

PALLAVI
MAHENDRA
WARGAONKAR

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WARGAONKAR
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 157 OF 2022
WITH
INTERIM APPLICATION NO.1991 OF 2024
IN
WRIT PETITION NO.157 OF 2022

1. Sandesh Mahadev Lavnde
Formerly residing at Laxman Bhandari Chawl,
Om Darshan Welfare Society,
Charkop Gaon, Kandivli (West),
Mumbai – 400 067.
2. Sadanand Babaji Palav
Formerly residing at Room No.6,
Laxman Bhandari Chawl
Near Rajudhaba, Charkop Village,
Kandivli (West),
Mumbai – 400 067.
3. Prasad Dattatray Pawar,
Adult, Indian Inhabitant,
Formerly residing at Laxman Bhandari Chawl,
Laxminagar, Charkop Village,
M.G. Road, Kandivli (West),
Mumbai – 400067.
4. Aruna Sarjerav Doke
Formerly residing at Laxman Bhandari Chawl,
Laxminagar, Charkop Village,
M.G. Road, Kandivli (West)
Mumbai – 400 067.

... Petitioners

Versus

1. Collector, Mumbai – Suburban District,
Administrative Building, 10th Floor,
Government Colony,
Opp. Chetana College,
Bandra (East), Mumbai – 400 051.
2. Assistant Engineer,
Municipal Corporation of Greater Bombay,
“R” South Ward, Kandivali (West),
Mumbai.

3. The State of Maharashtra
Through the Principal Secretary,
Housing Department,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point, Mumbai – 400032
4. The State of Maharashtra
Through the Additional Principal
Chief Conservator of Forest
Mantralaya Revenue and Forest
Department Mantralaya Mumbai
Revenue and Forest Department,
Mantralaya Mumbai – 32
5. The Senior Inspector of Police, ... Respondents
Charkop, Kandivali (West) Mumbai.

Ms. Ronita Bhattacharya Bector for the Petitioners/Applicant.

Ms. Uma Palsuledesai, AGP for the Respondent- State.

Ms. Anuja Tirmali a/w Ms. Jyoti Mhatre i/b. Komal Punjabi, for the
Respondent No.2 – BMC.

CORAM:

**G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

JUDGMENT RESERVED ON :

11 FEBRUARY 2025

JUDGMENT PRONOUNCED ON :

6 JUNE 2025

JUDGMENT (Per Advait M. Sethna, J.) :

1. Rule, made returnable forthwith. Respondents waives service. By consent of the parties heard finally.

2. This Writ Petition is filed under Article 226 of the Constitution of India praying for the following substantive reliefs :-

“a. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents No. 1 and 2 to provide the Petitioners and other residents of the Laxman Bhandari chawl area represented by them at Exhibit A with suitable in-situ rehabilitation in accordance with the law on account of being a protected occupants of hutments prior to the cut of date 01.01.2000 and/or 01.01.2011;

b. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 1 to restore the status quo ante in the Laxman Bhandari Chawl area in the Laxman Bhandari chawl area;

c. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents No. 1 and 2 to provide the Petitioners and other residents of the Laxman Bhandari chawl area represented by them at Exhibit A with due compensation for the hardships suffered by them over the past month;

d. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents No. 1 and 2 to take appropriate disciplinary action against the Deputy Collector of the Borivili region and the Sub-Divisional officer concerned for failing to verify the eligibility documents of the residents of the basti in the Laxman Bhandari chawl prior to demolishing their structures and further direct the other Respondent Authorities to cease any and all coercive actions against the Petitioners and those represented by them at Exhibit A;”

3. The challenge in the petition stems from the alleged illegal demolition undertaken by the respondents on 9 April 2021 of structures/hutments located at the Laxman Bhandari chawl at Charkop Gaon, Kandivali West, Mumbai on the land bearing survey no. 39 admeasuring 55 Hectares and 1900 sq. meters, (“**Subject Land**”) shown as reserved forest in the government / public records.

Prologue:

4. At the very outset, this case projects, yet again, the deep rooted menace of mushrooming of illegal slums, encroachments, unauthorized

constructions/structures on government/public lands and the challenges that arise therefrom, to be faced by the already overpopulated island city of Mumbai. The petitioners in the present petition belong to the category of persons who have apparently encroached on government/public land as described below, shown as reserved forest in government records as also falling within the prohibited 50 meters buffer zone around mangroves where human habitation is legally impermissible. However, such persons continue to reside in their dwelling structure/houses primarily on the basis of claiming to be ‘protected occupiers’, under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**‘Slums Act’**). It is on such basis that they assert rights and claim benefits under the Government Resolutions (**GRs**) dated 16 May 2015 and 16 May 2018. We are conscious of and cannot be oblivious to the delayed action and/or inaction on the part of the State machinery which at times would act as a mute spectator. Such approach would aggravate the problems that are already starring in these situations. However, the rule of law is supreme and has to prevail. It is on such backdrop and in light of the contentions canvassed before we examine and adjudicate this petition.

Factual Matrix:-

5. Following are the facts as averred in the petition which would be relevant for adjudication of the petition:-

(i) In the year 1980, Laxman Bhandari Chawl came to be established in Laxmi Nagar in Charkop, Kandivali on the land bearing Survey no.39.

(ii) It was in September 2006 that some of the hutment dwellers in the Laxman Bhandari Chawl were issued notices under Section 3Z-1(1) of the Maharashtra Slums Act. The residents who received notices at the time, submitted necessary documents as required under the notices. Whereas, some of the other residents disputed the legal validity of the notices and approached this Hon'ble Court by filing Writ Petition No.5283 of 2007, wherein some protective orders were passed by this Court.

(iii) The Government land situated at survey no.39 where the said Laxman Bhandari Chawl is located covers an area admeasuring 55 Hectares and 1900 sq. meters. The subject land is shown as reserved forest in the government/public records, including the 7/12 extract, a copy of which is exhibited to the reply affidavit of the respondent no.1. However, the petitioners in the rejoinder affidavit dated 8 October 2021 would contend that the structures of the petitioners are located on the balance area of survey no.39 which would fall outside the area of reserved forest.

(iv) During the period from 2012 to 2017, afforestation activities and plantation of mangroves were undertaken by the Forest Department on the entire land bearing survey no.39. The application of the petitioners made under Right to Information Act, 2005 ('RTI' for short) annexed to the rejoinder would show

that in the year 2012-2013, on the subject land in the area of 10 Hectares, mangroves species in the name of Avesinia Marinaceria Seria etc. were planted.

(v) According to the petitioners, during the period from 2013 to 2014, illegal demolitions of the said Laxman Bhandari Chawl were undertaken by the respondents.

(vi) On 16 June 2015, a Government Resolution was issued under the provisions of the Maharashtra Slums Act providing for shelter to slum dwellers actually residing in declared and enumerated hutments existing on or before the qualifying date of 1 January 2000 on government, semi-government and private lands, who are categorized as 'protected occupiers' under the said GR.

(vii) A public notice dated 30 May 2017 was issued by the Tehsildar, Borivali concerning the subject land to remove encroachments and unauthorized structure situated within 50 meters of the mangrove buffer zone under the provisions of section 3Z-2(4) of the Maharashtra Slums Act.

(viii) The petitioners would contend that during the period of May 2017 to June 2017 demolition drives were undertaken on the subject land by the respondent authorities.

(ix) The petitioners with reference to their Rejoinder would rely on a communication of June 2017 issued by the office of Tehsildar, Borivali to the Assistant Commissioner, R/South of the Municipal Corporation of Greater

Mumbai. This is to emphasize the need for a joint inspection to demarcate the boundaries of the 50 meters buffer zone around mangroves concerning subject land being in the nature of reserved forest.

(x) The petitioners would refer to an order of this Court dated 5 December 2017 passed in another Writ Petition No.999 of 2018 claimed to be filed by three residents of the Laxman Bhandari Chawl. The court observed that since it is not clear whether the shanties of those petitioners are removed by the concerned respondents or not, it would be necessary to direct the authorities to maintain status-quo as on date, in respect of the shanties of those petitioners.

(xi) The petitioners would then refer to a letter dated 18 November 2017 which is a part of their rejoinder, to contend that the City Survey Officer, Borivali wrote to the Tehsildar, Borivali that at the time of handing over possession of the forest area of subject land bearing survey no.39, the mangroves were not mapped. However, the said communication would clearly indicate that an area of 1900 sq. meter was demarcated and named as Maharashtra Government Protected Forest (Mangroves) which would encompass the subject land.

(xii) The petitioners would then place reliance on a GR dated 16 May 2018 for rehabilitation of hut holders actually residing in slums/hutments after 1 January 2000 but before the cut-off date of 1 January 2011 who would be conferred the status of protected occupiers, under the said GR. Both the said GRs incorporates and stipulates the documents to be shown for claiming status of 'protected

occupier'. They would be eligible to receive alternate permanent tenements as homes, upon paying construction related costs for the alternate tenements to be provided to such qualified hutments dwellers.

(xiii) The petitioners referring to their rejoinder affidavit would contend that on 30 July 2018 the City Survey Officer addressed a letter to the Divisional Forest Officer that the mapping of mangroves and the demarcation of the 50 meters boundary was not complete. Further, the petitioners would refer to a letter dated 25 May 2018 of the Maharashtra State Road Development Corporation ('MSRDC') addressed to the Collector, regarding the subject land, inquiring whether it could be utilized for the purpose of compensatory afforestation for the Versova-Bandra Sea Link Project.

(xiv) A coordinate Bench of this Court by a judgment dated 17 September 2018 in PIL No.87 of 2006, dealing with the issue of destruction of mangroves in the entire State of Maharashtra, issued detailed directions. The court, *inter alia*, directed that there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra, regardless of ownership of land having mangroves, all constructions taking place within 50 meters on all sides of all mangrove areas shall be stopped forthwith. There would be no development whatsoever within a buffer zone of 50 meters around the mangroves in the State of Maharashtra.

(xv) The petitioners would then refer to the minutes of meeting conducted by the Collector, Mumbai Suburban District on 6 April 2021 annexed to the reply affidavit of respondent no.1, to plan demolition of illegal structures, encroachments on the land bearing survey nos.38 and 39 situated within 50 meters from the mangrove buffer zone.

(xvi) The petitioners would refer to a public notice dated 7 April 2021 issued by the Tehsildar and Executive Magistrate, Borivali, Mumbai in regard to the demolition of unauthorized structures/construction within 50 meters of the mangrove buffer zone situated in subject land. The said public notice also refers to an earlier public notice dated 20 February 2019. The concerned persons were informed of the necessary action to be taken by the respondent authorities including removal of such unauthorized structures/encroachments, to be undertaken between 9 and 10 April 2021.

(xvii) It was on 8 April 2021 that the City Survey Officer, Borivali conducted survey and demarcated the area within 50 meters of the mangrove buffer zone in subject land bearing survey no.39. After such survey conducted by the City Survey Officer, the area within 50 meters of the mangrove buffer zone was so demarcated. However, according to the petitioners, no forest official was present when such demarcation was undertaken.

(xviii) The petitioners would then contend that it was on 9 April 2021 that the respondent authorities carried out an illegal demolition drive in the subject

land bearing survey no.39 which was so done without any verification of documents of the petitioners and/or verifying their eligibility to receive alternate accommodation.

(xix) It is in the above backdrop that the petition is filed with the prayers/reliefs as noted, (*supra*).

Submissions of Petitioners:

6. Ms. Bhattacharya would at the outset submit that the families residing in the Chawl are ‘protected occupiers’ on account of having the necessary documentation as per the Government Resolution No.Zopudho-1001/Case No.125/14/Zopsu-1 dated 16 May 2015 and the Government Resolution Number G.R. No -SR Scheme-0810/Pra. Kra.96/2018/SI-1 dated 16 May 2018. The Government Resolution dated 16 May 2015 qualifies those hutment-dwellers residing in structures constructed prior to 1 January 2000 to be protected occupants entitled to alternate accommodation in the form of tenements provided free of cost.

7. She would next submit that the Government Resolution dated 16 May 2018, qualifies those hutment-dwellers residing in structures constructed between the period of 1 January 2000 and 1 January 2011, upon paying certain construction related costs qua the alternate tenement to be provided to them. Accordingly, both the said GRs will apply to the petitioners, who qualify as

‘protected occupiers’ under the Maharashtra Slums Act, thereby vitiating the demolition action of the respondents. The petitioners are therefore entitled to alternate accommodation as provided in the said GRs.

8. Ms. Bhattacharya would contend that aggrieved by the illegal action of the officers of the Respondent No.1, forcibly evicting and taking other coercive measures against the petitioners and other residents of the Laxman Bhandari chawl during the period of 9 April 2021 till 11 April 2021, would be in flagrant violation of the said GRs and the provisions of Slums Act.

9. Ms. Bhattacharya would submit that instead of taking accountability for the illegal demolition drive on 9 April 2021 and making arrangements to provide the residents of the chawl with alternative accommodation, police officers of the Respondent - police department and officers of the Respondent - Forest Department of the State Government continue to harass, threaten and harm the Petitioners and other residents of the area by taking coercive measures against them, *inter alia*, by forcing them to evict their hutments, which is contrary to law.

10. Ms. Bhattacharya would contend that instead of assisting the petitioners, the Police Officers threatened to file criminal cases against the residents of the area for returning to reside on the area upon which their dwellings/structures stood prior to demolition. The Petitioners are suffering immense distress since the onset of the rain has begun, left them living amidst pools of dirty, contaminated rain water and are vulnerable to serious health issues

on account of being exposed to the direct rainfall and cold winds without any shelter over their heads. The Petitioners apprehend contracting influenza and even pneumonia, which will put them at severe risk of developing life threatening cases of Covid-19. Such hardship to the petitioners would have been avoided by the respondent authorities if they acted in accordance with law by not resorting to the illegal demolition.

11. Ms. Bhattacharya would submit that due to the illegal acts of respondents, the petitioners are being made to live in such a squalid and inhumane manner in the open, without any roof over their heads. At any time, during the past month when the Petitioners attempted to build temporary shelters over their heads in the form of shacks, the officials of the Respondent No. 4 - Forest Department arrived at the basti and coercively made the Petitioners dismantle their temporary shelters. Such high handed action and arbitrariness of the respondents is exacerbated by the fact that on 16 April 2021, merely a week after the demolition of the Petitioners structures, this Court stayed all evictions and demolitions within the State due to the Covid-19 Pandemic. The directions of the Court have been extended till 11 June 2021.

12. Ms. Bhattacharya would contend that on 9 April 2021, even while this Court was in the process of issuing directions in Writ Petition No. 999 of 2018 to maintain status-quo in the basti, Respondent No. 1 and 2 proceeded to demolish the structures, without affording them an opportunity of a

representation or protecting their valuables. This is not how ‘protected occupiers’ under the 2015 and 2018 GRs of the State of Maharashtra ought to be treated as Ms. Bhattacharya would strenuously urge.

13. Ms. Bhattacharya emphasize that notwithstanding her submission that their hutments were located outside the 50 meter buffer zone around mangrove areas in the region, it is on 9 April 2021, even while this Court was in the process of issuing directions in WP No. 999/2018 to maintain status-quo in the basti, the Respondent No. 1 and 2 proceeded to demolish the structures in the basti in a high-handed and arbitrary manner, not known to law.

14. According to Ms. Bhattacharya, the forcible evictions of the hutments of the petitioners were being done without any survey merely to try clear paths and establish a right of way for private high rise residential buildings being developed in the region. The public notice dated 7 April 2021 did not provide the residents of Laxman Bhandari chawl to be heard prior to their forced evictions, in contravention to the findings of the Supreme Court in the case of *Olga Tellis v Bombay Municipal Corporation and Ors.*¹. She would submit that the Supreme Court has clearly held that the ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken.

1. AIR 1986 SC 180

15. Ms. Bhattacharya would urge that the Supreme Court has held that the discretionary power of the Commissioner of the Municipal Commissioner to order the demolition of structures without serving prior notice should only be exercised when absolutely necessary, depending on the exigencies of the case and cited apprehending danger, presumably in the form of unstable structures collapsing, as being a circumstance warranting the demolition of a structure under Section 314 of the Mumbai Municipal Corporation Act, 1888. There was no such imminent danger arising from the hutments in Laxman Bhandari Chawl, and therefore, it was unwarranted for the Respondents to have demolished the structure, notwithstanding the distance between the hutments and mangroves in the Charkop area, on account of the fact that the residents of such hutments/dwellings were 'protected occupants' who could not be forcibly evicted without securing them with alternate accommodation.

16. Ms. Bhattacharya would submit that it is settled law that the right to live with human dignity, with a basic form of shelter over one's head is included within the realm of the right to life guaranteed under Article 21 of the Constitution of India. The Order passed by the this Court in the above mentioned Writ Petition No.999 of 2018, this Court directed the Respondent Authorities to maintain status-quo with regard to their shanties/hutments. The said order has been extended from time to time over the past few years including on 9 April 2021, when the officers of the Respondents once again sought to

forcibly evict the residents of the Laxman Bhandari Chawl area, which violated their fundamental rights.

17. Referring to the inhuman conditions which the petitioners had to face due to illegal act of demolition by the respondents, Mr. Bhattacharya would rely on a judgment of the Supreme Court in the matter of **Shantistar Builders v. Narayan Khimalal Totame**², more particularly, paragraph 9 thereof. In this context, she would submit that the Supreme Court has recognized that it is not necessary that every citizen must be assured of living in a well-built comfortable house but a reasonable home particularly, for people in India can even be mud-built thatched house or a mud-built fireproof accommodation.

18. Ms. Bhattacharya has also tendered a compilation of judgments at the end of hearing with which we deal with in the paragraphs below.

Submissions of Respondent No.1:-

19. Ms. Palsuledesai, learned AGP for the State would vehemently oppose the petition and the submissions made by Ms. Ronita Bhattacharya. At the very outset, she would submit that the present writ petition is misconceived and therefore, deserves to be dismissed with exemplary costs. It is submitted that this is a case where the petitioners encroached upon government land and constructed their shanties on the buffer zone, in the restricted mangroves reserved forest area. It is submitted that the respondents have time and again demolished

² (1990) 1 SCC 520

the shanties of the petitioners by conducting demolition drives in accordance with law read with the provisions of the Environment (Protection) Act 1986. However, in defiance the petitioners have again constructed the illegal tenements in such mangroves areas, consequent thereto also an FIR was registered against these petitioners. The Petitioners have not disclosed these vital facts and have not approached this Court with clean hands. The petitioners are guilty of '*suppresio veri*' and '*suggestio falsi*' for which the petition ought to be dismissed on such ground alone.

20. Ms. Palsuledesai would refer to the affidavit-in-reply of Vinod Dhotre, Tehasildar, Borivali dated 1st July 2021 filed on behalf of the Respondent No.1. According to the respondents, the subject land bearing survey No.39 admeasuring 55 hectares and 1900 sq. meters is shown as reserved forest in the 7/12 extract, which is annexed to the affidavit-in-reply. This is an undisputed position. However, the respondents would refute the petitioners' claim that their structures are located on the balance area of survey No.39 which falls outside the scope of reserved forest. This according to the respondents is only a bald assertion based on surmises and conjunctures without any material and/or document in support of such claim. In fact, to the contrary, the documents relied on by the petitioners more particularly in the rejoinder would falsify such claim of the petitioners.

21. Ms. Palsuledesai would urge that the basic contention of the petitioners that they are protected occupants under the GR dated 16 May 2015 and 16 May 2018 is totally untenable. A perusal of the said GRs would indicate that the tenements of the petitioners are neither declared nor enumerated as mandated under the Maharashtra Slums Act. On a bare perusal of Section 3X (c) which defines the term 'protected occupier' would demonstrate that the petitioners do not fall within the scope and ambit of such definition. Moreover, Section 3Z-6(c) of the Slums Act does not clearly apply to certain coastal areas, more particularly, being the Coastal Regulation Zone as declared under clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986. In view thereof, the Slums Act is not applicable to the subject land bearing survey No.39 where the petitioners have encroached, as such government land is demarcated as reserved forest. Also, under Section 3Z-6 of the Slums Act, scheduled areas declared as such by an order of the President of India under paragraph 6 of the Fifth Schedule to the Constitution of India and forest area to which the Forest (Conservation) Act, 1980 applies, are specifically excluded. This would mean that the petitioners cannot take shelter as protected occupiers under the said GRs of 2015 and 2018, which are clearly not applicable to the petitioners, in any manner whatsoever.

22. Ms. Palsuledesai would then submit that the petitioners are encroachers on the government land which is a buffer zone in the mangroves area, where human habitation is prohibited. The shanties constructed by the

petitioners on such government land being reserved forest in the mangroves buffer zone are encroached upon and are unauthorized and illegal.

23. The respondents would refer to the minutes of meeting held on 6 April 2021 under the chairmanship of Additional Collector, Mumbai Suburban District, to chalk out a plan for conducting demolition drive of the unauthorized structures situated within 50 meters of the mangrove areas in the Survey No. 38, Jalaram Mandir Area, Dingeswar Talav, and Survey No. 39, Laxmi Nagar, Charkop, District Borivali. A perusal of the minutes of such meeting would reveal that the subject land bearing survey No.39 was encroached upon by the petitioners whose structures/tenements fell within the prohibited 50 meters mangroves buffer zone. The said document is not controverted by the petitioners.

24. The respondents would then submit that on 7 April 2021, a public notice was duly issued and pasted on the conspicuous place of the unauthorized structures, and on 9 April 2021 in the presence of Additional Collector, MSD, Sub Divisional Officer MWS, Dy. Collector (Enc. And Rem.) Borivali-1, Tahsildar Borivali, City Survey Officer Borivali, Assistant Commissioner of Police, Kandivali, Senior Police Inspector, Charkop Police Station, Divisional Forest Officer, Mangrove cell, Circle Officer Borivali, Talathi Kandivali, Executive Engineer R/South ward BMC. Tahasildar (Enc. & Rem) Borivali, police squad etc. around 200 unauthorized temporary/pacca structures were demolished

except the structures of one Jaywant Ramnath Bhandari and Devu Putran who showed the status quo order dated 15 June 2013 in writ petition No. 8546/2013 and 8547/2013 respectively. After the demolition was carried out, to avoid further encroachment, possession was correctly handed over to the Forest Department.

25. The respondents would contend that the City Survey Officer, Borivali conducted survey and demarcated the area within 50 meters of the mangrove in the Survey No 39 at Charkop, Borivali on 8 April 2021 from morning 10.00 a.m. onwards. After the survey was conducted by the City Survey Officer, the area within 50 meters of the mangrove was demarcated as buffer zone. The Tahasildar, Borivali issued a public notice after following due process of law on 7 April 2021 in the evening and after the demolition was completed, Divisional Forest Officer Mumbai, Mangrove Conversion Cell, deputed security guards to avoid any further encroachment. Further, the arrangement of loudspeakers was made to appeal to the people to co-operate the demolition drive from 9 April 2021. Deputy Collector (Removal and encroachment) Borivali -1, was deputed to verify the records and the documents such as photo-passes, court orders, if any, or any stay orders and the present status of any cases pending before any courts and to remain present during the demolition drive on the Government land, who verified the records, accordingly, Tahsildar, Borivali took video shooting of the entire demolition drive and after the demolition was complete, City Survey Officer handed over the vacant possession of the mangrove area to

the Divisional Forest Officer to ensure no further encroachment on the said land compound was built as an appropriate safeguard. The respondent authorities have also recorded the proceedings conducted on 9 April 2021 by panchnama of the said date which is duly signed by the panchas/witnesses. It is hence submitted that complete procedure was followed contrary to the allegations of the petitioners which is without substance.

26. The respondents submit that it is pertinent to note that during the demolition drive, none of the petitioners produced before the Tahsildar (Enc. And Rem.) Borivali -1 who was present during the demolition drive, any documents to show that they are protected occupiers as defined under section 3X of the Maharashtra Slums Act and that their structures are legal, to avail of the benefits as per Government Resolution dated 16 May 2015 and 16 May 2018 for rehabilitation as slum-dwellers as claimed by the Petitioners.

27. The respondents submit that the petitioners have suppressed from this Court that even earlier a public notice was issued on 30May 2017 to the residents of Laxman Bhandari Chawl whose structures were situated within the mangroves area and pursuant to the said public notice, the said unauthorized structures were removed.

28. The respondents submit that the petitioners have further suppressed the fact that the Collector, MSD had taken a demolition drive on 1 June 2017 whereby 123 illegal structures were demolished and on 2 June 2017, additional

158 illegal structures came to be demolished and on 3 June 2017, further 94 structures were demolished.

29. The respondents submit that after these structures were demolished, the petitioners once again put up their structures on the mangrove area and the office of the Collector registered FIR No.25 of 2017 dated 21 November 2017 against 130 people (including the petitioners herein) under the provisions of section 15(1)(2) of the Environment (Protection) Act, 1986. The respondents submit that an FIR is registered against the Petitioners in the present petition as well as against the other persons which is annexed to the petition.

30. The respondents submit that in earlier Writ Petition No.999 of 2018 filed by the petitioners above-named challenging the public notice, an affidavit-in reply dated 18 June, 2019 was filed to place on record the facts that the petitioners are encroachers on the Government Land and put up their structures illegally within 50 meters of the mangrove area in spite of removing them time and again in the demolition drive. The said area of buffer zone has been rightly handed over, in accordance with law, to the Forest Department by the City Survey Officer, Borivali, on 9 April 2021.

31. The respondents through the learned AGP would urge that the petition is devoid of merits and ought to be dismissed.

Submissions of Respondent No.3:-

32. Further to the above, the respondent no.3 through the Deputy Secretary, Housing Department has filed an affidavit of Sunil Baburao Tumbare, dated 22 November 2022. The said affidavit supports the stand taken by the respondent No.1 as narrated above. The respondent No.3 would primarily contend and reiterate that in terms of Section 3Z-6(a) (b) and (c) of the Maharashtra Slums Act, the provisions of the Slums Act will not be applicable to the subject land bearing survey no.39. For such reasons the petitioners are not protected occupiers under the provisions of the Maharashtra Slums Act as also under the Government Resolutions dated 16 May 2015 and 16 May 2018. As the said GRs are not at all applicable to the petitioners, they cannot claim any right of alternate accommodation.

33. The respondent No.3 would further contend that the petitioners are not protected occupiers even under Section 3X(c) of the Maharashtra Slums Act. Moreover, this Court by an order dated 17 September 2018 passed in PIL No.87 of 2006 had clearly held that there cannot be any development or construction of structures in the prohibited buffer zone of 50 meters around mangroves areas, where the subject land bearing survey No.39, falls. Based on the order dated 17 September 2018, this Court passed an order not accepting such claim of the petitioners in order dated 14 November 2022 in these proceedings observing that it cannot permit in situ rehabilitation of the petitioners or such persons.

34. For the above reasons, the respondent no.3 would pray that the petition be dismissed.

Submissions of the Petitioners in Rejoinder:-

35. The petitioners through Ms. Bhattacharya would support the case of the petitioners as noted above. In rejoinder, the petitioners would first submit that out of the total area of the subject land under survey no.39 admeasuring 55 hectares and 1900 sq. meters, only 36 hectares is reserved forest, whereas the balance 19 hectares is not so. The petitioners' tenements fall within such area which is not reserved forest to which the provisions of the Indian Forest Act, 1927 do not apply. The petitioners would rely on mutation entry dated 4 August 2008 in support of such submission, to refute and deny the case of the respondents.

36. The petitioners would then submit that the demolition undertaken on 9 April 2021 was completely contrary to law. There was no show cause notice issued prior to such demolition by the competent authority. It was contrary to Sections 33 and 38 of the Maharashtra Slums Act as also in violation of the judgment of the Supreme Court in **Olga Tellis** (supra). Moreover, the petitioners were never given any notice of the proposed survey which was carried out belatedly. Thus, the demolition carried out by the respondents was in contravention of the principles of natural justice.

37. According to the petitioners, the public notice dated 7 April 2021 does not record any details of inspection of paper work or documentation, it is therefore defective, and contrary to law. The survey conducted on 8 April 2021 by the City Survey Officer was done in a manner unknown to law, as no procedure was followed in conducting such survey. This is inasmuch as no forest officer was present when such survey was conducted. The panchanama as relied on by the respondents, annexed to their affidavit-in-rely is also defective. This is inasmuch as the 50 meters buffer zone was not measured from the boundary of the mangroves, which ought to have been done. Such panchanama was conducted after the demolition according to the petitioners which makes it bad in law.

38. The petitioners would contend that no documents of the petitioners were verified by the respondents before conducting the demolition on 9 April 2021. This would make the demolition bad in law inasmuch as the petitioners were not given an opportunity to show their credentials as protected occupiers.

39. The petitioners would reiterate that they are protected occupiers under the provisions of the Maharashtra Slums Act read with the GRs dated 16 May 2015 and 16 May 2018 respectively. Therefore, the demolition of the petitioners' structure/tenement was illegal. The petitioners would submit that they are also protected under the Pradhan Mantri Awas Yojana for urban areas which is referred to under the GR dated 16 May 2018. Even on such ground the

petitioners are entitled to alternate housing/ accommodation, which is illegally deprived to them.

40. The petitioners would then submit that there is complete confusion created by the respondents regarding the boundary of the mangroves buffer zone. According to the petitioners, the forest department itself is unaware of the mangroves buffer zone boundary and the demarcations. The petitioners would rely on the communication dated 25 May 2016 addressed to the Collector by MSRDC to contend that the land on which the petitioners' structures/ tenements were located, being the subject land bearing survey No.39 was identified as the land on which MSRDC would carry out its compensatory afforestation of mangroves that would have to be cut for construction of the Versova-Bandra Sea Link and only a part of about 5.6 hectares of mangroves forest in possession of the forest department which was identified, was affected due to such project.

ANALYSIS:

41. At the very outset, it may be noted that the petitioners who are four in number claim to be residents of the slum situated on government land bearing survey no.39 referred to as Laxman Bhandari chawl, which according to them consisted of approximately 500 hutments, housing 500 families. At this juncture, we may observe that such government land admeasuring 55 hectares and 1900 sq. meters is shown as reserved forest in the revenue records viz. 7/12 extract. This fact is not controverted by the petitioners. However, the petitioners' stand is

that their tenements/hutments are located on the balance portion of the land of about 19 hectares which does not constitute reserved forest, as only 36 hectares is reserved forest. Such submission of the petitioners is premised on a mutation entry no.416 dated 4 August 2008 which is referred to in their rejoinder. The said contention is factually incorrect inasmuch as a letter issued by the office of the City Survey Officer, Borivali dated 18 November 2017 (at page 333 of the rejoinder) categorically refers to the area of 1900 sq. meters as reserved forest, without giving any break-up as the petitioners would contend. A perusal of the mutation entry no.416 dated 4 August 2008 (page 287 of Rejoinder) also does not support the stand of the petitioners inasmuch as the very document mentions the occupier as Maharashtra Government – area of 1900 sq. meters being reserved forest (mangroves). Thus, the petitioners' case that their hutment/tenements fall outside the area of reserved forest is completely contrary to the documents submitted by them in rejoinder and belies their stand in this regard. For such reason, it is apparent that the petitioners have attempted to mislead the court by not disclosing the true and correct facts in invoking the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India.

42. The primary contention of the petitioners is that they are protected occupiers under the provisions of the Maharashtra Slums Act. For such reason, they are legally entitled to in situ/alternate accommodation under the GRs issued by the State Government dated 16 May 2015 and 16 May 2018 respectively. To

test the submission, we would refer to section 3X(c) of the Slums Act which defines the expression ‘protected occupier’, which reads thus :-

“3X. Definitions

In this Chapter, unless the context otherwise requires,-

(a)

(b)

(c) “protected occupier” means an occupier of a dwelling structure who holds a photo-pass;”

(emphasis supplied)

43. We would then refer to section 2(c-b) which defines the expression ‘eligible slum dweller’ which reads thus :-

“2. Definitions

In this Act unless the context otherwise requires,-

(a)

(b)

(c)

(c-b) "eligible slum dwellers" means the protected occupiers who fulfils such criteria as may be prescribed, by the State Government to be entitled for rehabilitation or relocation;”

(emphasis supplied)

44. We would also refer to the provisions of Chapter 1C of the Slums Act which provides for special provisions for *in situ* rehabilitation housing schemes for protected occupiers in slum areas. The expression ‘housing scheme’ is defined under section 3Z-3(b) which reads thus :-

“3Z-3. Definitions

In this Chapter, unless the context otherwise requires,-

(a)

(b) "housing scheme" means a scheme formulated and declared by the State Government or the Government of India, for the construction or re-construction of dwelling units or structures in the scheme area for providing basic amenities to the slum dwellers who are protected occupiers as defined in clause (c) of section 3X and their in situ rehabilitation in such scheme area;”

45. Section 3Z-6 of the Slums Act states that the provisions of Chapter 1C will not apply in certain cases. The said section 3Z-6 reads thus :-

“3Z-6. Provisions of this Chapter not to apply in certain areas

Notwithstanding anything contained in this Act, nothing in this Chapter shall apply to the,-

- (a) Scheduled areas, declared as such by the President of India by an order under paragraph 6 of the Fifth Schedule to the Constitution of India;*
- (b) forest area to which the Forest (Conservation) Act, 1980 applies;*
- (c) Coastal Regulation Zone as declared under clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986;*
- (d) Eco-Sensitive Zones or Ecologically Fragile Areas as declared under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986;*
- (e) Hill Stations as notified by the State Government;*
- (f) Special Tourism Areas, declared as such by the Central or State Government;*
- (g) lands belonging to the Central Government or any entity thereof unless the same is voluntarily offered for the housing scheme;*
- (h) any slum area which, in the opinion of the State Government or the concerned Housing Committee, is unsuitable for human habitation or to which it would not be in the public interest to apply the provisions of this Chapter.”*

46. Section 3B refers to slum rehabilitation scheme which is prepared by the Slum Rehabilitation Authority with the previous sanction of the State Government as provided therein. Section 3C refers to declaration of a slum rehabilitation area which is to be so declared as stipulated therein and section 4 of the Act refers to declaration of slum areas in the mode and manner set out in the said provision.

47. A conjoint reading of the above provisions, in the context of the submissions advanced by the parties make it evident that the petitioners are not eligible slum dwellers as defined under section 2(c-b) of the Slums Act. This in as much as they are not protected occupiers claiming benefit of a slum rehabilitation scheme which is neither notified nor declared in respect of the area bearing survey

no.39 i.e. Laxman Bhandari chawl, where the tenements/hutments of the petitioners were located. There is no declaration of slum area in respect of such land under survey no.39 in terms of section 4 of the Slums Act.

48. Before analyzing the definition of the expression ‘protected occupier’ in further detail, it is useful to refer to the provisions of section 3Z-6 cited supra. In this context, we find substance in the submission of respondent no.3 who in its affidavit dated 22 November 2022 which contends that the provisions of the Maharashtra Slums Act will not apply to scheduled areas as declared by the President of India by an order under paragraph 6 of the V Schedule to the Constitution, forest area to which the Forest (Conservation) Act, 1980 applies and Coastal Regulation Zone as declared under section 3(2)(b) of the Environment (Protection) Act, 1986 as stipulated under sub-clauses (a), (b) and (c) respectively of section 3Z-6 of the Maharashtra Slums Act. Thus, there is a clear exclusion for the applicability of the Slums Act set out under section 3Z-6. Juxtaposing this to the given facts, it becomes clear that the area admeasuring 55 hectares and 1900 sq. meters of the subject land bearing survey no.39 falls within reserved forest as also within 50 meters of the buffer zone in the mangrove area which is statutorily prohibited as also held in the decision of this Court in PIL No. 87 of 2006 and connected matters dated 17 September 2018, (Bombay Environmental Action Group and Anr. vs. The State of Maharashtra and Ors.) under which no development in such buffer zone of 50 meters is permitted, for the reason that all mangrove lands, irrespective of its area, will fall in CRZ-1 as

per CRZ Notifications 1991 and 2011. We have analyzed this judgment further below.

49. From the above discussion, it becomes crystal clear that the subject land under survey no.39 where the petitioners' hutment/dwelling/structures are located would fall under the gamut of section 3Z-6 of the Maharashtra Slums Act. The petitioners cannot claim the applicability of such Act in the given factual situation. The petitioners have not controverted and or disputed such position in their detail rejoinder affidavit filed in the present proceedings nor any concrete case is made out in the context of the applicability or otherwise of Section 3Z-6 under chapter 1-C of the Maharashtra Slum Act, more particularly when the expression "housing scheme" under Section 3Z-3(b) is applicable only to protected occupiers.

50. In the alternative, let we test the claim of the petitioners of the petitioners being protected occupiers under the GRs issued by the State of Maharashtra dated 16 May 2015 and 16 May 2018. As noted above, the hutments dwelling structures of the petitioners are on the subject land admeasuring 55 Hectares 1900 sq. meters which falls in the area demarcated as reserved forest. Further, it also falls within the prohibited 50 meters mangrove buffer zone. For such reasons, the provisions of Section 3Z-6 would apply. Consequently as noted above, the provisions of the Slums Act will not apply to such restricted areas, hence the petitioners cannot claim benefit as protected occupier under such Act. Further, the GRs dated 16 May 2015 and 16 May 2018 having different

qualifying dates between 1 January 2000 and 1 January 2011 mandate that slum dwellers should be actually residing in 'declared' and 'enumerated' hutments existing on or before such qualifying cut off dates. There is nothing on record to show that the petitioners fulfill the statutory requirement of *eligible slum dwellers* as defined under Section 2(c-b) of the Slums Act. There is no legal, much less vested right in favour of these petitioners accruing or arising under the provisions of Maharashtra Slums Act, so as to claim any benefits thereunder. Thus, as rightly contended by the respondents, the petitioners cannot assert any legal rights under the four corners of GR dated 16 May 2015 followed by the GR dated 16 May 2018, as the said GRs do not apply to the petitioners, in any manner whatsoever.

51. The expression protected occupier as defined under Section 3X(c) of the Slums Act has a reference to eligible slum dwellers as defined under Section 2 (c-b) of the Slums Act (supra). The 'protected occupiers' means an occupier of a dwelling structure who hold a photo-pass. Photo-pass is defined under Section 3X(b) which reads thus :-

"3X. Definitions

In this Chapter, unless the context otherwise requires,-

(a)

(b) "photo-pass" means an identity card-cum-certificate issued by the Government in the prescribed format under section 3Y, and shall include such other document or documents declared by Government, by order issued in this behalf, to be equivalent of photo-pass for the purposes of this Chapter;"

Further, Section 3Y of the Slums Act is a provision for issuance of photo-pass and maintenance of Register, which reads thus :-

"3Y. Issuance of photo-pass and maintenance of Register

(1) The Government or any officer generally or specially authorised by it in this behalf shall, after verifying certain documents or records, as may be prescribed,

*issue a photo-pass for the purposes of this Act, in the prescribed format to the actual occupier of a dwelling structure, in existence on or prior to *[1st January, 2000].*

(2) If the photo-pass issued under sub-section (1) is lost or destroyed or defaced, the holder of the photo-pass shall forthwith intimate the loss, destruction or defacement of the photo-pass to the concerned authority which has granted the photo-pass and shall apply, in writing, to the said authority with the prescribed fee for issue of a duplicate.

(3) On receipt of an application under sub-section (2), the authority shall, after verifying the records and carrying out such inquiry, if any, as deemed fit, issue a duplicate photo-pass to the applicant with a clear marking on such photo-pass as "Duplicate".

(4) If after the issue of a duplicate photo-pass, the original is found, it shall be incumbent upon the applicant to forthwith surrender the same to the authority by which it was issued.

(5) The Government shall maintain in the prescribed form an upto-date Register of the photo-passes issued by it under sub-section (1)."

A conjoint reading of the above provisions would necessitate the requirement of a protected occupier to hold a photo-pass as stipulated under the provisions cited (supra). During the demolition drive on 9 April 2021, none of the petitioners furnished to the Tahsildar, who was present during the demolition drive, a single document to show that they are protected occupier under section 3X(c) of the Slums Act, so as to claim benefit of GRs dated 16 May 2015 and 16 May 2018 for rehabilitation as slum dwellers. The petitioners through Ms. Bhattacharya would strenuously urge that various documents have been produced by the petitioners which according to them satisfy the requirement of Slums Act and GRs. Such documents are referred to in the petition at Exhibit-I (page 112 onward which include documents like Aadhar Card, Pan Card, irrevocable power of attorney, election identify card, domestic gas consumer card, ration card, school

leaving certificate) etc., which are not even of the relevant years as specified in the GRs. In any event, none of these documents include the primary and vital document being photo-pass as mandated under Section 3X(b) read with Section 3Y of the Slums Act. The petitioners have failed to show that such photo-pass which is a pre-condition for being a protected occupier as defined under Section 3X (c) of the Slums Act is issued in the form and manner contemplated under Section 3Y of the Slums Act. There is not a whisper of such photo-pass being issued to the petitioners as mandated under the provisions cited (supra). No documents more particularly the photo-pass was shown or furnished by the petitioners to the Tahsildar/competent authority, there is no explanation forthcoming from the petitioners even in their elaborate rejoinder dated 8 October 2021. It is thus clear that the petitioners do not possess such mandatory documents issued by the competent authority under the Slum Act which is a pre-requisite to claim the entitlement of the protected occupiers under the said Act. Even for such reason, the petitioners can never be treated as a protected occupier. They have thus encroached the subject land bearing survey No. 39 which is shown as reserved forest land falling within 50 meter mangrove buffer zone.

52. The petitioners' contention to claim benefit of housing under the Pradhan Mantri Awas Yojana as stipulated under the GR dated 16 May 2018 is equally ill-founded. The petitioners, as noted above are not 'protected occupiers' neither are they eligible slum dwellers as stipulated under the provisions of

Maharashtra Slums Act which *per se* does not apply to the given facts. The expression housing scheme as defined under section 3Z-3(b) of the said Act also refers to protected occupier, which will not apply to the petitioners. For such reason, the petitioners can claim no rights much less benefits under the Pradhan Mantri Awas Yojana as stipulated under the said GR of May 2018, which also has no application to the given factual situation of the petitioners. This is a case where protection, relocation and rehabilitation of protected occupier under Section 3Z of the Slums Act is not available to the petitioners which makes their claim against the demolition legally untenable and unsustainable.

53. The petitioners have strenuously urged that the demolition undertaken on 9 April 2021 is contrary to the principles of natural justice in as much as the petitioners were not given any opportunity of representing themselves before such demolition was carried out. In this regard, the averments made in the affidavit in reply to the petition dated 1 July 2021 are worth noting, more particularly, paragraph no. 6 and 7 thereof. The entire procedure before carrying out the demolition begins with the minutes of the meeting held on 5 April 2021 under the chairmanship of Additional Collector, Mumbai Suburban Division, Mumbai to chalk out a plan to conduct a demolition drive of the unauthorized structures, situated within 50 meters of the mangrove area in the subject land bearing survey no. 39. This is followed by a public notice issued on 7 April 2021 by the respondents in the manner as contemplated under the Maharashtra Slums Act. The petitioners do not dispute the fact of issuance of the

said public notice but call it defective as the contents thereof are not sufficient, as claimed by the petitioners. On one hand, the petitioners disputes issuance of any notice and in the same breath in their rejoinder affidavit they contend that it lacks material particulars. The petitioners are estopped from approbating and reprobating at the same time. In the context of public notice and fulfillment of the requirements of the statute, the relevant extract of Section 3Z-1 and 3Z-2 of the Slums Act are required to be noted, which reads thus :-

“3Z-1. Powers to Competent Authority to demolish unauthorised or illegal dwelling structures

(1) Where a Competent Authority, upon a complaint from any person or report from its officer or police or any other record or information in its possession, is satisfied that any unauthorised or illegal dwelling structure or part thereof has been constructed, or any addition to the existing structure as recorded on photo-pass, has been erected, after the 1st January, 2000, within the area of its jurisdiction, without obtaining necessary permissions required to be obtained in that behalf under the relevant laws, of the concerned statutory authorities, it shall forthwith serve upon the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein and also upon the person who is in occupation of such structure, a written notice to show cause, within twenty-four hours as to why an order of demolition of the structure should not be made.

(2) If the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein for the occupier of such structure is, by any reason whatsoever, not available or serving or receiving the notice, such notice shall be affixed at a conspicuous place on such structure, and it will be deemed to be due service of notice on the concerned person or persons.

3Z-2. Demolition of unauthorised or illegal dwelling structures and penal liability

(1) After the commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment) Act, 2014], where a Competent Authority, upon a complaint from any person or report from its officer or police, or any other record or information in its possession, is satisfied that any unauthorised or illegal dwelling structure

or part thereof has been constructed or is being constructed or any addition to the existing structure is erected or being erected, within the area of its jurisdiction, without obtaining necessary permissions required to be obtained in that behalf, under the relevant laws, of the concerned statutory authorities, it shall forthwith serve upon the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein and also upon the person who is in occupation of such structure, a written notice to show cause, within twenty-four hours as to why an order of demolition of such structure should not be made.

(2) If the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein or the occupier of such structure is, by any reason whatsoever, not available for serving or receiving the notice, such notice shall be affixed at the conspicuous place on such structure, and it will be deemed to be due service of notice on the concerned person or persons.”

The above provisions thus make it clear that issuance of such public notice fulfilled the statutory mandate and the petitioners who are wholly aware about their own illegalities and have taken cognizance of the same, are estopped from taking a contrary position and not recognizing such legal requirement, complied by the respondents. It is in such context, the judgment of the Supreme Court in **Olga Tellis** (supra) as relied by Ms. Bhattacharya, the legal principles of which are not in dispute, does not assist the petitioners, as the present facts and circumstances are completely distinct and more particularly, when there is no breach of the principles of natural justice by the respondents.

54. We may also note that, sub-section (9) of section 3Z (2) of the Slums Act stipulate penal consequences under the provisions of Code of Criminal Procedure, 1973 for non production of document including photo-pass as and when demanded by the competent authority, which shall be a sufficient ground or

evidence for the police officer to take cognizance of an offence under this provision. Further, there is a detailed panchanama dated 9 April 2021, also annexed to the affidavit in reply to the petition recording all details, which bears testimony to the fact that the procedure in law is scrupulously followed by the respondents before undertaking the demolition in the manner recognized by law. There is no explanation, much less, justification from the petitioners who have clearly encroached the government land demarcated for reserved forest and mangroves area, bearing survey no. 39, unauthorizedly and illegally.

55. There is another note-worthy aspect in these proceeding which would disentitle the petitioners from claiming any relief, being the conduct of the petitioners, when they allege contempt of an ad-interim order dated 9 April 2021 passed by a coordinate Bench of this Court. A perusal of the said ad-interim order would clearly indicate that, it is passed in another Writ Petition No. 999 of 2018 where the petition was filed by three different residents of the said purported slum namely Laxman Bhandari chawl. The said ad-interim order clearly applies to those petitioners. The present petitioners cannot take benefit of the said order by creating an impression that the respondents are in contempt of such order passed in the other Writ Petition No. 999 of 2018 and not in these proceedings. The said order dated 9 April 2021 passed in Writ Petition No. 999 of 2018 reads thus: -

“Mr. Nedumpara, learned advocate for the petitioners has joined through virtual medium. He submits that since he is in Cochin and does not have papers with him, coupled with the fact that the advocate on record is also unwell, he prays before the Court for an order of injunction to the respondents not to proceed further in terms of notice dated April 7, 2021 and thereby disobey and disregard the order dated December 5, 2017 passed by the co-ordinate Bench of this

Court on this Writ Petition.

2. We have been informed by Ms. Chavan, learned AGP that in pursuance of the notice dated April 7, 2021, a demolition drive was initiated and in midst thereof, without identification of the hutments belonging to the petitioners in this writ petition, inadvertently the hutment of petitioner no. 1 has been demolished. However, the hutments of other two petitioners have not been touched. We called upon the respondents to file an affidavit and place the above facts on record.

3. Although we are prima facie of the view that the petitioners can claim no right to encroach the Government land and construct hutments, that too on mangroves, since an order was passed on December 5, 2017 directing the parties to maintain status quo, we restrain the respondents from demolishing the hutments of the other petitioners until further order of this Court.

4. List this writ petition on April 20, 2021 once again for further consideration. It is made clear that the Court shall endeavour to hear the writ petition finally at the admission stage.

5. Mr. Nedumpara shall be free to address the Court by participating in the proceeding physically.”

(emphasis supplied)

A perusal of the above would demonstrate that the petitioners’ attempt once again is to mislead the court by alleging contempt against the respondents of the above order and the directions contained therein. It is pertinent to note that the court has clearly recorded its *prima facie* view in paragraph 3 that those petitioners can claim no right to encroach government land and construct hutments, that too on mangroves.

56. We may observe that the conduct of the petitioners to misconstrue the orders of the court does not stop here. The petitioners have very cleverly suppressed a subsequent order of this Court 14 November 2022, also passed the said Writ Petition No. 999 of 2018, which reads thus:-

“1. We will require a further clarification from the State Government particularly in regard to the 20th February 2019 public notice referred to at Exhibit F at page 51. We also require learned Advocate for the State Government to take instructions as to what is the applicable policy, if any, in regard to Petitioners

and others like them on survey nos. 38 and 39 of Charkop Gaon, Kandivali (West), Mumbai 400067 and said to be occupying a slum called 'Laxman Bhandari Chawl'. The Petition asserts that all these persons were or are protected occupiers within law. Some of the Petitioners were evicted from the site in 2017. There was second eviction drive in April 2021, and it is this 2021 eviction that is challenged in the present Petition. We are informed that some of the occupants were asked to produce documents. If this be so, then obviously such a demand for documents or even a notice to show cause must be relatable to some existing policy. It may also relate to a cut off or datum line.

- 2. We are making it clear that we do not propose at this or at later stage to permit an in-situ rehabilitation of any of these persons particularly in view of the Judgment of this Court in PIL No. 87/2006 regarding maintaining a buffer zone of 50 meters around all mangrove areas.*
- 3. The State Government's further Affidavit is to be filed and served by 23rd November 2022.*
- 4. List the Petition on 25th November 2022."*

(emphasis supplied)

A bare perusal of the above order it is evident that the Court has minced no words in observing that it does not propose at any stage to permit in-situ rehabilitation of any of these persons particularly in view of the judgment of this Court in PIL No.87 of 2006 (supra) regarding maintaining buffer zone of 50 meters around the mangrove area. It is pursuant to the directions passed by the Court to the State Government to file a further affidavit, that respondent no. 3 filed an affidavit dated 22 November 2022 and made submissions in that regard as noted above. However, there is no response from the petitioners to this affidavit.

57. We may further observe that the petitioners have ceased to be law abiding citizens when with impunity they have decided to violate all legitimate norms to adhere to the law when they willfully decide to encroach not only an Government land but a sensitive/prohibited area on which no construction of any

nature whatsoever can ever be permitted. They have constructed shanties on the buffer zone around the mangroves. The respondents have submitted in their reply affidavit dated 1 July 2021 that time and again the authorities were required to demolish their shanties by undertaking a demolition drive under the provisions of Environment (Protection) Act unlike a phoenix rising from the ashes, the petitioners unlawfully, have again and again put the unauthorized structure in the prohibited mangroves areas also resulting in an FIR dated 21 November 2020 being registered against them and other 130 persons including petitioners in this petition, under the provisions of Section 16(1) (2) of Environment (Protection) Act.

58. The petitioners have not approached this Court with clean hands by suppression of facts amounting to *Suggestio Falsi and Suppressio Veri*. Thus, this is a case where the petitioners have breached the clean hands doctrine being the *sine qua non* in approaching the court under writ jurisdiction. It would be apposite to refer, in this context, to the decision in the case of the **State of Bombay vs. Morarji Cooverji**.³ where a Division Bench of this Court was pleased to hold that in a case where justice is not on the side of the petitioner, it is on the side of the State, there is no reason why any relief should be granted to the petitioner. This in our view, would squarely apply to this petition.

59. We may observe that the contentions of the petitioners with regard to undue hardship and violation of their fundamental rights is of no avail to the

3. (1959) SCC OnLine Bom.188

petitioners in the given facts, when the petitioners have failed to establish any legal right much less fundamental right in their favour. The petitioners have attempted to unwarranted portray a picture of gross violation of their human rights, *inter alia*, relying on letters of political leaders, busy bodies, human rights organizations, including orders of State Human Rights Commission. This with a view, to justify the unauthorized and illegal encroachment on reserved forest land and mangrove area where human habitation is prohibited. The submission by the petitioners relating to undue hardship, etc. in the given facts and circumstances is of no assistance to persons who are encroachers on one hand and seeking to justify such illegal encroachment, on the other. We cannot be oblivious to the fact that delays and inaction of the State machinery does exists in certain situations, which cannot be glossed over. However, this is not a case of that type. The reliance of Ms. Bhattacharya on the decision of **Shantisar Builders** (supra) of the Supreme Court will have no application to the factual complexion in the given case. In fact, considering the legal principles as laid down by the Supreme Court coupled with our constitutional scheme, we cannot countenance the stand of the petitioners which the law would never mandate.

60. We may gainfully refer to the decision of a coordinate bench of this Court in PIL No. 87 of 2006 where the court was dealing with the issue of destruction of mangrove in the entire State of Maharashtra. It is in such context, the court passed a detailed judgment dated 17 September 2018 where certain elaborate directions were passed in the following terms, some of which reads

thus:-

“(I) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra;

(II) Dumping of rubble/garbage/solid waste on the mangrove areas shall be stopped forthwith;

(III) Regardless of ownership of the land having mangroves and the area of the land, all constructions taking place within 50 metres on all sides of all mangroves areas shall be forthwith stopped. The area of 50 meters shall be kept free of construction except construction of a compound wall/fencing for its protection.;

(IV) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves. All authorities including the Planning Authorities shall note that all mangroves lands irrespective of its area will fall in CRZ-I as per both the CRZ notifications of 1991 and 2011. In case of all mangrove areas of 1000 sq. meter or more, a buffer zone of 50 meters along the mangroves will also be a part of CRZ-I area. Though buffer zone of 50 meters in case of mangroves area of less than 1000 meters will not be a part of CRZ-I, it will be subject to above restrictions specified in clause III above;”

A bare perusal of the aforesaid directions would show that the petitioners have acted in absolute breach of the said judgment by encroaching upon the government land demarcated as reserved forest within the 50 meters buffer zone around the mangroves which is impermissible for human habitation. The above decision was followed in a recent judgment of a Co-ordinate Bench of this Court in **Maharashtra Maritime Board vs. Union of India and Ors.**⁴ where one of us (G.S. Kulkarni, J. was a member) wherein the Court has emphasized on the applicability of the public trust doctrine, in light of which the State is bound to protect and preserve mangroves.

61. It would be further apposite to refer to a decision in High Court on Its Own Motion (In the matter of **Jilani Building at Bhiwandi vs. Bhiwandi**

4. 2021 SCC OnLine Bom. 3667

Nizampur Municipal Corporation and Ors.⁵ of the Coordinate Bench of this Court where one of us (G.S. Kulkarni, J. was a member). The court is dealing with a similar situation of illegal structures in the context of collapse of a building known as Jilani Building at Bhiwandi, Mumbai was confronted with an issue relating to mushrooming of slums, illegal encroachments and unauthorized constructions. In such context, the relevant observations of the Court read thus:-

“44. Illegal construction and encroachment on Government land, without fear of law or of public officials have resulted into a loss of twelve lives, due to the collapse of three storeyed structure at Malvani. Therefore, at the first instance, we deal with the issue of encroachment on public lands and illegal constructions thereon.

45. There can be no two opinions that the issues of encroachment on public land, mushrooming of slums on such lands and illegal constructions on such land, as also, on any open land in the city, and the total collapse of the machinery available in law to control these issues, adversely affecting the urban agglomeration, is a sad story of an invited misery and a massive failure on the part of the State Government and the municipal bodies. An overview of these adversities, depicts a sorry and painful state of affairs, having a harmful and an overbearing effect not only on those who are residing in the slums and unauthorized constructions, but also, the hard impact it creates on the infrastructure in cities and the continuous and successive damage to the limited resources. The consequence of all this, is ghastly and harmful. As to what is in store for the future generations cannot be imagined. Admittedly, these are larger issues to be effectively looked into by the policy makers before things further worsen, albeit there appears to be a stage of no return, unless aggressive planning and commitment to the constitutional principles is kept at the forefront by the policy makers. Happening of encroachments, unauthorized and illegal structures being put up and deliberate neglect to these issues, when all this is unpleasantly happening before the open eyes and to the knowledge of the authorities, is not without purpose. From the report of the learned Commissioner, it appears to be a deep rooted menace, perpetrated for years together, which has ruined the cities and its scarce resources. There are vested interests as pointed out by the learned Commissioner, namely political interest, slumlords and ultimately the cancer of corruption, which is the primary cause, for the authorities not taking action to remove illegal structures which continue to exist for years together.

46.

47. The menace of continued encroachments on Government lands and thereafter, illegal and unauthorized constructions being undertaken post encroachment, are also a result of an unwarranted protection being conferred on the slum dwellers by the policies of the State Government, which protect the interest of the slum dwellers by awarding a premium on such illegality. This merely for the reason that the government machinery failed to take any action to remove such encroachments and with impunity continued these encroachers to remain on government land for years together. The encroachments are of two categories, those who have encroached for commercial purpose (those who have grabbed public land for installing shops etc.) and those who have encroached for putting up structures for residential user. Under the government policies both these encroachers are recognized and rewarded by providing alternate tenements of the nature they were occupying. The government policies issued from time to time to protect such encroachers, if their names are found in the voters list on a cut-off date being fixed at the ipse dixit of the Government. In our opinion, fixing of such arbitrary dates to protect the illegality of encroachment and ultimately to reward the encroachers with a free of cost permanent structure on the same government land, is certainly not an exercise of power, the

5. 2022 SCC OnLine Bom.386

constitutional principles would permit. These situations have added to the alarming woes of the city. It is no more a secret that these policies, which appear to be innocuous and intended to primarily protect the slum dwellers, resulted to be also of a political concern, as these large slums also constituted potential vote banks.

48. What can be the logic and any legal sanctity to a policy which rewards encroachment on public land by granting free of cost tenements, on the very same land amounting to a bonanza for its private exploitation? By such *modus operandi*, public land, merely because of it being encroached, vanishes from the public holding and most astonishingly the basis for the allotment of tenements under the redevelopment process, is identification of an encroacher by his voters ID, on the basis of an arbitrary cut-off date fixed by the government. In fact, such policies create a mechanism being made available to the slum dwellers and thereafter private interest like that of the developers, to obtain a surreptitious allotment of public/government land for commercial exploitation, for profits by a backdoor method, completely contrary to the well settled principles of allotment of State largesse, known to the Constitution. This more particularly, when there is an allotment of a small piece of public land for a lawful purpose, many a times there is a hue and cry. However, when large tracts of public land are being gulped by encroachers, would the legal machinery remain a mute spectator?"

(emphasis supplied)

62. Another decision which requires to be noted, following the judgment in the Jilani Building's case (*supra*), is in **Mujibbir Rehaman Chaudhary vs. Municipal Corporation for Greater Mumbai**⁶ where a Coordinate Bench of this Court of which one of us (G.S. Kulkarni, J. was a member). The relevant observations in the said decision read thus :-

"36. This Court in **Mohammed Iqbal Abdul** (*supra*) in paragraph 21 was confronted with similar facts, which was also a case in regard to a commercial structure in a slum area. Referring to the decision of the Division Bench of this Court in '**Jilani Building's Case**' (*supra*) as also the decision of the Supreme Court in **Friends Colony Development Committee V. State of Orissa** (2006)3 SCC 581; **Dipak Kumar Mukherjee V. Kolkata Municipal Corporation and Ors.** (2013)3 SCC (Civ) 72; **Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & Ors.** [(2021)10 SCC 1], this Court upheld the action of the Municipal Corporation in issuance of notice under Section 351 of the MMC Act on removal of such unauthorized commercial structure. Paragraph 20 of the said order of this Court reads thus:-

20. It may be observed that once a construction is unauthorised and illegal, the course of law to be taken in that regard is well settled by the catena of decisions of the Supreme Court [See: **Friends Colony Development Committee V. State of Orissa** (2006)3 SCC 581; **Dipak Kumar Mukherjee V. Kolkata Municipal Corporation and Ors.** (2013)3 SCC (Civ) 72; **Supertech Ltd. vs. Emerald Court Owner Resident Welfare Association and Ors.** (2021)10 SCC 1.] In **Jilani Building at Bhiwandi** (*supra*), the Division

6. 2023 SCC OnLine 579

Bench has considered such mandate of law as laid down by the Supreme Court in paragraphs 85 to 87 which reads thus:-

“85. In *Friends Colony Development Committee V/s State of Orissa* (2006)3 SCC 581, the Court was concerned with an unauthorized construction being undertaken by the builder, as instead of sanction of a four storeyed building, he had constructed a 5th floor and for which an action came to be initiated against him. On the plea of the builder being accepted by the High Court that he be permitted to make a fresh application and submit a revised plan for approval qua the construction he had already undertaken, the appellant had moved the Supreme Court. It is in such context the Supreme Court made significant observations in regard to the threat to the society, illegal and unauthorized constructions pose. These observations are important not only in the context of unauthorized and illegal constructions but also in the context of the plight of those who purchase premises in unauthorized buildings. The relevant observations are required to be noted, which reads thus:

“20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.

22. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the state. The exercise of such governmental power is justified

on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified.”

(emphasis supplied)

86. Apart from the above observations, what is significant is that the Supreme Court also observed that if the High Court feels that the illegal/unauthorized building activities are so rampant, so as to be noticed judicially, it may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability. Such observations are required to be noted, which reads thus:

“(7) The High Court, if it feels that illegal/unauthorized building activities in Cuttack are so rampant as to be noticed judicially, may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability.”

(emphasis supplied)

87. In Dipak Kumar Mukherjee v Kolkata Municipal Corporation and Ors. (2013)3SCC(Civ.)72, again the Supreme Court was concerned with an illegal and unauthorized construction of buildings and other structures put up by respondent no. 7 in the said proceedings, who had undertaken construction in violation of the sanctioned plans. An order was passed by the Municipal Corporation ordering demolition of the disputed construction. Respondent no. 7 having approached the High Court, an order came to be passed by the High Court directing the competent authority to pass an appropriate order after giving an opportunity of a hearing to respondent no. 7. The Supreme Court held that such an order could not be sustained, as the construction undertaken by respondent no. 7 was in clear violation of the sanctioned plans and for which a notice was issued by the competent authority of the Corporation and more so because an application for regularization was made by respondent no. 7 after completion of the construction. It is in such context, the Supreme Court considering the position in law as laid down in the earlier decisions emphasized that illegal and unauthorized constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. It was observed that the common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. In commenting on the menace of illegal and unauthorized constructions, the Supreme Court considering its decisions in K. Ramadas Shenoy V. Town Municipal Council, Udipi (1974)2 SCC 506, Pratibha Coop. Housing Society Ltd. v. State of Maharashtra (1991)3 SCC 341, Friends Colony Development Committee v. State of Orissa (supra), Shanti Sports Club v. Union of India (2009)15 SCC 705 and Priyanka Estates International (P) Ltd. v. State of Assam

(2010)2 SCC 27. the Supreme Court made the following observations:

“29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

(emphasis supplied)

37. In Abdul Rehman Jamadar Shaikh & Anr. Vs. The Municipal Corporation of Gr. Mumbai & Anr. (Appeal from Order No.73 of 2023 decided on 10 February, 2023) this Court in similar facts wherein a case relying on a photo-pass was urged by the appellant's therein, rejecting such contentions had made the following observations:-

“8. From a perusal of the document of what is contended by the appellants/plaintiffs to be a photo-pass, there is a grave doubt as to whether the document (receipt) pertains to the unauthorized structure of the appellants/plaintiffs. Even assuming that the structure in question is issued a photo-pass, however, it appears that the photo-pass has not been issued in the name of subsequent purchasers like the appellants/ plaintiffs who have purchased the premises recently in the year 2019, under an illegal sale deed dated 13 September, 2019. Hence the appellants/plaintiffs cannot be given benefit under any such document or under the slum scheme. It is also not pointed out that there is any provision under the Slums Act or any other law that a slum structure becomes an authorized structure and it becomes transferable by a sale deed and even the benefit of photo-pass if any issued is available to a transferee of the slum structure. Such contention as urged on behalf of the appellants/ plaintiffs if accepted, in fact, would lead to mockery of the Slums Act and slums scheme. As clearly seen from the provisions of the Slums Act, photo-pass is issued only for dwelling house and not for commercial structure.”

38. It would thus be required to be held that on a mere issuance of a photo-pass, the appellant would not be entitled to a protection to the illegal vertical extension as undertaken to the slum structure in question.”

(emphasis supplied)

In our view, both the above decisions duly address the issues and concerns before us which we are inclined to follow in letter and spirit.

63. In the aforesaid backdrop, and at this juncture, we would deal with

the judgments cited by Ms. Bhattacharya in the compilation tendered by her. The first judgment of **Sudama Singh & Ors. vs. Government of Delhi and Anr.**⁷ would apply to eligible slum dwellers, which is not the case in the present petition. In fact, the Supreme Court in the said decision was dealing with the right of way of certain persons. In such context it was held that the amenities of relocation is available to them, which is completely inapplicable to the given factual scenario.

64. We would next refer to the decisions cited by Ms. Bhattacharya in **Ajay Makan and Ors. Vs. Union of India and Ors.**⁸ and **Chameli Singh and Ors. vs. State of U.P. and Anr.**⁹ which were cases where the emphasis was on the right to shelter which is a facet of fundamental rights, such proposition is not disputed. However, the facts and circumstances in the present case are completely different where the slum dwellers are neither eligible nor protected occupiers not entitled to any right much less protection under the Slums Act in any manner whatsoever.

65. Ms. Bhattacharya has placed reliance on the decision in **State of Maharashtra vs. Charudatta Pandurang Koli and Ors.**¹⁰ of this Court. A perusal of this judgment would make it clear that the Court was dealing with a case with censused slum and in that context, rehabilitation of those eligible slum dwellers. Such not being the situation in this present petition, the said decision is of no assistance to the petitioners.

7. (2010) SCC OnLine Del. 7618

8. 2019 SCC OnLine Del.7618

9. (1996) 2 SCC 549

10. 2019 SCC OnLine Bom.1993

66. We may now refer to the judgment in the case of **Pani Haq Samiti and Ors. vs. Brihan Mumbai Municipal Corporation and Ors.**¹¹ of this Court where the Court observed that even if a citizen has no right to retain the illegally constructed hut, he cannot be deprived of the fundamental right to food and water which is an integral part of the right guaranteed under Article 21 of the Constitution of India. This cannot be disputed. However, the factual matrix in the given case is entirely different and the said decision thus cannot be juxtaposed to the given facts and circumstances. We refrain from dealing with the interim orders of this Court cited by Ms. Bhattacharya which are not precedents.

67. The order relied on by Ms. Bhattacharya in the case of **Utran Se Besthan Railway Jhopadpatti Vikas Mandal vs. Government of India and Ors.**¹² where the Supreme Court laid down certain guidelines for the project affected persons to be rehabilitated under the applicable scheme. The petitioners in the given case are not project affected persons as also noted above can claim no protection, relocation and rehabilitation applicable to protected occupiers which is not the case. For such reason, the said decision is also of no assistance to the petitioners.

68. Before concluding we may observe that this is a case where the State Authorities have acted in accordance with law to protect the forest land. It is undoubtedly a herculean task for the State Officers to keep a continuous vigil on persons who repeatedly attempt to challenge the official machinery which is

11. PIL No.10 of 2012

12. SLP (C) No.12366 of 2022

attempting to take all reasonable steps, care and caution that the government/public lands are not encroached. However, as the experience in this regard would show that it may not be that every time they are successful in their endeavour as the limited government/public land in the city of Mumbai is already lost by encroachments as observed in the decisions of this Court, some of which we have noted hereinabove. Unfortunately, in such endeavour to protect public lands, there are number of hurdles which are faced by the official machinery from different sectors which are powerful interventions to protect unauthorised use and encroachment on government land. However, as observed by this Court in **Jilani Building at Bhiwandi** (supra), the question is of public accountability and the accountability of not only to safeguard such government lands from unauthorized use and encroachment, but also of a fundamental duty cast on the citizens to abide by law and not resort to encroachment on a misbelief that in future there is likelihood of some rehabilitation or a hope of premium on such illegality. The State Government and the public officers are required to take all possible steps as the law would mandate to prevent the unauthorized use of the public lands, illegal construction and encroachments and to make an endeavour to bring about a situation that the public lands are available for public utility and not to the encroachers or any other persons, who can reap monumental gains from the public lands. In the event these objects are not achieved by a rigorous exercise of powers and authority, so as to stop such unauthorized activities, it is not too far that Mumbai and its adjoining areas which have limited public open

land would be lost forever. Such concerns are noted by this Court time and again (see: **Galaxy Enterprises vs. State of Maharashtra & Others**¹³ as also in **New Janta SRA CHS Ltd. vs. State of Maharashtra & Ors.**¹⁴.) The observations of the Court in these decisions are referred with approval by the Supreme Court in a recent decision in **Yash Developers vs. Harihar Krupa Co-operative Housing Society Ltd. & Ors.**¹⁵. It is thus high time that the government officials rise to the expectations as reposed in them under the laws and the constitution, and remain alive to the public trust as reposed in them, as in the present case and protect the government/public lands. Also the municipal authorities need to take stringent steps in removing encroachment and illegal construction. We may also add a note of caution that merely as the concerned State and Municipal Officials do not take timely steps, by passage of time such illegal occupants unfortunately start believing that the rights are created in them. This has brought about avalanche of litigation on unauthorized construction and encroachment not only before the High Court but several other Courts. As observed by this Court in **Galaxy Enterprises** (supra), “it is never too late”.

69. In the light of the above discussion, we are certain that in this case we are concerned with a situation of the petitioners who were encroachers having illegal structures/hutments on government/public land. Accordingly, we cannot grant any reliefs in such gross and glaring facts and circumstances of the case.

13 2019 SCC OnLine Bom 897

14 2019 SCC OnLine Bom 3896

15 2022 SCC OnLine Bom 3712

Doing so would tantamount to a premium on illegality which the law would never permit. It is in the light of the foregoing discussion, we find no merit in the petition. The writ petition is accordingly dismissed. Accordingly, interim application/s also do not survive and the same are accordingly dismissed.

70. We may observe that this is a fit case wherein we need to impose exemplary costs considering that the present petition is an abuse of process of law. However, despite the fact that the petitioners have good resources not only to re-erect their tenements and also resort to several other techniques to protect such illegality we refrain from doing so. This for the reason that although we would be justified in imposing costs, the untold mantra is that ultimately they are slum dwellers which in our opinion in the facts of the case needs to be held to be totally misconceived.

71. Disposed of in the aforesaid terms.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)