योजना स्विकृती / अस्विकृती वावत उपरोक्त सर्व कार्यवाही प्राधिकरणाव्दारे निर्गमीत- नागरीकांच्या सनदे मध्ये नमुद विहीत मुदतीमध्ये करणे बाबत सर्व विभाग प्रमुखांनी दक्षता घेणेची आहे.

वरील प्रमाणे झोपडपट्टी पुनर्वसन योजने बाबतचा प्रस्ताव स्विकारण्याची कार्यपद्धती निश्चित करण्यात येत आहे. याप्रमाणे सर्व संबंधितानी कार्यवाही करावी. यापूर्वी दि०४/०५/२०१३ रोजी निर्गमित करण्यात आलेले परिपत्रक क्र. १४१ याद्वारे रद्द करण्यात येत आहे.

(Emphasis added)

The translation of the same reads as under :

1. Chief Promoter/Developer/Architect of the proposed society will submit the application in Annexure I to V in prescribed form with necessary documents, in two copies to Head clerk, Engineering Department, SRA.
2. Head Clerk, Engineering Department, SRA will scrutinize if there is any scheme filed with the authority on the plot mentioned in the application and put the remark on the application. The application will be rejected if there is earlier scheme.
3. If the Head Clerk, Engineering Department finds that the application to be filed is proper then they will put remark that it is proper to accept and return the application to the applicant.
4. The Applicant will hand over the applications to the Executive Engineer.
5. Executive Engineer will accept the application by himself. He will ensure that the necessary documents are attached with the application as per Annexure. Later he will accept the application and record the same through regular post. Incomplete application will be rejected.

6. After the application comes to Executive Engineer by registering the same by the post, then he will send the documents with the annexure wise index to the following department. One copy will be kept with him permanently.

Sr. No.	Annexure	Related Department
1	Annexure-I	Engineering Department
2	Annexure-II	Deputy District Collector Department
3	Annexure-III	Finance Department
4	Annexure-IV	City Survey Department
5	Annexure-V	Co-operative Desk

7. The concerned Executive Engineer will prepare self-explanatory remarks after scrutinizing the prescribed form of the Annexure-1 and the documents received with it.

8. The Deputy District Collector will send his self-explanatory remarks to Executive Engineer, SRA after scrutinizing the documents received with Annexure – II.

9. The Finance Controller will send his self-explanatory remarks to Executive Engineer, SRA after scrutinizing the documents received with Annexure - III.

10. The City Survey Officer, SRA will send his self-explanatory remarks to Executive Engineer, SRA after scrutinizing the documents received with Annexure - IV.

11. The Jt Registrar, SRA and Asst. Registrar, SRA will send his self-explanatory remarks to Executive Engineer, SRA after scrutinizing the documents received with Annexure - V.

12. After all the self-explanatory remarks from all the Department heads are received with Executive Engineer, Engineering Department, SRA of the concerned department as per above-mentioned then the Executive Engineer will take necessary action about accepting/ rejecting the proposal after scrutinizing the received proposals.

13. The Executive Engineer will receive acceptance fees after the decision of accepting the proposal.

14. The Executive Engineer, SRA will inform the applicant accordingly if the proposal is rejected.

All the head of Departments must ensure that all the abovementioned action about accepting/rejecting the scheme within the prescribed duration mentioned in the Citizen's charter issued by the Authority.

The process to accept the proposal to about the Slum Rehabilitation Authority as per the above-mentioned is decided. All the concerned people should take action accordingly. The circular No. 141 issued earlier dated 04/05/2013 is cancelled hereby.”

Thus, what is contemplated by Circular No.144 is that the proposal has to be filed in the prescribed form along with Annexures.

17. Mr. Patil, learned Senior Counsel, submitted contents of various Annexures and also format of Annexures – I to V. The contents of various Annexures are as follows:

ANNEXTURE -I	
ANNEXTURE -I	Architect
44/69 form	Architect
Slum Gazette	Developer
D. P. Remark 1991	Developer
Draft DP Remark 2034	Developer
A. E. Survey Remark	Developer
R. L. Remark - Road Status Remark (if applicable)	Developer
Super Imposed Plan (Slum plan / D. P. Plan / C.T.S. Plan along with hatched slum boundary)	Architect
Draft Plan	Architect
Project Report & Scheme Viable letter	Architect
Architect Plot Area Calculation	Architect
Triangular Method	Architect
Appointment Letter - Society - Developer	Developer
License Copy & Acceptance Letter	Architect
Indemnity Bond cum Affidavit	Developer
Undertaking	Developer
संमतीपत्र	Developer
G. B. R.	Developer
विकास करारनामा	Developer
कुलमुखत्यार नामा	Developer
Owners plot area affidavit	Developer
Slum Plan	Developer

ANNEXTURE -II	
ANNEXTURE -II	Architect letter head
Annexure II List	Developer
Slum Gazzet	Developer
Slum Plan	Developer
Voting List with Name Highlight	Developer
Affidavit	Developer
P.R. Card	Developer

ANNEXTURE -III (All paper certified by C.A. & Developer)	
ANNEXTURE -III	Developer letter head
Partnership DEED	Developer
Registration Certificate	Developer
Pan Card (All Partners)	Developer
Authority Letter	Developer

Provisional Balance Sheet	Developer
Bank Balance Certificate	Developer
Photo Signature Verification (From Bank) - Partners	Developer
Certificate of C.A regarding Net-worth	Developer
CA Registration Certificate	Developer
Abide Undertaking	Developer
Affidavit	Developer

ANNEXTURE -IV	
ANNEXTURE -IV	Architect letter head
G.I.S CD	(SRA)
P. R. Card & 7/12 (original) / Convenes deed	Developer
C.T.S. Plan (Original)	Developer
Slum Plan	Developer
Architect Plot Area Calculation	Architect
Triangular Method	Architect
Appointment letter	Developer
Appointment acceptance letter	Architect

ANNEXTURE -V	
ANNEXTURE -V	Architect letter head
G. B. R.	Developer
Annexure II List	Developer
संमती पत्र	Developer
झोपडीधारकांची यादी	Developer

ANNEXTURE -VI	
ANNEXTURE -VI	Architect letter head
All Remark	Developer
Google map	Developer

Note :- All remarks colour copy & within one year & P.R. Card within 3 month.

18. The said prescribed Annexures which are provided as Annexures I to V, are as under :

Annex I to V
20

SLUM REHABILITATION SCHEME
ANNEXURE - I

1	Name of the Slum/ Location / Municipal ward/ Name of prop. CHS (Tel. If any)	
2	Name of the Architect Firm of Architect & Address with Telephone no. & Email ID.	
3	Application u/Sec. 44/69 (complete in all respects)	
4	Survey No. / CTS No./ C. S. No. /F. P. No. of Village /Division Name of Road Pin code.	
5	Status of Slum a) Notification No b) Year of Census c) Area of slum declaration/ Censuses slum	
6	Details of existing hutments (As submitted by Developer / Society) a) Residential (R) -----Nos. b) Residential Cum Commercial (R/C) -----Nos. c) Commercial shop/ work shop/ Factory shop/ Economic activities. (c) -----Nos. d) Existing Amenity structure /Welfare Hall, Balwadi, Schools, Gymnasium and Religious Structure Etc. -----Nos. Total Nos. of hutments dwellers (a+b+c+d)	
7	D.P. Remarks (Reservations) (valid upto date)	
8	A.E. Survey Remarks (with special remarks for CRZ, if applicable)	
9	A.E. (Maint.) Remarks (for status of road/ Access if required)	
10	Super Imposed Plan (Slum Plan/ D P Plan / CTS Plan along with hatched Slum boundary)	

[illegible]

Note : Separate Commercial User shall be Considered only if it is in a separate built-up Premises and not through common wall
Every page of Annexure-II should be signed

2

(On Letterhead of Developer)
ANNEXURE III

Annexure to assess the financial capability of the Developer to execute the SRA Scheme.

1. Name of the Slum Co. op. Society : _____
2. Address of the Slum Co. op. Society : _____
3. Name of the Chief Promoter / President
& Secretary of the Slum Co. op. Society : _____
4. Name and Address of the Architect : _____
5. Name and Address of the Developer : _____
6. Tentative Number of Rehabilitation Tenements
To be constructed as per Annexure II : _____
7. Status of the Developer's Firm
(Proprietary / Partnership/Company) : _____
8. Attach Memorandum of Association
& Article of Association /
Registered Partnership Deed. : _____
9. Attach Audited Statements of Bal. Sheet &
I.T. Returns of last three Consecutive Years. : _____
 - i) Financial Year ----- : _____
 - ii) Financial Year ----- : _____
 - iii) Financial Year ----- : _____
 - iv) Prov. Bal. Sheet dt ----- : _____
10. a) Funds required for construction of _____ Rehab. Tenements
Number of Rehab. Tenements X cost of one tenements.
No. of Tenements X Rs. 4,50,000/- = Rs. _____
b) 20% of the Amount in (a) above as initial Rs. _____
c) Proof of 20% funds available.
d) Plan for 80% of the amounts in (a) above, that required for completing the
scheme will be made available from the following sources.

Signature of C.A. & Seal

Signature of Authorised /Director
Partner of the company
& Company Seal

१०

परिशिष्ट - IV
(मालकी हक्का बाबत)

१. अर्जदाराचे नांव -	
२. नियो. सह. संस्थेचे नांव -	
३. गावाचे/ विभागाचे नांव -	
४. न. भू. क्र. / भू. क्र. / अ. भू. क्र. -	

५. योजनेत सामिल मिळकतीचा तपशील

अ. क्र.	न. भू. क्र., भूकर क्र., अ. भू. क्र.	मिळकत पत्रिकेनुसार क्षेत्र	योजनेत सामिल मिळकतीचे क्षेत्र	मिळकतीचे धारकाचे नांव
१.				
२.				

६. मिळकत पत्रिकेस धारणाधिकार सदरी शेती असल्यास तपशील

अ. क्र.	न. भू. क्र.	क. जा. प. नुसार सर्व्हे नं. / हि. नं.	७-१२ नुसार धारक	योजनेत सामिल क्षेत्र
१.				
२.				

७. मिळकत पत्रिका किंवा ७/१२ वर विकासकाचे नांव नसल्यास खालील कागदपत्रे आवश्यक

अ. क्र.	जोडलेली कागदपत्रे	पानांक
१	मिळकत पत्रिका किंवा ७/१२ मध्ये नमुद असलेल्या धारकाकडून घेतलेले नोंदणीकृत खरेदीखत.	
२	खरेदीखत नसल्यास मिळकत पत्रिका किंवा ७/१२ वर धारक सदरी असलेल्या धाकाकडून घेतलेले नोंदणीकृत विकास करारनामा व कायमस्वरूपी कुलमुखत्यारपत्र.	
३	वरील काहीही नसल्यास खाजगी मिळकत जमीन झोपडपट्टी पुनर्वसन (सु., नि., आणि पु.) अधिनियम १९७९ चे कलम १४(१) नुसार संपादन करणे बाबत विकासकाचा संस्थेच्या वतीने अर्ज. विकासकास या साठी संस्थेने प्राधिकृत केल्याचा ठराव.	

८. अ)	योजनेच्या क्षेत्राचा वसलेवार गणना तक्ता जोडावा व झोपडीस्थित नकाशा.	
ब)	वास्तुविशारदाचे योजनेच्या क्षेत्राबाबतचे विवरणपत्र व दाखला.	

(अर्जदाराची स्वाक्षरी)

परिशिष्ट -V	
योजना सादर करण्यापूर्वी सर्वसाधारण सभेचा वृत्तांत तपासणी नमूना	
१)	नियोजित संस्थेचे नाव :
२)	नियोजित संस्थेचा पत्ता / सीएस क्र. :
३)	सभेच्या नोटीसचा दिनांक :
४)	सभेचा दिनांक व वेळ :
५)	सभेचे ठिकाण :
६)	प्रारूप परिशिष्ट-२ मधील झोपडीधारक संख्या :
७)	सभेस उपस्थित झोपडीधारकांची संख्या :
८)	ठरावास पाठिंबा दिलेल्या झोपडीधारकांची संख्या :
९)	ठरावास विरोध करणाऱ्या झोपडीधारकांची संख्या :
१०)	मुख्य प्रवर्तक, सुचक व अनुमोदक यांनी सर्वसाधारण सभेत उपस्थिती बाबत स्वाक्षरी केल्याचा अनु. क्रमांक :
११)	प्रारूप परिशिष्ट - II मधील मुख्यप्रवर्तक, सुचक : व अनुमोदक यांचा अनुक्रमांक :
१२)	निवडलेल्या विकासकाचे नाव व पत्ता. :
१३)	निवडलेल्या वास्तुविशारदाचे नाव व पत्ता. :
१४)	सभेच्या कामकाजाचे व्हिडीओ शूटिंग / फोटोग्राफी: सोबत जोडली आहे काय ?
१५)	सभेचे कामकाज विषय पत्रिके नुसार झालेले आहे काय ?
(विकासक)	(मुख्य प्रवर्तक)
१२	

19. Thus, it is clear that a very comprehensive proposal is required to be submitted to the Chief Executive Officer. It is

the submission of Mr. Kamdar, learned Senior Counsel that in fact the scrutiny is carried out and whatever documents are required to be furnished for completing the proposal, the same are communicated and thereafter decision is taken. He submitted that the Circular No.144 contemplates as follows :

“Circular No. 144 issued by Respondent No. 1. This circular lays down the following procedure for submission of a slum rehabilitation scheme -

- i. Developer / Society will submit an application in Annexures I to V along with necessary documents to Head Clerk, Engineering Department, SRA.
- ii. If there is an earlier scheme in respect of the same land, the Head Clerk will reject the scheme. If not and the application is found to be proper, Head Clerk will return the application to the applicant who will then submit the application to the Executive Engineer, SRA.
- iii. Executive Engineer will ensure that all necessary documents are filed with the application. If incomplete, application will be rejected.
- iv. If found to be complete, Executive Engineer will forward the documents annexure wise to the departments set out in paragraph 6.

v. Each of these departments are then required to provide their remarks (NOCs) to the Executive Engineer, SRA after scrutinizing the documents.

vi. Once all such remarks (NOCs) are received, Executive Engineer will either accept or reject the application.”

20. It is the submission of Mr. Kamdar, learned Senior Counsel that as the proposal submitted by the Petitioner No.2 was substantially complete and therefore, the same was accepted. In this behalf, it is significant to note that as far as Annexure-III which is concerning financial capabilities of the developer to execute the SRA scheme, it is significant to note that by communication dated 13th March 2020, Finance Department of SRA communicated the Petitioner to comply with following requirements :

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झोपडपट्टी पुनर्वसन प्राधिकरण
प्रशासकीय इमारत, अनंत काणेकर मार्ग
वांद्रे (पूर्व), मुंबई- ४०० ०५१
Email : info@sra.gov.in
क्र. झोपुप्रा/विनि/FC-NOC/८७०/२०२०/११६२४
दिनांक :

13 MAR 2020

प्रति,
म. सुधारण इन्फ्रास्ट्रक्चर्स प्रा.लि.
बो-२४/२४अ, अनिराज टॉवर,
काका पेद्रोल पंपच्या समोर,
एल.बी.एस.मार्ग, भांडुप (प),
मुंबई - ४०० ०७८.

विषय : FC-NOC मंजूरीसाठी कागदपत्रे सादर करण्याबाबत.
न.मु.क्र. ४६९/३, ऑफ मोने - नाहूर, ता- कुर्ली, टी विभाग येथील
भवानी शंकर एस आर ए सह गृह संस्था नियोजित करिता.

संदर्भ : अभियांत्रिकी शाखेकडील टिप्पणी क्र. झोपुप्रा/अभि/ओडब्ल्यू/२०२०/१०५३४
दि. ०५.०३.२०२०

महोदय,
उपरोक्त विषयाधिन योजनेसाठी FC-NOC निर्गमित करण्यासाठीचा प्रस्ताव संदर्भाद्वारे प्राप्त झाला आहे.
प्रस्तावासोबत प्राप्त कागदपत्रांची पडताळणी केली असता खालील नमूद कागदपत्रे सादर केली नसल्याचे दिसून येते.

अ. क्र.	तपशील
१	सादर केलेल्या MOA & AOA च्या प्रती प्रमाणित नाहीत.
२	सादर केलेली मागील ३ वर्षांची लेखा परीक्षित आर्थिक विवरणपत्रे सनदी लेखापाल यांनी प्रमाणित केलेली दिसून येत नाहीत.
३	सादर योजनेस आवश्यक असणाऱ्या नक्कलमूल्यासह चालू महिन्याची आर्थिक विवरणपत्रे (Provisional Balancesheet) शेड्युल्डसह दोन संचालक व सनदी लेखापाल यांच्या स्वाक्षरीने सादर करावीत.
४	सनदी लेखापाल यांनी सादर केलेल्या चालू महिन्याच्या आर्थिक विवरणपत्रातील निव्वळ भांडवल रकम (Capital net of withdrawals) स्वतः सनदी लेखापाल यांनी खात्री करून प्रमाणित केलेले विहित नमुन्यातील प्रमाणपत्र सादर करावे.
५	C.A. Membership Certificate सादर करावे.
६	संचालकांची यादी सादर करावी.
७	विकासकाच्या नावे बँक खात्यातील शिल्लक रकमेविषयीचे प्रमाणपत्र सादर करावे.
८	कंपनीने भाग भांडवल वाढविल्याबाबतचे PAS-३ सादर करावे.
९	श्रीम. पिकी दुहे, संचालक यांचे स्वाक्षरीकृत प्रमाणित पॅनकार्ड सादर करावे.
१०	अभियांत्रिकी विभागाकडून FC-NOC देण्यासाठी प्रस्ताव प्राप्त झाल्यानंतर विकासकाच्या विरुद्ध कोणत्याही न्यायालयात दावा दाखल झाला आहे अथवा या योजनेस स्थगिती मिळाली आहे किंवा कसे? याबाबत रु. ६००/- च्या स्टॅम्प पेपरवर Indemnity Bond सादर करावे.
११	सर्व वित्तीय विवरणपत्रे व कागदपत्रे सनदी लेखापाल व कोणत्याही दोन संचालक यांना स्वाक्षांकित केलेली असावी उर्वरीत कागदपत्रे प्राधिकृत संचालक यांनी प्रमाणित (Self attested) केलेली असावीत.

12. March 20 Annexurized Balancesheet

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वर नमूद कागदपत्रांअभावी या विभागाची FC-NOC निर्गमित करणे शक्य होत नाही. कृपया वर
कागदपत्रांची पूर्तता १० दिवसांत करण्यात यावी.

[Signature]
स.ल.अ.
(श्री. पवार)

[Signature]
ल.अ.
(श्री. सोळे)

आपली
[Signature]
वि.नियंत्रक
झोपडपट्टी पुनर्वसन प्राधिकरण

* If space is not sufficient for signature, please use separate sheet for signature.

English translation of the same reads as under :

“Slum Rehabilitation
Authority
Administrative Building,
Anant Kanekar Marg, Bandra
(East), Mumbai 400051.
Email: info@sra.gov.in
Number : S.R.A./D.C./FC-
NOC/870/2020/11684
Date : 13th March, 2020

To,
M/s. Sudhanshu Infrastructures Pvt. Ltd.
B-24/24A, Aniraj Tower,
Opp. Kaka Petrol Pump,
L.B.S. Marg, Bhandup (W),
Mumbai – 400078.

Subject :- Regarding submitting documents for issuance of
FC-NOC for Bhavani Shankar S.R.A. Co-operative
Housing Society (Proposed) located on the plot of
land bearing C.S.No.469/3, situated at T-Ward,
village Nahur, Tal. Kurla.

Reference :- Noting No. S.R.A./Opinion/O.W./2020/10534
dated 05.03.2020 of the Engineering Branch.

Respected Sir,

By the Noting referred to hereinabove, the proposal has
been received for issuing FC-NOC for the Scheme mentioned
under subject. On perusing the documents received
alongwith the proposal, below-mentioned documents are not
found to have been submitted.

Sr.No.	Particulars
1	The copies of MOA and AOA that have been submitted, are not certified.
2	The audited Financial statements of the previous

	three years that have been submitted, are not found to have been certified by the Chartered Accountant.
3	The financial statements (Provisional Balance Sheet) of the current month togetherwith the net value and schedule required for the said Scheme should be submitted with the signatures of two Directors and Chartered Accountant.
4	The net capital amount (Capital Net of Withdrawal) in the current month's financial statement submitted by the Chartered Accountant should be verified by the Chartered Accountant himself and a Certificate in the prescribed format to that effect should be submitted.
5	C.A. Membership Certificate should be submitted.
6	List of Directors should be submitted.
7	Certificate in respect of the balance amount in the Bank account standing in the name of the Developer should be submitted.
8	PAS-3 in respect of increasing the Share Capital by the Company should be submitted.
9	Duly signed and certified copy of PAN-CARD of the Director Smt. Pinky Dubey, should be submitted.
10	Indemnity Bond on the Stamp Paper of the value of Rs.600/- should be submitted mentioning therein as to whether any suit has been filed against the Developer or whether any stay has been granted to the aforesaid scheme, after the proposal has been received from the Engineering Department for issuing FC-NOC.
11	All Financial Statements and documents must be duly signed by the Chartered Accountant and by any two

	Directors. All the remaining documents must be self attested by the Authorized Director.
12	Un-audited Balance-sheet for March-20.

This Department is unable to issue FC-NOC of this Department for want of the above-mentioned documents. Therefore, you are requested to comply with the above-mentioned documents within 10 days.

(Signature Illegible)
 ” 12.03.2020
 (Assistant Accounts Officer)
 Shri Pawar

Yours faithfully,
 (Signature Illegible)
 13.03.2020
 (B. B. Thite)
 Finance Controller,
 Slum Rehabilitation Authority

(Signature Illegible)
 12.03.2020
 (Accounts Officer)
 Shri Sankhe”

21. On 20th September 2021 again, the Petitioner No.2 was called out to comply with the same. The said letter reads as under:

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30/11

झोपडपट्टी पुनर्वसन प्राधिकरण
प्रशासकीय इमारत, अनंत काणेकर मार्ग
वांद्रे (पूर्व), मुंबई- ४०० ०५१
Email : info@sra.gov.in
क्र. झोपुप्रा/विनि/FC-NOC/८७०/२०२१/२५३८९
दिनांक : 20 SEP 2021

स्मरणपत्र - १.

प्रति,
मे. सुधांशु इन्फ्रास्ट्रक्चर प्रा.लि.
बी-२४/२४ए, अनिराज टॉवर, काका
पेट्रोल पंप समोर, एल.बी.एस.मार्ग,
भांडूप (प), मुंबई - ४०० ०७८

विषय : FC-NOC मंजूरीसाठी कागदपत्रे सादर करण्याबाबत.
न.भु.क्र. ४६९/३ ऑफ मोजे-नाहूर, ता-कुर्ला, टी विभाग येथील भवानी शंकर
सह.गृह.संस्था नियोजित करिता

संदर्भ : १. अभियांत्रिकी शाखेकडील टिप्पणी क्र. झोपुप्रा/ईडी/ओडब्ल्यू/२०२०/१०५३४,
दि.०५.०३.२०२०
२. या विभागाचे पत्र क्र. झोपुप्रा/विनि/FC-NOC/८७०/२०२०/११६८४, दि.१३.०३.२०२०

उपरोक्त संदर्भांमधील विषयात नमुद जागेवरील योजनेकरीता वित्त विभागाचे ना-हरकत प्रमाणपत्र प्राप्त
करण्यासाठी अभियांत्रिकी विभागाकडून संदर्भ क्र.१ अन्वये प्रस्ताव प्राप्त झाला आहे. त्यानुषंगाने आवश्यक कागदपत्रे
सादर करणेबाबत या विभागाने संदर्भ क्र.२ अन्वये आपणांस कळविले आहे. परंतु अद्यापी आपण कागदपत्रे सादर
केलेली नाहीत. परिणामी आपला प्रस्ताव या विभागात प्रलंबित आहे.

याद्वारे आपणांस सूचित करण्यात येते की, आपण सदर योजनेस आवश्यक असणाऱ्या कागदपत्रांची पूर्तता हे
पत्र प्राप्त झाल्यापासून १५ दिवसांच्या आत करावी. अन्यथा प्रस्तुत योजनेमध्ये आपणांस काही स्वारस्य नसल्याचे समजून
प्रस्ताव दफ्तरी दाखल करण्याबाबत आवश्यक ती कार्यवाही करण्यात येईल, याची नोंद घ्यावी.

आमिला,
(स.ल.अ.)
लेखा अधिकारी
झोपडपट्टी पुनर्वसन प्राधिकरण

(श्री. साबुके)

The English translation of the same is as under :

Reminder-1.

Slum Rehabilitation
Authority.
Administrative

Building,
Anant Kanekar Road,
Bandra (East),
Mumbai 400051.

Email :
info@sra.gov.in

No. SRA / DC / FC-
NOC / 870 / 2021
/35381.

Date : 20th September,
2021.

To,
M/s. Sudhanshu Infrastructure Pvt. Ltd.,
B-24/24A, Aniraj Tower,
Opp. Kaka Petrol Pump,
L. B. S. Road, Bhandup (West),
Mumbai – 400 078.

Subject : To submit documents for issuance of FC-NOC
for Bhavani Shankar Co-operative Housing
Society Proposed, situated on the land bearing
C.S. No. 469/3, in ‘T’ Ward, off. Village –
Nahur, Taluka – Kurla.

Reference : 1) Noting bearing No. SRA / ED / OW /
2020 / 10534, dated 05.03.2020 of the
Engineering Branch.

2) Letter bearing No. SRA / DC / FC-NOC /

870 / 2020 / 11684, dated 13.03.2020 of
this Department.

By the Noting under the Reference at Sr. No. 1 above, a proposal has been received from the Engineering Branch for issuing a No Objection Certificate of the Finance Department for implementing the scheme on the land mentioned in the above referred subject. In that connection, this Department, by its letter under the Reference at Sr. No. 2 above, had informed you to produce the necessary documents. However, you have not yet produced the said documents and as a result thereof, your proposal has remained pending in this Department.

Hence, you are hereby informed to make compliance of the documents required for implementation of this Scheme, within a period of 15 days from the date of receipt of this letter, failing which it will be deemed that you have no interest of whatsoever nature in implementing the present Scheme and necessary steps will be taken to file your proposal in the records of this Office, which may please be noted.

(Signature Illegible)

16.09.2021

Assistant Accounts Officer

(Shri Salunkhe)

Yours faithfully,

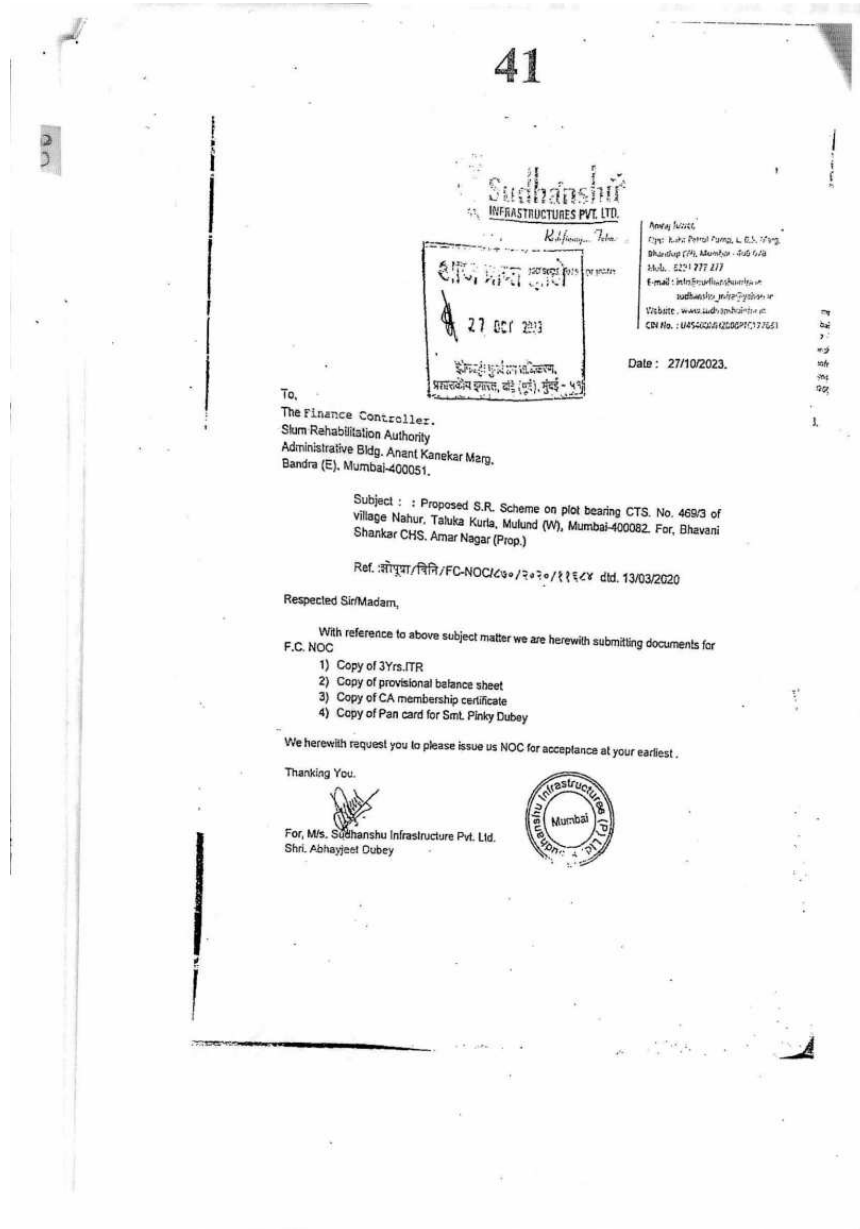
(Signature Illegible)

[D. P. Tonge]

Accounts Officer,

Slum Rehabilitation Authority.

22. Ultimately the above requirements were partially complied with on 27th October 2023 by the Petitioner No.2. The covering letter dated 27th October 2023 of the Petitioner No.2 reads as under :



Thus, it is clear that the Petitioner No.2 took about 3 years and 7 months to comply with the details sought by Annexure-III and the same has also been not completely complied with as the same are only partly complied with.

23. It is the contention of learned Counsel appearing for the Respondents that many documents which are mentioned in Annexure-III have not been forwarded. The impugned Order dated 11th January 2024 specifically *inter alia* records that although NOC by Finance Department of SRA is required, it has not been received. In fact, it is the contention of learned Counsel for the Respondents that very crucial information is not supplied along with the proposal in Annexure-III including list of the Directors, bank balance certificate of the developer, unaudited balance sheet of March 2020 etc. Even it is not the case of the Petitioners that all these documents which are required to be produced along with Annexure-III have been produced. It is very clear that as far as the documents which are to be provided along with Annexure-III are in complete knowledge and control of the Petitioner No.2. Thus, there was no requirement of communication by SRA authorities to the Petitioner to submit the same. It is required to be noted that even for furnishing

3 years of Income-Tax returns as certified by the Chartered Accountant, about 3 years and 7 months were taken by the Petitioner No.2.

24. As far as documents to be submitted as per Annexure-V are concerned, the same are very crucial for the purpose of redevelopment scheme as the same is concerning the number of slum dwellers attending the General Body Meeting and number of slum dwellers who have opposed the redevelopment. In this behalf, it is significant to note that the proposal is submitted on 5th March 2020. By letter dated 21st August 2020, it has been informed to the Petitioners by the Assistant Registrar, Co-operative Societies, East West Suburban, SRA, Mumbai that the Co-operation Officer will visit the society on 24th August 2020 to verify following original documents :

“१. संस्थेच्या ग्राहक परिशिष्ट-२ ची प्रत .

२. संस्थेच्या सर्वसाधारण सभेची नोटीस व सदर नोटीस झोपडीधारकांना दिल्याबाबतची पोहोच पावती.

३. संस्थेचे सर्वसाधारण सभेचे मूळ इतिवृत्त नोंदवही.

४. पुनर्वसन योजनेचे विकासक मे. सुधांशु इन्फ्रास्ट्रक्चर्स प्रा.लि. यांचे समवेत केलेल्या सामूहिक संमतीपत्राची छायांकित प्रत..

५. व्यवस्थापक समिती सदस्य यांचे पासपोर्ट आकाराचे छायाचित्र, वैयक्तिक ओळखपत्र (आधारकार्ड / मतदान ओळख पत्र / पॅन कार्ड) व त्या ओळख पत्राची छायांकित प्रत.”

The English translation of the same is as under :-

- “1. *Copy of the Draft Annexure-II in respect of the Society.*
2. *Notice issued for holding General Meeting of the Society and Acknowledgement Receipt for having served the said Notice on the Slum-dwellers.*
3. *Original Minutes Register for maintaining the minutes of the General Meeting of the Society.*
4. *Photocopy of the Common Letter of Consent executed in favour of M/s. Sudhanshu Infrastructures Private Limited, the Developer of the aforesaid Rehabilitation Scheme.*
5. *Passport size photographs of the members of the Managing Committee, Individual Identity Card (Aadhaar Card / Election Identity Card / PAN Card) and photocopy of the said Identity Card.”*

The same was complied with on 27th October 2023, as along with the letter dated 27th October 2023, copy of notarised General Body Resolution, copy of draft Annexure-II and copy of notarised common consent has been submitted. Thus, it is clear that even to comply with the same about 3 years 2 months period is taken.

25. As far as these documents are concerned, it is submitted by the learned Counsel for the Respondents that the Petitioner No.2 has only submitted consents for 376 out of 838 slum dwellers, which equates to only 45% of the consents, which are far less than the requisite 51% consents which is required. The impugned Order also *inter alia* states that the proposal submitted is not complete. Thus, it is clear that the documents which are very crucial as contemplated by the Annexure-V are not submitted by the Petitioner No.2.

26. As far as the said submission is concerned, in the Written Submissions of the Petitioners, it is stated as follows:-

“55. It is pertinent that the Petitioners submitted a proposal in respect of land bearing CTS No. 469/3. According to Respondent No. 1, **there are a total of 1872 slum structures on this land.**

56. The proposal, however, was submitted in respect of 1000 slum structures out of which the Petitioner No. 2 had consent of 750 slum structures [Aff. In Rej to R5 para 5.1/pg. 384, Ex. A/pg. 388].

57. It is pertinent that one of the terms set out in the Town Planning Department's NOC [Petition Ex. D/pg. 61] was that Petitioner No. 2 ought to include the remaining slums in the future.

58. As a result, Petitioner No. 2 was required to obtain consent of the remaining 800 odd slum structures as well for which a General Body meeting would have to be convened and a formal resolution be passed. The Petitioners was unable to do so first in view of the pandemic related restrictions. Secondly, in view of the Hon'ble Supreme Court's order, there would be no justification in convening such meeting.

59. It was only when such restrictions were eased in September 2023 that the Petitioners convened a meeting of the remaining 800 odd members. This meeting was held on 26th October 2023 where a majority of 450 members out of total 800 slum dwellers provided their consent in favour of Petitioner No. 2 [Aff. In Rej to R5 para 5.2/pg. 384, Ex. B/pg. 446]. It is also in this manner how the Petitioner No. 2 enjoy the majority consent of the entire subject land.

60. Immediately on the next day, i.e. 27th October 2023, the Petitioners submitted certain documents

to various departments of Respondent No.1 [Petition Ex. F/pg. 116].

61. In fact, all necessary documents were submitted to the City Survey Department on 27th October 2023 which is recorded in the NOC dated 5th February 2024 issued by the Dy. Director of Land Records [Petition Ex. J/pg. 130]. It was also for this reason that admittedly, the NOC dated 5th February 2024 issued by the Dy. Director of Land Records is for the larger area encompassing all 1800 odd slum structures [R1-R3 Aff. In Rp. Para 6.7/pg. 1029].

62. When all these factors are viewed together, it is respectfully submitted that there is no inordinate delay on part of the Petitioners. The attempt made by the Respondents to repeatedly point out that the Petitioners failed to take any cogent steps for a period of 3 years and 10 months is also false, baseless and misleading.”

(Emphasis added)

Thus, it is clear that although the total slum dwellers are 1872 occupying respective slum structures, the Petitioner No.2 has included only about 1000 slum structures earlier in the Scheme. Thus, in this background, it is important to note N.O.C. dated 11th January 2021 *inter alia* mentions as follows :

“५) नभूक -४६९/३ च्या संपुर्ण हदीमध्ये झोपड्या आहेत त्यापैकी क्षेत्रावर विषयांकित योजना सादर

केलेली असून उर्वरीत क्षेत्रा वरील झोपड्यांचा समावेश
सद्यस्थितीत केलेला नाही तथापी नियोजनाच्या
दृष्टीने भविष्यात उर्वरीत झोपड्यांचा देखील समावेश
केल्यास उचित होईल.”

Even as per contention of the Petitioner, the same was complied with in or about 26th October 2023. In any case, factual position on record clearly show that the Petitioner NO.2 has submitted the proposal on 5th March 2020 and till passing of the impugned Order dated 11th March 2024 various compliances were not done even for a large period of about 4 years. Even if it is assumed that due to Covid pandemic, for certain period no steps could be taken, however, even by taking into consideration that aspect also, it is clear that there is delay on the part of the Petitioner No.2. This is a case concerning rehabilitation of about 1872 slum dwellers and thus it is absolutely essential that the urgency should have been shown by the Petitioner No.2. Such large number of slum dwellers are languishing in inhuman conditions and therefore, some urgency should have been shown while carrying out slum rehabilitation scheme. In fact, it is required to be noted that on 23rd February 2023, the Petitioner No.1 issued notice to the Petitioner No.2 terminating the Petitioner No.2 as Developer on account of the Petitioner No.2 failing to take any effective steps to have its proposal accepted and commencing the

development of the subject property. It is required to be noted that the earlier letter dated 8th August 2022 issued by the Petitioner No.1 to Petitioner No.2 inter alia records in paragraph Nos. 3 to 5 as follows:-

3) I say that on various occasion you representative and manager, as given vague answered which I am not able to convey the same to our members. **That I have been informed by you that you are not interested in proceeding with the redevelopment of said society as Tunnel proposed by the state government is passing through the said CTS No. 469/3, and as such you are not interested to proceed further with redevelopment of said society.**

4) I say that my representative had requested you several times to explain the same however you have refused to give any clarification till date. **Further you have failed to provide information in respect of compliance with SRA authority to us and till date you have not informed us about the NO-OBJECTION's obtained by various government departments nor provided us with financial certificate (FC) as submitted and/or issued by the SRA Authority till date for reasons best known to your good self.**

5) I say that **the non-co-operation from your end is creating strong apprehension that you are not interested or capable in continuing and completing the said development under SRA, thereby restraining its members (Slum Dwellers)**

to live there live in dignify manner and development of the area, which is the sole purpose of SRA.

I say that you to provide us with all the permissions and FC issued by the SRA Authority within 15 days, failing which we shall be constrained to initiate appropriate legal action against you in order to protect the interest of its member including termination of your Good self as developer of the said society.”

(Emphasis added)

27. It is relevant to note last paragraph of notice dated 23rd February 2023 issued by the Petitioner No.1 to Petitioner NO.2, which reads as under:

“My client vide this letter hereby make it clear that they have no faith in you as you have neglected to get necessary approvals and caused the proposal of my clients society has been kept in abeyance causing grave and irreparable loss to by client. That my client hereby terminates and cancels your appointment as their developer of their society and call upon you to return all the original documents with you and not to create any third party interest. Kindly note that my clients shall be constrained to initiate appropriate legal action against you for your act of defamation and false allegations against the members of the society and in order to protect the interest of its members.”

(Emphasis added)

Thus in this case due to inaction of the Petitioner No.2, the Petitioner No.1 has terminated and cancelled the appointment of the Petitioner No.2 as developer by said notice dated 23rd February 2023.

28. It is the contention raised in the Writ Petition, which has been filed by both the Petitioners that the concerned Advocate has not been instructed to issue said notice dated 23rd February 2023. The said contention is raised in the Writ Petition, which has been filed on 2nd August 2024. The said notice was issued on 23rd February 2023 earlier also Petitioner No.1 sent letter dated 8th August 2022 to the Petitioner No.2 raising same contentions. The issuance of said letter dated 8th August 2022 by the Petitioner No.1 to the Petitioner No.2 is admitted position. Thus, the said contention that notice is issued by Advocate without any instructions is without any basis. In any case, the factual position on record shows that there was considerable delay on the part of the Petitioner No.2 in complying with the requirements. In this background of the matter, it is required to note that in the impugned Order dated 11th January 2024, following reasons are set out :-

(i) In spite of communicating Petitioner No.2, on several occasions to comply with certain requirements, the same were not fulfilled;

(ii) City Survey Department, Deputy Collector, Co-operation Department and Finance Controller have not issued necessary NOC.

29. Perusal of record shows that the said reasons given are not perverse reasons. The reasons given are in accordance with the material on record. In fact, it is admitted position that till the passage of the impugned Order dated 11th January 2024, various no objections were not received by the Petitioner No.2. In this background of the matter, it is required to consider the submissions of Mr. Kamdar, learned Senior Counsel that the impugned Order dated 11th January 2024 is passed in violation of the principles of natural justice. It is further submissions of Mr. Kamdar, learned Senior Counsel that in view of Circular No.144, show cause notice should have been issued to the Petitioner NO.2 before passing the impugned Order dated 11th January 2024.

30. All the learned Counsel have extensively argued on the aspect of issuance of show cause notice in view of Circular No.144. Mr. Kamdar, learned Senior Counsel contended that in view of said Circular No. 144, it is incumbent on the part of the Respondent-SRA to issue show cause notice, whereas Mr. Naik, learned Senior Counsel, Mr. Khandeparkar, learned Counsel and Mr. Naphade, learned Counsel vehemently argued that such notice is not required to be issued. It is their submission that unless all NOCs are received and all requirements are complied with, the proposal is not complete and therefore the proposal cannot be accepted. It is their submission that the effect of the impugned Order is that the proposal is not accepted as the same is incomplete and therefore, there is no occasion to give show cause notice.

31. On the other hand, it is the submission of Mr. Kamdar, learned Senior Counsel that if show cause notice would have been issued then, the Petitioner No.2 would have placed before the SRA authorities the efforts made by the Petitioner No.2 and that many compliances which have been made and that certain compliances are under process.

32. Various contentions have been raised by all the learned Counsel appearing for the parties regarding violation of the principles of natural justice and concerning issuance of show cause notice before passing the impugned Order dated 11th January 2024. In that context, it is required to be noted that the Supreme Court in the case of **State of Uttar Pradesh Vs. Sudhir Kumar Singh**²⁰, in paragraph No. 42 has set out following principles :

“42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him

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or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

(Emphasis added)

Thus, the Supreme Court has held that the natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. It has been further held that where procedural and/or substantive provisions of law embody the principles of

natural justice, their infraction *per se* does not lead to invalidity of the orders passed. In that case also, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest. It is also observed that in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice, matter need not be remanded. It has been further held that in case where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. Thus, it is necessary to consider this case on the touchstone of above legal position.

33. Even if it is assumed that Mr. Kamdar, learned Senior Counsel is right in contending that the show cause notice should have been issued in view of Circular No.144, in compliance with the principles of natural justice, however, in the case of **State of U.P. Vs. Sudhir** (supra), the Supreme Court in paragraph 34 has set out certain guidelines while remanding back the matter by setting aside the impugned Order on the ground of the violation of the principles of

natural justice which are in detail set out herein above. If the facts of this case are judged on the touchstone of above parameters, then it is clear that in view of admitted position that the day on which the impugned Order dated 11th January 2024 has been passed, admittedly the Petitioner No.2 has not complied with various requirements i.e. after a period of about 4 years after the submission of the proposal. This is a case where the redevelopment consists of 1872 slum dwellers. Out of said 1872 slum dwellers, 1215 members have consented for the appointment of Respondent No.5 as developer. Thus, overwhelming members have consented for the redevelopment by the Respondent No.5 and terminated the appointment of the Petitioner No.2 as developer. It is required to be noted that the said termination is before acceptance of the proposal of the Petitioner No.2 by the SRA. It is also required to be noted that the compliance to be made for obtaining NOC from the Finance Controller of SRA, as discussed hereinabove, is in complete control of the Petitioner No.2 and even the same has been delayed for about 4 years. Thus, if the factual aspects of the present case are examined on the touchstone of the principles laid down in **State of U.P. Vs. Sudhir**, then it is clear that no case is made out for quashing

of the impugned Order and remanding the matter to the Respondent No.3-Executive Engineer.

34. As submitted by Mr. Naphade, learned Counsel for Respondent No.5, prior to the impugned decision dated 11th January 2024, the concerned Department of SRA issued as many as six letters to the Petitioner No.2 i.e. letters dated 12th March 2020, 13th March 2020, 21st August 2020, 7th January 2021, 8th April 2021 and 1st November 2021 calling upon Petitioner No.2 to comply with the requisitions to process proposal of the Petitioner No.2. Mr. Naphade, learned Counsel is right in contending that in these circumstances, there is sufficient compliance even of the principles of natural justice as it has been brought to the notice of the Petitioner No.2 on number of occasions that he has to comply with many requirements.

35. Thus, if the factual position on record is examined on the touchstone of the law laid down by the Supreme Court in the case of **State of U.P. Vs. Sudhir** (supra) and also in view of the above contention of Mr. Naphade, learned Counsel, then it is clear that in this case, no case is made out to set aside the impugned Order

dated 11th January 2024 on the ground of violations of principles of natural justice.

36. As far as the contention that the impugned Order dated 11th January 2024 is passed for the *malafide* purpose of favouring the Respondent No.5, it is required to be noted that *prima facie*, the said contention appears to be attractive as the Respondent No.5 has on the very next day of the impugned Order dated 11th January 2024 i.e. on 12th January 2024 submitted the proposal to the SRA. However, as noted hereinabove, the various departments of SRA have issued communications to the Petitioner No.2 on number of occasions calling upon Petitioner No.2 to comply with certain requirements and for about 4 years, the Petitioner No.2 has failed to comply with the requirements necessary for issuance of N.O.C.s prescribed by the various departments of the S.R.A.

37. In fact, it is required to be noted that as the Petitioner No.2 was not taking effective steps, the Petitioner No. 2 was terminated as developer by the Petitioner No.1 by notice dated 23rd February 2023 (although it is the contention of the Petitioners that the said Advocate was not instructed to issue the notice). In any case, what

is relevant to note is that, thereafter five societies of the occupants residing on said property totally admeasuring 32,085.80 sq. mtrs. came to be merged with Respondent No.4- Society or formed the Respondent No.4- Society on 9th September 2023. The Respondent No.4-Society consists of 1872 members. On 9th September 2023, special general body meeting has been held of the Respondent No.4 wherein it was resolved by the Members to appoint Respondent No.5 as developer to undertake the slum rehabilitation scheme. In the said meeting the Petitioner No.2 has been terminated as the developer. In the said Special General Body Meeting, 1217 members were present and voted in favour of appointment of Respondent No.5 as Developer and also for removal of the Petitioner No.2 as the Developer. The Respondent No.4- Society executed Development Agreement with Respondent No.5 on 23rd December 2023. Thus, all these factual aspects show that the Respondent Nos.4 and 5 are taking various actions to further the redevelopment scheme concerning the subject plot. The position on record very clearly show that in fact the Respondent No.4 appointed Respondent No.5 as developer on 9th September 2023 i.e., long before the impugned Order dated 11th January 2024 has been passed. As the Respondent No.5- developer submitted the

proposal on 12th January 2024, i.e. on the next day after the impugned Order dated 11th January 2024 is passed, *prima facie*, the contention raised by Mr. Kamdar, learned Senior Counsel that the Order dated 11th January 2024 has been passed to favour the Respondent No.5 looks attractive, however, if the said contention is examined in the background of the above factual position, then it is clear that there is no substance in the said contention. In any case, it is required to be noted that the Petitioner No.2 has failed to comply with various mandatory requirements and at the most, it can be said that partly complied with the same, after a period of about 3 to 4 years and therefore, the said aspect is not much relevant.

38. Mr. Kamdar, learned Senior Counsel also raised contention that the impugned Order dated 27th June 2024 passed by AGRC is perverse. For appreciating the said contention raised by Mr. Kamdar, learned Senior Counsel, it is necessary to set out reasons given by AGRC in paragraph Nos. 31 to 36, which reads as under:

“31. From the record it appears that, slum dwellers residing on plot of land bearing CTS No. 469/3 of Village Nahur, Taluka Kurla, Amar Nagar, Mulund Goregaon Link Road, Mulund (W), Mumbai 400

082 formed a society known as Bhavani Shankar CHS (Prop) and appointed Sudanshu Infrastructure Pvt. Ltd. as developer for implementation of subject plot of land. Accordingly, Sudanshu Infrastructure Pvt. Ltd. submitted S.R. Scheme on the subject plot of land.

32. The said plot of land is owned by State of Maharashtra and same is censused slum. By **impugned order dated 11.01.2024 Respondent No. 3 rejected the proposal submitted by owned by Applicants on the ground that, the proposal submitted by Applicants is not complete in all respect. In the meantime, all the residents of Bhavani Shankar CHS, Amar Nagar CHS, Ganesh Nagar CHS, residing on the property admeasuring about 33,085.80 sq. mtrs came together and formed a new society in the name of Amar Nagar CHS (Prop) through Special General Body Meeting was held on 09.09.2023. In the said meeting, the slum dwellers of Respondent No. 4 unanimously appointed Sugee Builders Pvt. Ltd as their Developer and Shri. Sanjay Neve of M/s. Sanjay Neve & Associates as their Architect for redevelopment of the said property in accordance with the S.R. Scheme.**

33. Pursuant to appointment, the Sugee Builders Pvt. Ltd submitted its proposal before the SRA on 12.01.2024 in accordance with Circular No. 144 for an area admeasuring about 33,085 so, mtrs,

34. On perusal of documents, it is noted that Applicant No.2 the erstwhile Developer had been served notice by Applicant No.1 Bhavani Shankar CHS (Prop) for unsatisfactory performance and

delay. Subsequent to this, the Applicant No.1 Bhavani Shankar CHS (Prop) has passed a resolution whereby it has underlined loss of confidence in the Applicant No. 2 as the Developer Applicant No. 2 though had got NOC from 2 Departments of the SRA, was yet to obtain full NOCs and approval.

35. The fact that the Society has meanwhile reposed faith in a new Developer Sugee Builders Pvt. Ltd is thereby correct that the new Developer gets an opportunity to prove the confidence vested in them by speedy execution of the subject S.R. Scheme **this Committee's main objective is to ensure speedy implementation of the Scheme alone.**

36. Considering the said facts, this Committee is of view that, Respondent No. 3 has rightly passed the Impugned order dated 11.01.2024 and does not require any interference by this Committee.”

(Emphasis added)

The above reasons show that the AGRC *inter alia* took into consideration following aspects :

(i) The proposal submitted by the Petitioner No. 2 is not complete in all respects even after considerable period;

(ii) In the meanwhile, the occupants residing on the property admeasuring about 33,085.80 sq. mtrs. formed the new society i.e. Respondent No.4. and in the General Body Meeting held on 9th September 2023 appointed Respondent No.5 as developer.

(iii) Respondent No.5- developer submitted the proposal before the SRA on 12th January 2024 for area admeasuring about 33085 sq. mtrs.

(iv) The Petitioner No.1 has terminated appointment of the Petitioner No.2 as developer for unsatisfactory performance and delay.

Thus, it is clear that the AGRC has taken into consideration the relevant factors and therefore, it cannot be said that the impugned Order dated 27th June 2024 by AGRC is perverse.

39. Even if, it is assumed that there is some substance in the contentions raised by Mr. Kamdar, learned Senior Counsel, still, it is required to be noted that the Supreme Court in the case of **Central Council for Research in Ayurvedic Sciences** (supra), while

considering the scope of Article 226 of the Constitution of India observed in paragraphs 51, 52, 57, 65 and 78, as under:

“51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of the Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects.

The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

“57. In Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath v. Ahmad Ishaque [Hari Vishnu Kamath v. Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233] occasioning failure of justice.”

“5. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere

asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.”

“78. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent court. This Court in G. Veerappa Pillai v. Raman & Raman Ltd. [G. Veerappa Pillai v. Raman & Raman Ltd., (1952) 1 SCC 334] observed : (SCC p. 341, para 26)

“26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without

jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

(Emphasis added)

40. Thus, what the Supreme Court observed is that the first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be

issued on mere asking. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects.

41. Thus, on the touchstone of the above legal position regarding exercise of jurisdiction under Article 226 of the Constitution of India, this is a case where admittedly for about more than 3 years and 7 months, the Petitioner has not complied with various requirements. The initial proposal of the Petitioner No.2 submitted on 5th March 2020 was only for area admeasuring 18,368 sq. mtrs.. After passing of impugned Order, the Petitioner by communication dated 9th February 2024, informed to SRA to consider the proposal for area admeasuring 34,288.50 sq. mtrs. The position on record

shows that various departments of SRA have from time to time called upon the Petitioner No.2 to comply with various requirements and for a period of 3 years and 7 months thereafter, also and when the impugned Order was passed, at that time also, many requirements were not complied with. In any case in September 2023, the Respondent No.4- Society is formed consisting of 1872 members residing in the entire subject slum property. The said society in the meeting held on 9th September 2023, appointed Respondent No.5 as developer. The Respondent No.4- Society executed Development Agreement with Respondent No.5 on 23rd December 2023. On 12th January 2024, the Respondent NO.5 submitted proposal to Respondent No.2 for redevelopment of the subject slum. As far as proposal of Respondent NO.5 is concerned, NOCs were given by Assistant Registrar Co-operative Societies on 20th February 2024, by the Deputy Collector, Special Cell, SRA on 22nd February 2024, from Town Planning Department of SRA on 29th February 2024 by the Deputy Director of Land Records, SRA on 11th March 2024 and NOC from Finance Controller, S.R.A. on 15th March 2024 and the proposal of the Respondent No.5 has been accepted on 23rd July 2024.

42. Thus, in view of above factual position and for the above reasons, and in view of extraordinary and discretionary nature of the jurisdiction, the Petitioner is not entitled for any relief under Article 226 of the Constitution of India. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

43. At this stage, learned Counsel for the Petitioner seeks that slum redevelopment scheme being conducted by the Respondent No.5 be stayed for some period. However, in the facts and circumstances of this case, no case is made out for granting said request.

44. This order was dictated in Open Court on earlier dates and completed today.

(MADHAV J. JAMDAR, J.)

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