

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.747 OF 2024

1. Kamal Sevakram Jadhawani
Age: 66, Adult, of Mumbai, Indian
Inhabitant, having his residence
603 B, Skywalker building 4th cross lane,
Lokhandwala complex, Andheri West,
Mumbai – 400053.
2. Prajakta Chandrashekhar Chaugule
Age: 41, Adult, of Mumbai,
Indian Inhabitant having address at
1001/A, Platinum Heights,
Near Versova Tel. Exc.,
SVP Nagar, Versova, Andheri West,
Mumbai – 400053.

...Petitioners

V/s.

1. State of Maharashtra
(to be served through Govt. Pleader,
High Court, Bombay)
2. Hon. Chief Executive Officer
Slum Rehabilitation Authority,
an Authority, constituted under the provisions
Maharashtra Slum Areas (I.C. & R)
Act 1971, and having its Office address at
Administrative Bldg. Prof. Anant Kanekar
Marg, Bandra (E) Mumbai – 400051.
3. Shiv Infra Vision Pvt. Ltd.
A Company incorporated under the Indian
Companies Act, 1956 and having
Its office at 1st Floor, R.C. House, The
Grand Residency, Near Sheetal Cinema,
L.B.S. Marg, Kurla (W),
Mumbai – 400070.

4. M/s. K.S. Chamankar Enterprises
Corres.- A-702, 7th Floor., Krishna Galaxy,
Datta Mandir Road, near Vakola Bridge,
Santacruz (East), Mumbai – 400055. ... Respondents

**WITH
INTERIM APPLICATION (L) NO.20688 OF 2024
IN
WRIT PETITION NO.747 OF 2024**

Andheri Anna Nagar “Shiv Shakti” SRA CHSL
A co-operative housing society incorporated under
The Maharashtra Co-operative Housing Societies
Act, 1960 and having its registered office at
CTS No. 825/1(Pt) & 825/2 of Village Ambivali,
Andheri (W), Mumbai – 400 053. ...Applicant/Intervenor

IN THE MATTER OF:

1. Kamal Sevakram Jadhawani
Age: 66 yrs, of Mumbai, Indian Inhabitant
having his residence at 603B,
Skywalker building, 4th Cross Lane,
Lokhandwala Complex, Andheri (West),
Mumbai-400 053.
2. Prajakta Chandrashekhar Chaugule
Age: 41 yrs, of Mumbai, Indian Inhabitant
having address at 1001/A, Platinum Heights,
Near Versova Tel. Exchange,
SVP Nagar, Versova, Andheri (West),
Mumbai-400 053. ...Petitioners

V/s.

1. The State of Maharashtra
(to be served through Govt. Pleader,
High Court, Bombay)
2. The Hon. Chief Executive Officer
Slum Rehabilitation Authority

an Authority, constituted under the provisions Maharashtra Slum Areas (I.C. & R) Act 1971, and having its Office address at Administrative Bldg. Prof. Anant Kanekar Marg, Bandra (E) Mumbai – 400051.

3. Shiv Infra Vision Pvt. Ltd.

A company incorporated under the Indian Companies Act, 1956 and having Its office at 1st Floor, R.C. House, The Grand Residency, Near Sheetal Cinema, L.B.S. Marg, Kurla (W), Mumbai – 400070.

4. K.S. Chamankar Enterprises

a partnership Firm, registered under the Partnership Act, 1932, having its registered Office at A-702, Krishna Galaxy, Datta Mandir Road, Near Patha College, Vakola, Santacruz East, Mumbai – 400 055.

... Respondents

**WITH
INTERIM APPLICATION (L) NO.17624 OF 2024
IN
WRIT PETITION NO.747 OF 2024**

Prajakta Chandrashekhar Chaugule
Thr. POA Chandrashekhar Chaugule
Adult, of Mumbai, Indian Inhabitant, Having address at 1001/A, Platinum Heights, Near Versova Tel. Exc., SVP Nagar, Versova, Andheri (W), Mumbai-400053

...Applicant

IN THE MATTER BETWEEN:

1. Kamal Sevakram Jadhawani

Age: 66 yrs, of Mumbai, Indian Inhabitant having his residence at 603B, Skywalker building, 4th Cross Lane, Lokhandwala Complex, Andheri (West), Mumbai-400 053.

2. Prajakta Chandrashekhar Chaugule
Thr. POA Chandrashekhar Chaugule
Adult, of Mumbai, Indian Inhabitant,
having address at 1001/A, Platinum Heights,
Near Versova Tel. Exc,
SVP Nagar, Versova, Andheri (West),
Mumbai-400 053. ...Petitioners

V/s.

1. The State of Maharashtra
(to be served through Govt. Pleader,
High Court, Bombay)
2. Hon. Chief Executive Officer
Slum Rehabilitation Authority,
an Authority, constituted under the provisions
Maharashtra Slum Areas (I.C. & R)
Act 1971, and having its Office address at
Administrative Bldg., Prof. Anant Kanekar
Marg, Bandra (E) Mumbai – 400051.
3. Shiv Infra Vision Pvt. Ltd.
A Company incorporated under the Indian
Companies Act, 1956 and having
Its office at 1st Floor, R.C. House, The
Grand Residency, Near Sheetal Cinema,
L.B.S. Marg, Kurla (W),
Mumbai – 400070.
4. M/s. K. S. Chamankar Enterprises
Corres. - A-702, 7th flr., Krishna Galaxy,
Datta Mandir Road, near Vakola Bridge,
Santacruz (East), Mumbai – 400 055. ... Respondents

WITH
WRIT PETITION NO.3865 OF 2024

1. K.S. Chamankar Enterprises,
a Partnership Firm, registered under
The Partnership Act, 1932, having its
Office at A-702, Krishna Galaxy,
Datta Mandir Road, near Patha College,

Vakola,
Santacruz East, Mumbai – 400055.

2. Praveena Prasanna Chamankar,
Age: 54 years, of Mumbai, Indian
Inhabitant, Authorised Partner of
M/s. K.S. Chamankar Enterprises,
having his residence at A/1001, Aditi
CHS, Opp. Versova Tel. Exchange,
SVP Nagar, MHADA Four Bungalows,
Andheri (West), Mumbai – 400053.

...Petitioners

V/s.

1. The State of Maharashtra
(to be served through Govt. Pleader,
High Court, Bombay as per practice)
2. Hon. Chief Executive Officer
Slum Rehabilitation Authority,
an Authority, constituted under the provisions
Maharashtra Slum Areas (I.C. & R)
Act 1971, and having its Office address at
Administrative Bldg., Prof. Anant Kanekar
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3. Shiv Infra Vision Pvt. Ltd.
A Company incorporated under the Indian
Companies Act, 1956 and having
Its office at 1st Floor, R.C. House, The
Grand Residency, Near Sheetal Cinema,
L.B.S. Marg, Kurla (West),
Mumbai – 400070.
4. Kamal Sevakram Jadhawani
Age: 66 yrs. of Mumbai, Indian
Inhabitant, having his residence
603 B, Skywalker building 4th Cross lane,
Lokhandwala Complex, Andheri (West),
Mumbai – 400053.
5. Prajakta Chandrashekhar Chaugule
Age: 41yrs., of Mumbai,

Indian Inhabitant having address at
1001/A, Platinum Heights,
Near Versova Tel. Exc.,
SVP Nagar, Versova, Andheri (West)
Mumbai – 400053.

... Respondents

**WITH
CONTEMPT PETITION NO. 105 OF 2024
IN
WRIT PETITION NO.3865 OF 2024**

1. K.S. Chamankar Enterprises
A Partnership Firm, registered under
The Partnership Act, 1932, having its
Office at A-702, Krishna Galaxy,
Datta Mandir Road, Near Patha
College, Vakola Santacruz East,
Mumbai – 400 055.

2. Praveena Prasanna Chamankar
Age: 54 years, of Mumbai, Indian
Inhabitant, Authorized Partner of
M/s. K. S. Chamankar Enterprises,
having his residence at A/1001, Aditi
CHS, Opp. Versova Tel. Exchange,
SVP Nagar, MHADA Four Bungalows,
Andheri (West), Mumbai – 400 053.

...Petitioners

V/s.

1. Shiv Infra Vision Pvt. Ltd.
A Company incorporated under the
Indian Companies Act, 1956
Having its office at 1st Floor, R.C.
House, The Grand Residency, near
Sheetal Cinema, L.B.S. Marg, Kurla
(West), Mumbai – 400 070.
2. Prithvijeet Rajaram Chavan
An Adult
1st Floor, R.C. House, The Grand
Residency, Near Sheetal Cinema Plot,
L.B.S. Marg, Kurla (West),

Mumbai – 400070.

3. Jyoti Sharma
An Adult, Full name not known,
1st floor, R.C. House, The Grand
Residency, Near Sheetal Cinema Plot,
L.B.S. Marg, Kurla (West),
Mumbai – 400070.
4. Kewal Mehta Dilip
An Adult,
1st Floor, R.C. House, The Grand
Residency, Near Sheetal Cinema Plot,
L.B.S. Marg, Kurla (West),
Mumbai – 400070.
5. The State of Maharashtra
(To be served through Govt. Pleader,
High Court, Bombay.)
6. The Hon. Chief Executive Officer
Slum Rehabilitation Authority,
an Authority, constituted under the provisions
Maharashtra Slum Areas (I.C. & R)
Act 1971, and having its Office address at
Administrative Bldg. Prof. Anant Kanekar
Marg, Bandra (E) Mumbai – 400051.
7. Kamal Sevakram Jadhawani
Age: 66 yrs, of Mumbai, Indian Inhabitant
having his residence at 603B,
Skywalker building, 4th Cross Lane,
Lokhandwala Complex, Andheri (West),
Mumbai-400 053.
8. Prajakta Chandrashekhar Chaugule
Age: 41 yrs., of Mumbai, Indian
inhabitant having address at 1001/A,
Platinum Heights, Near Versova Tel.
Exchange, SVP Nagar, Versova,
Andheri (West),
Mumbai – 400 054.

...Respondents.

**WITH
INTERIM APPLICATION (L) NO. 26020 OF 2024
IN
WRIT PETITION NO.3865 OF 2024**

1. K.S. Chamankar Enterprises
A Partnership Firm, registered under
The Partnership Act, 1932, having its
Office at A-702, Krishna Galaxy,
Datta Mandir Road, Near Patha
College, Vakola Santacruz East,
Mumbai – 400 055.

2. Praveena Prasanna Chamankar
Age: 54 years, of Mumbai, Indian
Inhabitant, Authorized Partner of
M/s. K. S. Chamankar Enterprises,
having his residence at A/1001, Aditi
CHS, Opp. Versova Tel. Exchange,
SVP Nagar, MHADA Four Bungalows,
Andheri (West), Mumbai – 400 053.

...Applicants

IN THE MATTER BETWEEN:

1. K.S. Chamankar Enterprises
A Partnership Firm, registered under
The Partnership Act, 1932, having its
Office at A-702, Krishna Galaxy,
Datta Mandir Road, Near Patha
College, Vakola Santacruz East,
Mumbai – 400 055.

2. Praveena Prasanna Chamankar
Age: 54 years, of Mumbai, Indian
Inhabitant, Authorized Partner of
M/s. K. S. Chamankar Enterprises,
having his residence at A/1001, Aditi
CHS, Opp. Versova Tel. Exchange,
SVP Nagar, MHADA Four Bungalows,
Andheri (West), Mumbai – 400 053.

...Petitioners

V/s.

1. The State of Maharashtra
(to be served through Govt. Pleader,
High Court, Bombay as per practice)
2. The Hon. Chief Executive Officer
Slum Rehabilitation Authority,
an Authority, constituted under the provisions
Maharashtra Slum Areas (I.C. & R)
Act 1971, and having its Office address at
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Marg, Bandra (E) Mumbai – 400051.
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A Company incorporated under the Indian
Companies Act, 1956 and having
Its office at 1st Floor, R.C. House, The
Grand Residency, Near Sheetal Cinema,
L.B.S. Marg, Kurla (W),
Mumbai – 400070.
4. Kamal Sevakram Jadhvani
Age: 66 yrs., of Mumbai, Indian
Inhabitant, having his residence at
603B, Skywalker building, 4th Cross
Lane, Lokhandwala Complex, Andheri (West)
Mumbai – 400 053.
5. Prajakta Chandrashekhar Chaugule
Age: 41 yrs., of Mumbai, Indian
Inhabitant having address at 1001/A,
Platinum Heights, Near Versova Tel.
Exchange, SVP Nagar, Versova,
Andheri (West), Mumbai- 400053. ... Respondents

**WITH
INTERIM APPLICATION (L) NO.20746 OF 2024
IN
WRIT PETITION NO.3856 OF 2024**

Andheri Anna Nagar “Shiv Shakti” SRA CHSL
A co-operative housing society incorporated under

The Maharashtra Co-operative Housing Societies Act, 1960 and having its registered office at CTS No. 825/1(Pt) & 825/2 of Village Ambivali, Andheri (W), Mumbai – 400 053. ...Applicant/Intervenor

IN THE MATTER BETWEEN:

1. K.S. Chamankar Enterprises,
a Partnership Firm, registered under
The Partnership Act, 1932, having its
Office at A-702, Krishna Galaxy,
Datta Mandir Road, near Patha College,
Vakola, Santacruz East, Mumbai – 400055.
2. Praveena Prasanna Chamankar,
Age: 54 years of Mumbai, Indian
Inhabitant, Authorized Partner of
M/s. K.S. Chamankar Enterprises,
having his residence at A/1001, Aditi
CHS, Opp. Versova Tel. Exchange,
SVP Nagar, MHADA Four Bungalows,
Andheri (West), Mumbai – 400053. ..Petitioners.

V/s.

1. The State of Maharashtra
(to be served through Govt. Pleader,
High Court, Bombay as per practice)
2. The Hon. Chief Executive Officer
Slum Rehabilitation Authority
an Authority, constituted under the provisions
Maharashtra Slum Areas (I.C. & R)
Act 1971, and having its Office address at
Administrative Bldg., Prof. Anant Kanekar
Marg, Bandra (E) Mumbai – 400051.
3. Shiv Infra Vision Pvt. Ltd.
A Company incorporated under the Indian
Companies Act, 1956 and having
Its office at 1st Floor, R.C. House, The
Grand Residency, Near Sheetal Cinema,
L.B.S. Marg, Kurla (W),

Mumbai – 400070.

4. Kamal Sevakram Jadhvani
Age: 66 yrs., of Mumbai, Indian
Inhabitant, having his residence at
603B, Skywalker building, 4th Cross
Lane, Lokhandwala Complex, Andheri (West)
Mumbai – 400 053.
6. Prajakta Chandrashekhar Chaugule
Age: 41 yrs., of Mumbai, Indian
Inhabitant having address at 1001/A,
Platinum Heights, Near Versova Tel.
Exchange, SVP Nagar, Versova,
Andheri (West), Mumbai- 400053. ... Respondents

Adv. Ashish Kamat, Senior Advocate a/w. Adv. Akshay Patil, Adv. Ish Jain, Adv. Kiran Jain, Adv. Duj Jain, Adv. Vinayak Siraskar, Adv. Nayan Bhalekar i/by Kiran Jain & Co. for Petitioner in WP/3865/2024.

Ms. Rubin Vakil a/w. Adv. Hindavi Lubde i/by Adv. Rahul Karnik for the Applicant in IAL/20688/2024 in WP/747/2024.

Mr. Shyam Mehta, Senior Advocate a/w. Ms. Leena Shah, Adv. Shubham Mishra i/by M/s. Shah and Furia Associates for Petitioner in WP/747/2024 and for Respondent Nos.4 & 5 in WP/3865/2024.

Mr. Chetan Kapadia, Senior Advocate a/w. Adv. Shraddha Achliya, Adv. Sunil Gangan, Adv. S.M. Seegarla i/by RMG Law Associates for Respondent No.3 in WP/747/2024.

Mr. Mayur Khandeparkar a/w. Adv. Jagdish G. Aradwad (Reddy) for Respondent No.2-SRA in WP/747/2024 and in WP/3865/2024.

Mr. Aspi Chinoy, Senior Advocate a/w. Adv. Shardul Singh, Adv. Sayali Sawant for Respondent No.3 in WP/3865/2024.

Mr. Dipesh Siroya, AGP for the Respondent-State in WP/3865/2024.

Ms. Gaurangi Patil, AGP for Respondent - State in WP/747/2024.

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

RESERVED ON : 18th December 2024.

PRONOUNCED ON : 21st January 2025.

JUDGMENT (Per : Kamal Khata, J) :-

- 1) Before us there are two interconnected Writ Petitions.
- 2) In Writ Petition No.747 of 2024, Petitioners-Jadhawani's seek the following substantive reliefs:

“a) this Hon’ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction, calling for the papers and files leading to granting the permission for the conversion of the scheme as per Government order dated 23/04/2013 at Exhibit ‘F’ and Conversion of the scheme as per the provisions of DCPR 2034 and approvals / sanctions / permissions / IOA / Reports / Letter of Intent / Commencement Certificate / Further Commencement Certificates / Occupation Certificate in respect to the Existing Composite Building No.1 and proposed Rehab Building No.2 and after going into the legality, validity and propriety thereof, to quash and set aside the approval granted for Conversion of Composite Building No.1 and the approval granted for demolition of the Composite Building No.1 vide LOI dated 05/12/2019 at Exhibit ‘I’

b) this Hon’ble Court be pleased to stay the I.O.A. dated 10/02/2020 at Exhibit ‘M’ issued for Rehab Building No.1 for construction of new rehab Building by Demolition of the existing Building No.1 on land bearing CTS Nos. 825/1(pt) & 825/2 (pt) of Village Ambivali, Andheri (West), Mumbai;

c) this Hon’ble Court be pleased to direct the Respondent no.2 to provide the Petitioners sale shop on Ground to Second floor in the sale building to be approved by the Respondent no.2 on land bearing CTS Nos. 825/1 (pt) & 825/2 (pt) of Village Ambivali, Andheri (West), Mumbai in case of the demolition of the Petitioners shops in the Composite Building no.1;”

3) In Writ Petition No.3865 of 2024, Petitioners-Chamankar's seek the following substantive reliefs:

“(a) that this Hon’ble Court be pleased to issue writ of certiorari or any other writ as deemed fit and proper by this Hon’ble Court and issue such order and/or directions to stop the demolition of the Composite Building No. 1 on the plot bearing CTS no. 825/1 (pt) & 825/2 (pt), situated at Village Ambivali, Andheri (East), Mumbai and call for the papers and records and file pertaining to the Composite Building No. 1 along with all sanctions, permissions, reports, certificates and after scrutinizing the same the legality and propriety thereof be considered and all such approvals, sanctions and permissions of conversions be quashed and set aside granting approval and permission for conversion of the said Composite Building No. 1 along with the demolition permission of the building vide LOI dated 27th July 2023;

(b) that this Hon'ble Court be pleased to cancel and set aside the said LOI dated 27th July 2023, IOA dated 25th August 2023, permission to allow demolition by letter dated 17th May 2024 and private report dated 1/4/2024 of Sardar Patel College of Engineering;”

4) In Writ Petition No.3865 of 2024 under Article 226 of the Constitution of India, the Petitioners seeks a direction to the Respondents to stop the demolition of the composite building, which has been declared as dilapidated and classified as “C-1” based on a report allegedly procured by Respondent No. 3 in collusion with Respondent No 2. The Petitioners further challenge the legality and validity of Letters of Intent (LOI) dated 27th July 2023 and Intimation of Approval (IOA) dated 25th August 2023,

both issued in favour of Respondent No.3. The Petition highlights a breach of statutory duties and obligations by Respondent No. 2-SRA, who at the behest of Respondent No.3-Developer secured demolition permissions based on a private institute's report, without adhering to the due process of law.

5) Mr. Aspi Chinoy, learned senior counsel representing the Respondent No.3 – Developer, raises a preliminary objection regarding the Petitioner's *locus standi* to challenge the building's demolition. He contends that the Petitioner-Chamankars' is none other than the former Developer who was removed from the project pursuant to an Order by the SRA under Section 13(2) of the The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slums Act). He argues that the Petitioners are only entitled to compensation, which will be determined by the SRA, and beyond this, they have no right to interfere in the redevelopment of the plot in question. In light of these facts, he submits that the Petition should be dismissed with costs. Furthermore, he notes that the Petitioner-Chamankars' have also filed civil suits but have not obtained any ad interim reliefs in those proceedings.

5.1) At Present, the composite building has already been demolished. Although the Petition was filed before the demolition commenced, this Court initially granted a stay on demolition. However, during the pendency of the Appeal to the Supreme Court, the Petitioners-

Chamankars' failed to file the undertaking required by the High Court and sought to be continued by the Supreme Court. Consequently, due to this failure, Respondent No.3-Developer proceeded with the demolition of the building.

5.2) In view of the above, it is necessary to first determine the *locus standi* of the Petitioners before addressing other aspects of the matter. Mr. Chinoy for the Respondent No.3-Developer contends that, the Petitioners-Chamankars, as the former Developer of the Slum Rehabilitation Scheme (SR scheme) was removed through an Order by the CEO SRA under Section 13(2) of the Slum Act dated 19th August 2017. That, before this removal, the Petitioner had completed Composite Building No.1 consisting of seven floors. However, the Occupation Certificate ('OC') was issued only for floors 4 to 7, with 856.60 sq. mtrs. earmarked as free sale area for the Petitioners. He notes that no O.C. was issued for the ground to the third floor. The Petition is premised on the Petitioner's alleged indefeasible entitlement to the 856.60 sq. mtrs., of free sale area in the Composite Building No.1, despite their removal as a Developer under Section 13(2), for failing to complete the Slum Rehabilitation Scheme.

5.3) Mr. Chinoy submits that, the Petitioner as the former Developer, was required to accommodate 911 slum dwellers in rehabilitation (rehab) and Project Affected Persons (PAP) tenements and upon successful completion of the Scheme would have been entitled to a free sale area of

79,500 sq. mtrs.

5.4) However, by an Order dated 19th June 2017, the CEO of the SRA removed the Petitioner as a Developer under Section 13(2) of the Slums Act. The Petitioners also lost their Appeal to the Apex Grievance Redressal Committee (AGRC). The AGRC dismissed the Appeal against the 19th June 2017 Order by a reasoned Order dated 28th November 2017. The High Court subsequently upheld the AGRC's decision in Writ Petition No.1324 of 2018 and Review Petition No.28 of 2018. The Special Leave Petition (SLP) filed by the Petitioner No.1 against this decision was also dismissed.

5.5) In 2018, through a General Body Resolution, Respondent No.3 was appointed as a new Developer. The SRA issued LOIs for the Slum Rehabilitation Scheme in their favour. Following the extension of the cut-off date for eligibility from 1990 to 2000, additional slum dwellers became eligible, increasing the required rehab and PAP tenements from 911 to 1619. Respondent No.3, after consultations with the SRA, decided to demolish the existing seven-storey composite building and replace it with an 18-storey structure. This new building would accommodate the additional eligible slum dwellers and provide them with an increased unit size of 27.88 sq.mts. under Development Control and Promotion Regulations Act, 2034 ('DCPR') up from the previous required 25 sq.mts. under the Development Control Regulations, 1991 ('DCR'). Respondent

No.3 secured the consent of all slum dwellers previously housed in the composite building from 4th to 7th floor and received SRA approval to proceed. Consequently, the building has been completely demolished. The Petitioners specific case is that they are entitled to 856.60 sq.mtrs of free sale area that they held on the first and second floor of the old building in the new building. Mr. Chinoy counters that, this claim is baseless and inconsistent with the established legal principles. He asserts that once removed as Developer under Section 13(2), the Petitioners are only entitled to compensation determined by the SRA and cannot claim rights over the free sale area.

6) Mr. Chinoy cites settled legal principles from various Judgements to reinforce his arguments:

6.1) In *Priya Construction Co. v The Slum Rehabilitation Authority & Ors.* an unreported judgement dated 18.07.2023 in WP No.5116 of 2022 a co-ordinate bench of this Court in paragraphs 2 & 3 referred to another co-ordinate bench judgement in *Housing Development & Infrastructure Ltd. v Mumbai International Airport Private Ltd.* reported in 2013 SCC OnLine 1513 held as follows:

2. We now state this as a matter of settled law, and not only has this Bench said it, but previous benches have said it as well, that under Slum Rehabilitation Laws, free sale development rights, are contingent and conditional upon performance of undeniable obligations to eligible slum dwellers. A failure to fulfill those obligations is a failure of

consideration, if this be seen in contractual terms,

3..... 24 HDILs [the Developers] entitlement to a share in some of the lands released from encroachment was contingent upon the successful performance of its obligations under the Slum Rehabilitation Contract.. .. In other words, HDILs [the developer therein] entitlement did not crystallise upon the execution of the Slum Rehabilitation Contract. If it did not fulfill its obligations it acquired no rights.”

6.2) In paragraph 4 of the same judgement another judgement of the co-ordinate bench in case of *Shree Sai Pawan SRA CHS Ltd V/s. CEO SRA & Ors. dated 27th February, 2023 in WP No.9291 of 2022* was referred. Mr Chinoy summed up the judgement to submit that if the developer fails to successfully complete the Slum rehabilitation Scheme and is removed as the Developer under Section 13(2), his contingent entitlement to the free sale area, does not crystallize and he acquires no rights whatsoever in any part of the free sale area. A developer who “is in default of his obligations” and has accordingly been removed under Section 13(2) “is not entitled to any of the benefits of the slum rehabilitation project i.e. the free sale component”.

6.3) He further emphasized on paragraph 6 of the said judgement which reads as under:

6. “Thus under SRA law, the obligations of the developer in whose name the Letter of Intent or LOI are issued are inter alia payment of transit rent and construction of rehab homes for those entitled to rehabilitation according to sanctioned specifications. If these obligations are not met, then, as a

matter of law, there is failure of consideration and there is no right to any free sale unit”.

6.4) Mr. Chinoy then referred to the unreported judgement in the case of *Rajesh Gupta & Ors V/s. SRA* dated 31st July 2023 in WP (L) No.5083 of 2023 to submit that although the Developer might have entered into Agreements with third parties for purchase of the sale area/entitlement, at a time when the developer of the Slum Rehab Scheme was entitled to deal with the same, on the removal and termination of such Developer for not having successfully completed the Scheme, such purchasers/allottees acquire no right to any free sale area and can only have recourse against the erstwhile Developer.

6.5) Mr Chinoy submitted that the above position in law was affirmed by Judgment of this Hon’ble Court in “*Deepak Prabhakar Thakoor & Ors V/s. MHADA & Ors* reported in 2023 SCC Online Bom 2234 particularly in paragraphs 9 to 11.

6.6) He asserted that this settled legal position is not altered by the fact that (i) the free sale area might have been demarcated as covering specific premises/area in the already constructed building; (ii) the erstwhile developer might have completed some of the proposed rehab building. The question is not whether the Developer had completed a particular rehab building, but whether he had successfully completed the entire project. For example, in Vaidehi Akash’s case the Developer had completed 8 rehab

buildings but on his being removed as Developer he ceased to have any right to any free sale area.”

7) Based on the above, Mr Chinoy argues that, the Petitioners’ claim to 856.60 sq. mtrs., of free sale area is unfounded and contrary to settled legal precedents. He further contends that the Petitioners’ claim of settled possession over the free sale area of 856.60 sq. mtrs. is also baseless. A removed Developer cannot assert possession or settled possession of any premises under the scheme. He submitted that, the Petitioner’s-Chamankar’s are at the most entitled for compensation for the work done by them from SRA. He submits that due process of law does not apply to a removed Developer’s claim, and the Petition should therefore be dismissed.

8) Mr. Kapadia appearing on behalf of Respondent No. 3 in Writ Petition No. 747 of 2024 fairly aligned with and reiterated the stand taken by Mr. Chinoy. He additionally contended that the primary reason for seeking demolition of Composite Building was the new DCPR 2034 that came into effect from 13th November 2018 whereby the area to be provided to the rehab tenements increased from 25 sq. mts to 27.88 sq. mts., and the numbers of eligible slum dwellers increased from 911 to 1543.

8.1) Moreover, regarding the new development under the Revised LOI dated 5th December 2019 the Respondent was not required to approve plans as per the “as built” area contended by Mr. Mehta. He submitted that

“as built” could never have included an illegal area.

8.2) He also submitted that, it was pursuant to the resolutions passed in the Annual General Meeting of the Society where members had agreed for demolition and reconstruction of their building and following the Order passed by the SRA they had demolished the building. He also relied upon the report of Sardar Patel College of Engineering to contend that it clearly revealed that the building was in a dilapidated condition.

8.3) Finally, he added that, the SRA had relied upon the report of the Valuer who valued the cost to be paid to the Petitioners at Rs. 25,03,55,495/- and consequently no prejudice would be caused to the Petitioners. In conclusion he submitted that the Petition be dismissed.

9) Mr. Khandeparkar, representing Respondent No. 2 - SRA also aligned with and reiterated the arguments by Mr Chinoy. He emphasized that the appointment of Chamankars' as Developer was terminated by an Order dated 19th June 2017, which has since attained finality, following the dismissal of their challenges up to the Hon'ble Supreme Court. Consequently, he argued that the Petitioners now have no legal recourse to any part of the Slum Rehabilitation Scheme, including the free sale component. He submitted that under the Slum Rehabilitation Act, the Chamankars' claims are restricted solely to costs incurred and they possess no ownership rights concerning the subject property within the Slum Scheme.

9.1) Mr. Khandeparkar further contended that CEO of the SRA adhered to the principles of natural justice, considering all relevant aspects before rendering the decision. He asserted that the Chamankars' were removed from the slum scheme both *de jure* and *de facto* following the due process. As a result the Chamankars' lack the locus to challenge the scheme or to claim any associated benefits through this Petition.

9.2) To support his arguments, Mr. Khandeparkar relied on the decision in the case of *Housing Development Infrastructure Ltd. Vs. Mumbai International Airport Ltd.* reported in *2013 SCC Online Bombay 1513*. He highlighted that, no interest is created in favour of a developer merely by securing a slum scheme. Free sale rights are contingent upon the Developer fulfilling obligations under the slum rehabilitation contract and adhering to the stipulated timeline within the LOI. Entitlement to free sale does not materialize solely upon execution of slum rehabilitation contract but requires completion of the prescribed obligations. He further stated that this Judgment was reinforced in the case of *Priya Construction vs. SRA* (Order dated 18th July 2023 in Writ Petition No.5116 of 2022).

9.3) Additionally, Mr. Khandeparkar pointed out that the Chamankars have already initiated a Commercial Suit bearing No.21 of 2024. Upon viewing the reliefs sought in the Commercial Suit, it is evident that the subject matter of the Suit and reliefs overlap with those in the present Petition. He argued that this overlap renders the Writ Petition non-

maintainable.

9.4) In support of this contention, he relied on the case of *Jai Singh vs. Union of India* reported in *1977 SC page 1(4)*. He submitted that the reliefs sought in the Commercial Suit and the Writ Petition are not only similar but also inconsistent with one another. Based on these points he concluded by urging the dismissal of the Petition.

Submissions by Mr. Shyam Mehta and Mr. Ashish Kamat on behalf of the Petitioners Chamankars and Jadhawani.

9.5) Mr. Shyam Mehta, learned senior counsel, appeared for the Petitioner Kamal S. Jadhawani and Anr. (Petitioner – Jadhawani) in Writ Petition No.747 of 2024. He submitted that the Petitioners- Jadhawani were in possession of the certain units on the second floor of the Composite Building No.1, which had been allotted to them by the previous developer, K S Chamankars' Enterprises. Consequently, their claims are derived from Chamankar Enterprises, and Anr., Petitioners in Writ Petition No.3685 of 2024 (Petitioner-Chamankar).

10) After hearing Mr. Shyam Mehta on the conspectus of the matter, we deemed it appropriate to hear Mr. Ashish Kamat because the Petitioners-Jadhawanis' would not have a higher right than that of the Petitioners-Chamankars'.

10.1) Mr. Kamat asserted that, this is a distinct case since the rehab and free sale components were not different but in a composite Building.

Having completed the building as per the approved plans, the Petitioners contract stood fulfilled to that extent. He argued that, admittedly Petitioners-Chamankars' had constructed the composite Building No.1 on 7th September 2007 and had received a Part Occupation Certificate (O.C.) for the 4th to 7th floors. Undisputedly the possession of the residential units on 4th to the 7th Floor were handed over to the SRA for allotment to the eligible slum dwellers. There was no record of the SRA taking possession of the premises on the Ground to the 2nd Floors. The Petitioners – Chamankars thus continued to possess at least the saleable component namely the earmarked 856.60 sq. mts that included 4 units on 1st floor and 5 units on 2nd floor as per the IOA report dated 16th July 2007 since 2007 i.e. for over 17 years.

10.2) He explained that, lack of an O.C. for other floors was due to some eligible persons selling their premises. Apart therefrom the Petitioner's-Chamankars had realigned units on the 1st and 2nd floor as was permissible and submitted plans for its regularization that was pending approval from the authorities.

10.3) Responding to Mr. Chinoy, Mr. Kamat contended that, this was not a case of non-performance by the developer. The scheme was executed in phases and two buildings had been fully constructed without grievance for over 15 years. This was corroborated by the revised LOI dated 16th January 2019, which stated:

“1) That all the other approvals & permissions sanctioned (i.e. IOA, C.C., O.C.C. etc.) approved & issued by the SRA in name of earlier Developer now stands revoked **except the approvals of already constructed and commenced buildings under regulation 33(10) i.e. Rehab Building no. 01 of Andheri Anna Nagar, Kasam Nagar CHS Ltd., Rehab Building No. 01 of Vitthal Rakhumai CHS Ltd., RTO office Building etc.**.”

10.4) Mr. Kamat questioned how the Respondent No. 3 – new developer, without the occupants’ consent, could demolish the structure completed only 17 years ago in the year 2007. He argued that, the SRA and the Respondent No 3- new developer acted in bad faith by declaring this building as dilapidated through a BMC notice under Section 353B and thereafter obtaining a private Structural Engineers’ report categorizing the building as C-1.

10.5) He vehemently argued that, the new developer - Respondent No. 3 offered larger areas to the rehabilitated members of the composite building in the new building and under that pretext, prompted them to lodge complaints with the BMC regarding Structural Stability. The BMC obliged and issued a notice, following which certain members of the rehab building obtained a structural stability report that categorized the building as C-1, leading to demolition.

10.6) Mr. Kamat argued that, the managing committee members indulged in forgery and fabrication of sale of shops and offices. Complaints regarding sale of offices and shops were lodged with Respondent No. 2 on

5th December 2023. He claimed that this action of issuing notice under Section 353B by BMC was malafide. He emphasized that no notice or hearing was provided to the Petitioners.

10.7) Moreover, the SRA did not inquire about the building's deterioration or hold the original architect accountable for faulty construction.

10.8) Therefore, the permissions granted by SRA via the LOI dated 27th July 2024, IOA dated 25th August 2023 and demolition Approval dated 17th May 2024 based on the private report dated 1st April 2024 also were unlawful and should be set aside. Additionally, the Petitioners were wrongfully dispossessed through illegal acts, including breaking locks. He asserted that, when analysed cumulatively it clearly reveals that the State Authorities acted in undue haste to permit demolition, demonstrating malafide intent. Consequently, the actions of the SRA and the Respondent no. 3 – new developer should be set aside.

10.9) Mr Kamat submitted that, the Petitioners were entitled to equivalent space in the new building at par with the other eligible occupants. He clarified that the suit filed for damages was unrelated to the current Writ Petition which sought to challenge the collusive actions of the developer, BMC and SRA in demolishing a stable building. He thereafter submitted that, the Petition of the Chamankar's be allowed.

REASONS AND CONCLUSION:

11) We have heard all counsel at length and also closely examined the record.

12) At the outset it be noted that, though Mr Chinoy's arguments were convincing, but there seemed to be something amiss.

13) On a careful analysis, when we focused on the actions of the BMC and the SRA, ignoring the status of the Petitioner, it became evident that the entire action smacks of malafide. In our view, this Petition does not concern whether the Petitioners are entitled to damages, 856.88 sq. mtrs. or compensation as calculated by the SRA. Instead, the issue is whether the actions of the new developer, through the BMC and SRA, were lawful or required setting aside.

14) The other issue that cropped up was whether the new developer could redevelop the duly constructed building and complete building with part O.C. taking the rehabilitated occupants (members of a co-operative society) once again as "slum dwellers" in the SR Scheme to benefit from the new DCPR 2034? In our view they loose their status as "slum dwellers" once rehabilitated. However, this issue being beyond the scope of this Petition, is not addressed.

PART O.C., ALLOTMENT & POSSESSION

15) There is no dispute that the Chamankars had completed the Composite Building in all respects. Part O.C. too was obtained and the Slum Dwellers proposed to be rehabilitated too were allotted tenements as

contemplated by the IOA dated 16th July 2007. Admittedly, eligible slum dwellers are in lawful possession of their premises from the 4th to the 7th floors. Obviously, therefore the possession of these tenements was handed over by the Petitioner-developer Chamankars' to the SRA who in turn have, after due process, handed over the possession to the slum dwellers. Resulting in compliance with the LOI conditions. Thus the slum dwellers ceased to be slum dwellers once they were rehabilitated.

16) The letter dated 17th March 2010 whereby the Chamankars' had offered the premises on the 1st and 2nd floor to the SRA and sought permission for the Occupation Certificate for the ground plus three floors is also not disputed. Therefore, the contention that the Petitioners could not have been in possession of the premises for want of OC would not be relevant for the purposes of being in formal or physical possession of the building.

17) Referring to the revised LOI dated 5th August 2019 and 5th December 2019 it is evident that the approvals granted earlier to the previous developer for certain rehab buildings were saved, while all other approvals were revoked. Mr. Chinoy's argument that the Petitioners were in wrongful occupation or lacked the right to oppose the demolition is unpersuasive. His assertion that the Petitioners were in wrongful occupation or that they ought to have surrendered these premises to the SRA and therefore they possess no right to come to court opposing

demolition of the building is an argument which we are unable to accept.

18) It is undisputed that, the Chamankars developed the building, allotted units to the Jadhawanis (rightly or wrongly) and handed over possession of tenements from 4th to 7th floor to the SRA and subsequently, eligible slum dwellers have been in lawful possession of those premises. We also cannot ignore that it is for the developer to hand over possession of the tenements and of the building to the SRA or for the SRA to take possession in some manner of form duly recorded in writing.

19) Furthermore, there is no communication produced on record or referred, from the SRA to the Petitioners calling upon them to handover the three floors of the composite building or even the earmarked area that continued to be in their possession over 17 years pursuant to being terminated under Section 13 (2) of the Slums Act. Pertinently, the SRA has failed to take a stand on this aspect. It has neither filed a reply in Chamankars' Petition or brought any documentary evidence before us to substantiate or reject any action by the new developer. They ought to have, but have deliberately left it to the Court to draw an inference that, in either way would favour the new developer whom they openly support.

20) In our view, the SRA ought to have placed on record certain facts:

- 1) as to when they took possession of the tenements from the
4th to 7th Floor,

- 2) whether they took possession of the rest of the building and if not why not,
- 3) what steps they took against the developer for 17 years if he had failed to handover possession of the building or any part,
- 4) who were in occupation of the other tenements from the ground to the 3rd floor other than premises/area claimed by the Petitioners Chamankars or Jadhawanis, and
- 5) why O.C. was not granted to the remaining floors i.e. Ground to 3rd floor for 17 years.
- 6) if there were occupants on the Ground floor to the 3rd floor then it would mean that they were in illegal possession and if so what steps did the SRA take to vacate them.
- 7) earlier building structural stability report – despite this Court directing to produce – it is not produced till this date.

The absence of this information which the SRA alone would have, is suppressed from this Court.

21) We cannot ignore the terms and conditions of the IOA 16th July 2007 which categorically mentioned about CC of only one building namely Composite Building No. 1 and the part O.C. granted to the Petitioners on 7th September 2007 which categorically entitled them to a certain units in the Composite Building. Furthermore, the Undertaking of the new

developer dated 7th February 2020 filed with the SRA clearly establishes that there were occupants in the tenements from Ground floor to the 2nd floor, third floor being a service area.

22) Moreover, undisputedly, this was a contract which was to be executed in a phased manner. The fact that two buildings were fully constructed and one had commenced construction by the Petitioners can be evinced from paragraph 1 (**supra**) of the LOI dated 16th January 2019.

22.1) Mr. Kamat was thus right in contending that, no one has raised any grievance about these two building for more than 15 years and the requirement of demolition of the building would have been mentioned in the LOI dated 16th January 2019 and not have been saved.

23) Assuming, that they would have to return the area under their occupation, on failure to hand over, the SRA could not have simply sent the new Developer to forcibly take possession – the SRA would necessarily have to initiate proceedings to recover possession as per the law, being a statutory Authority. Mr. Khandeparkar has discretely only referred to the inspection reports of 23rd and 26th April 2024 to contend that the allottees from Chamankars', namely the Jadhawanis' were not in possession as claimed.

24) We are unable to accept that the Petitioners were not in possession. If we had to hold otherwise, the SRA would have to make a positive statement on Affidavit along with documentary evidence to show

that the entire building was handed over to them and thereafter they have put those persons who were eligible only in possession of the areas including the ground to the 2nd floor. There is nothing on record to show any actions taken by the SRA.

25) The possession to the ground plus second floor having been received from the developer has not been touched upon by Mr. Khandeparkar either in the Affidavit or in the submissions that have been filed.

26) We are unable to appreciate this stand of the SRA in behaving like a private individual. We also do not appreciate State Authorities misguiding the Court. The SRA has remained silent regarding the interpretation of clause / paragraph No.2 of the letter dated 7th September 2007, addressed to Chamankars which clearly stated, “that all pending IOA and LOI conditions shall be duly complied with before asking full occupation to the last building in layout.” A plain reading conveys, that in view of this condition imposed by the SRA the composite building would not be granted further or full Occupation Certificate until this condition was met. The SRA also ought to have placed on oath as to whether or not the Petitioners were entitled to 856.60 sq. mtrs. including the 9 shops earmarked on the 1st and 2nd Floors of the Composite building and if so under what provision. There is no statement in the Affidavit suggesting that on termination the Petitioners-Chamankars were liable to hand over the

area under their possession or any communication calling upon them to surrender the possession since 19th June, 2017.

27) We therefore agree with Mr. Kamat and Mr. Mehta that the demolition of the building was a back door entry to take over possession from the Petitioners frustrating their rights without following any process known to law.

28) In our view, whether the Petitioners were in actual or formal possession is irrelevant to this case when we are considering the action of the BMC issuing the 353B notice under the BMC Act, when ex-facie the building was not 30 years old.

BMC NOTICE UNDER SECTION 353B

29) A simple arithmetical calculation would reveal that the building was not 30 years old. SRA granted part O.C. on 7th September 2007 and notice under Section 353B was issued on 13th March 2024. Thus, the building on the date of issuance of notice was not more than 17 years old. Therefore ex facie the notice was bad in law.

30) In this regard, the Section 353B notice of the Brihanmumbai Municipal Corporation Act, 1888 ('BMC Act') is relevant and reproduced hereinbelow for ready reference:

"353B. Structures Stability Certificate

(1) Every owner or occupier of a building in respect of which a period of 30 years from date of –

- (i) Issue of its completion certificate by the Corporation; or
- (ii) issue of permission of occupy a building under section 353A; or
- (iii) its physical occupation of at least 50 per cent of its built-up area,

whichever is earlier, has expired, shall cause such building to be examined by a Structural Engineer registered with the Corporation for the purposes of certifying that the building is fit for human habitation (such Certificate hereinafter referred to as “the Structural Stability Certificate”). These Structural Stability Certificate issued by such Structural Engineer shall be submitted to the Commissioner.

(2) The Structural Stability Certificate shall be submitted within one year from the expiry of a period of thirty years referred to in sub-section (1), and every ten years thereafter or such earlier period as the Commissioner may determine having regard to the condition of the building and the corrective repairs carried out by the owner or occupier.

(3) Notwithstanding anything contained in sub-section (1), the Commissioner may, at any time, after having recorded the reasons, in writing, direct the owner or occupier of a building, to cause such building to be examined by such Structural Engineer and to submit to the Commissioner, the Structural Stability Certificate, as

required under sub-section (1), within the period not exceeding thirty days as specified by the Commissioner, in such direction.

(4) If the Structural Engineer recommends any corrective repairs for securing the structural stability of the building, such corrective repairs shall be carried out by the owner or occupier of a building to the satisfaction of the Commissioner.

(5) Any owner or occupier, as the case may be, who fails to carry out corrective repairs for securing structural stability, within a period of six months from the date of report of the Structural Engineer, shall be punished with the fine as provided in section 471.

(6) Notwithstanding anything contained in sub-section (5), the Commissioner may, after giving the owner or occupier, a notice in writing, require him to carry out, within the period specified in the notice, corrective repairs for securing structural stability of a building. If the owner or occupier fails to carry out such corrective repairs within the period specified in the notice, the Commissioner may carry out the same and the expenses incurred by the Commissioner on such repairs shall, on demand if not paid within thirty days, be recovered from the owner or occupier as arrears of property tax.

(7) If there is any dispute about the amount of expenses for which demand is made under sub-section (6), an appeal may be preferred to the Chief Judge of the Small Causes Court, but no

such appeal shall be entertained by the said Chief Judge, unless —

(i) it is preferred within twenty-one days from the date of receipt of notice of such demand;

(ii) the amount for which demand is made is deposited with the Corporation and a true copy of the receipt showing that the amount has been so deposited accompanies the appeal.

(8) In case the appeal is decided in favour of the appellant and the amount of expenses deposited with the Corporation is more than the amount payable by the appellant, the Commissioner shall adjust the excess amount with interest at 6.25 per cent per annum from the date on which the amount is so deposited by the appellant, towards the property tax payable by the owner in respect of such building thereafter.”

31) Section 353B mandates that the buildings over 30 years old must obtain a structural stability certificate. This provision presupposes two conditions: (i) the building must be 30 years old and (ii) notwithstanding anything contained in sub-section (1) the Municipal commissioner for reasons recorded in writing cause such building to be examined and certified by a Structural Engineer.

31.1) Consequently, the issuance of notice under Section 353B of BMC Act which proceeds on the basis that the building was 30 years old was unlawful. Furthermore, the BMC had no ground to intervene, as this plot was under the SRA Scheme.

ROLE OF SRA AND NEW DEVELOPER

32) The SRA could not have acted like a post office. The SRA could not have feigned ignorance about the age of the building given the fact that it had issued the O.C. It failed to take any steps and verify the authenticity of the report of the private Structural Engineers. It appears that they were eager and interested in getting the building demolished.

33) Normally, we would have expected SRA to obtain an independent report about the condition of the building if they on survey and inspection alongwith their Engineers felt that the private Engineer's report had some weightage. It was the SRA's responsibility to take appropriate action against the developer and Architect after providing written reasons. This was not done.

34) We also agree with Mr. Kamat's contention that, there is no evidence of complaints about the building's condition and stability until the developer proposed demolition and reconstruction of the old building to gain benefits under the DCPR 2034.

35) The tenements from Ground to the 2nd floor were commercial tenements. The Undertaking submitted by the new developer, acknowledges occupants on ground to second floors. The actions of the SRA in delegating its powers to verify the authenticity of occupants, including that of the sale shops, to the new developer, before demolishing the Composite Rehab building in the SRA scheme was unlawful. The

possession of these tenements to those eligible was and is the SRA's responsibility. The SRA alone had the prerogative and duty to authenticate occupants before demolition. By delegating this authority, they acted improperly and unlawfully. In our view the SRA could not have done this.

36) The SRA has not clarified when it took possession of the balance floors of the building or why it failed to act for 17 years if the developer had not handed over possession. The absence of this critical information and the lack of documentary evidence leads us to draw an inference that, the SRA's actions were malafide. The SRA's failure to take a clear stand on these matters further undermines their bonafides.

37) The Courts, in our view are not expected to get into the nitty-gritty's of the contracts in Writ Petitions filed under Article 226 of the Constitution of India. But appalled by the conduct of the SRA and the BMC and the manner in which they have proceeded with demolition of the recently completed composite building in this slum project, we examined the documents minutely. We do not expect the SRA to stand like a private individual. SRA is a State within Article 12 of the Constitution and is expected to come clean to Court and point out all aspects of the matter as they stand and not take up stands with a biased approach as is evident in this case. We express our displeasure towards the act of the CEO, SRA for having delegated powers to the developer to verify and authenticate the occupiers in the composite rehab building constructed in 2007. On that

ground alone, the Petitioners would deserve to be heard and entertained in this Petition.

38) The judgments relied upon by Mr. Chinoy and Mr. Khandeparkar do not deal with composite buildings or compensation in lieu of part completion of a Scheme as in this case. Areas were not only earmarked but were in possession of the developer for 17 years. The facts in this matter are thus entirely different from the judgments cited by Mr. Chinoy. Thus those judgments will render him no assistance.

39) Despite being called upon by this Court, the SRA has failed to produce the structural stability certificate issued at the inception, which would indicate the certified lifespan of the structure. While granting the O.C. to the building in 2007 upon its completion, such certification was essential. However, the document now produced is vague and does not provide the crucial detail of the certified lifespan as determined by the Structural Engineer.

40) The BMC's actions, too are questionable. Issuing notices under Section 353B, despite the inapplicability of the section, demonstrates malafide intent. State authorities like the SRA and BMC are expected to act transparently and in public interest, but their conduct in this case falls far short. We agree with the contentions of Mr. Kamat that the provisions of the BMC Act would not be applicable to this building as it had not completed 30 years as is a preliminary condition to the applicability of the

section itself. We thus find the actions from the SRA and the BMC mala fide in this case. The BMC also being a Statutory Authority cannot play or even seen to be playing to the tunes of any developer. They are expected to be and ought to be unbiased, strict followers of the law and their actions ought to be only in public interest. They ought to have refused to take action and issue notices as were done calling upon the occupants to get reports in the first place. We do not appreciate the conduct of the engineers and the Authorities and all concerned who were responsible for these over enthusiastic actions favouring both the occupants as well as the developers in the SRA scheme.

41) We are also unable to accept the stand of the SRA when they say that the unit Nos.201, 202 and 203 claimed by the Petitioners Jadhawanis' were rehab component units being residential cum Commercial R.C. Nos.40, 41, 42, 43 and 44 whereas unit No.207 claimed by the Petitioner No. 2 is in fact R.C. 35 and 36. We are unable to understand as to what action had the CEO SRA taken with regard to these units since 2007, that the building was completed. There is also a failure to mention about the other units on the three floors that is the ground, first and second and as to who were in occupation of these floors. There is also no mention as to what has been done with regard to the other units occupied or empty on these floors.

42) The entire reply is only based as a response to the petition and

there is no clear narration of facts and the current status of the said three floors. The SRA is also a Statutory Authority and therefore is bound to come to the Court with clean hands and with an unbiased approach. This is clearly absent in this case. It clearly smacks of mala fide and the conduct is that of a private individual rather than a State. There is also no clarification as to why the amended plans were not accepted or rejected by the SRA and the BMC. If they were rejected, why no action was taken by them for the past 17 years for having been put up differently as opposed to the approved sanctioned plans. There is no mention or argument or contention raised by the SRA in reply to this Petition. No such documentary evidence or clause in the Order has been pointed out to us in this regard. The SRA has also failed to point out from the terms of the contract, as to why these premises of 856.60 sq. mtrs. were earmarked for the Chamankars' and whether they were required to be given to them under the contract upon completion of the composite building or not and if not, then why have the SRA not taken possession of these floors from the Chamankars' for a period of more than 17 years. These questions remain unanswered and therefore these stands taken by the SRA in this Petition clearly lead us to believe that their actions are mala fide. The SRA's failure to clarify why amended plans were neither accepted nor rejected and their lack of action regarding premises earmarked for the Chamankars for over 17 years, further underscores the malafide nature of their actions.

43) In conclusion, the contention of Mr. Chinoy that, the Chamankars' and Jadhawanis' had no locus is rejected. Being in occupation either physical or formal would suffice to grant locus to the Petitioners to challenge the actions of new developer as well as the SRA. The delegation of powers to the developer to verify occupants was illegal. The saying — "if the premise is incorrect, the conclusion is inevitably flawed" squarely apply in this case.

44) In view of the above, deliberation and to balance equities, we pass the following Order:

1) Respondent No.3 is directed to set aside and earmark an area of 856.60 sq. mtrs. approved for the Petitioner in the new building, along with the proportionate increases offered to the other eligible occupants under the new scheme;

a) The Petitioners Chamankars entitlement to this area or compensation in lieu of the said area of 856.60 sq. mtrs. as per the market rate be decided by the SRA preferably within six months.

b) In the interim, the Petitioners are entitled to transit accommodation or compensation for the said area similar to and at par with other eligible occupants.

45) Chamankar's Petition is accordingly allowed in the aforesaid terms.

46) Since Petitioner-Jadhwani's rights are secured through the

Chamankar's their Petition stands disposed of in the aforesaid terms.

47) In view of the disposal of the above Writ Petitions, all Interim Applications and Contempt Petition stand disposed off.

48) All the concerned to act on an authenticated copy of this Order.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)