

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

WRIT PETITION NO.1612 OF 2024

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1. Om Vishwashanti CHS (Proposed),
Through his Chief promoter
Sadhashiv Nanekar, having his
address at Nevatia Municipal Colony,
Nevatia Road, Malad (East), Mumbai 400 097.

2. Okhawala Shelter, Builders &
Developers, having its office at 402,
Morya Land Mark II, New Link Road,
Andheri West, Mumbai 400 053.

...Petitioners

Versus

1. Mumbai Municipal Corporation
Through Municipal Commissioner,
Head office, Mahalika Bhavan
Mahapalika Marg, Opp. CSMT,
Mumbai-400 001

2. Executive Engineer (D.P.),
P & R Ward, Municipal Head Office,
Mahapalika Marg, Fort,
Mumbai-400 001.

3. Slum Rehabilitation Authority,
Administrative Building, Anant Kanekar Marg,
D. Block, BKC, Naupada, Bandra East,
Mumbai-400 051.

4. The Additional Municipal Commissioner,
BMC Western Suburbs,
Brihanmumbai Mahanagarपालिका,
Municipal Head Office, Annexe Building,
2nd Floor, Mahapalika Marg, Fort,
Mumbai-400 001.

5. The Assistant Municipal Commissioner,
P/North Ward & Competent Authority,
Near Liberty Garden, Mamletdarwadi Marg,
Malad-West, Mumbai-400064

...Respondents

Mr. Girish Godbole, Senior Advocate i/b. Ramsingh & Ajar Ahmed Ansari for
Petitioner.

Mr. Joel Carlos aw Pushpa Yadav for Respondent No.1 BMC.

Mr. Jagdish Aradwad (Reddy) for Respondent No..3-SRA.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED ON: 20th JANUARY 2026
PRONOUNCED ON: 11th FEBRUARY 2026

JUDGMENT (PER AARTI SATHE, J.):

1. This Petition under Article 226 of the Constitution of India has been
filed praying for the following substantive reliefs:-

- “(a) To admit the present Writ Petition and issue Rule.
- (b) That by a writ of mandamus, writ in the nature of mandamus or any other writ, order and direction, the Order dated 10.1.2024 passed by the Respondent No.4, copy of which is at EXHIBIT 'O' to this petition may kindly be quashed and set aside and by the same order the Respondent Nos. 1, 2, 4 and 5 may kindly be directed to sanction the building proposal submitted by the Petitioners on 08.1.2024 and permit the Petitioners to commence and complete the construction of the building in accordance with that proposal.
- (c) By a suitable order interim effect, operation and implementation of the Order dated 10.1.2024 copy of which is at EXHIBIT 'Q' to the petition may be kindly stayed during pendency of this petition.”

2. This is the second round of litigation before this Court challenging the order dated 10th January 2024 passed by Respondent No. 4-The Additional Municipal Commissioner, Mumbai Municipal Corporation cancelling the No Objection Certificate (NOC) dated 31st December 2021 given to Respondent No.

3- Slum Rehabilitation Authority (SRA) by the Estate Department of the MCGM/BMC. On account of the cancellation of the NOC, the Petitioners are aggrieved, inasmuch as it is their grievance that they are unable to commence and complete the construction of the building in accordance with the proposal submitted for the redevelopment of the building. As noted by us, this Petition is being re-heard in view of the order dated 28th November 2025 passed by the Supreme Court in Special Leave Petition (C) No. 31485 of 2025 which challenged the order dated 20th June 2025 passed by this Court by which the present Writ Petition came to be rejected on the ground of availability of an alternate remedy. The Supreme Court, by the said order dated 28th November 2025 has modified the order dated 20th June 2025 passed by this Court and in pursuance thereto, this matter has been taken up for hearing. The relevant paragraphs of the order dated 28th November 2025 passed by the Supreme Court are reproduced below:-

“3. Our order dated 31.10.2025 reads thus:-

“1. Delay condoned.

2. Exemption Application is allowed.

3. Heard Mr. Shyam Divan, the learned Senior counsel appearing for the petitioners.

4. Prima facie, it appears from the materials on record that the petitioners – herein are Developers. They entered into an agreement for redevelopment of a slum. It is not in dispute that the Municipal Corporation issued ‘No Objection Certificate’ in favour of the petitioners – herein. Thereafter, a letter of intent was also issued. Later, the Corporation decided to withdraw the ‘NOC’ which was issued in favour of the petitioners – herein. This led to filing of a Writ Petition No.26148/2023 by the petitioners before the High Court.

5. The High Court disposed of the Writ Petition, referred to above, filed by the petitioners – herein vide order dated 8-11-2023. The order reads thus:-

“1. Mr Chinoy has instructions to state that the impugned order at page 30A stands withdrawn. It is of 6th September 2023. The Municipal Corporation of Greater Mumbai ("MCGM") will issue a fresh show cause notice to the Petitioners and will afford the Petitioners a hearing and then pass an order thereafter.

2. Mr Vashi's contention that the Municipal Commissioner has no authority in law to issue such a notice is for the present kept open. Mr Vashi is at liberty to urge that point if necessary in any later proceedings.

3. The Petition is disposed of. No costs.”

6. In pursuance of the order passed by the High Court, a Show Cause Notice was issued by the Municipal Corporation to which the petitioners duly replied and ultimately the final order came to be passed dated 10-1- 2024 cancelling the 'NOC'.

7. The operative part of the Order dated 10-1-2024 reads thus”-

“Considering all the above factors, I pass the order as under:-

i) The NOC given to SKA by Estate Department dated 31 12.2021 is hereby cancelled. CEO(SRA) be informed to record the proposed Slum Rehabilitation scheme.

ii) As such, the construction of Municipal Ward Office building will be carried out by BMC alongwith the rehabilitation of existing affected eligible structures as per prevailing policy of BMC at BMC's cost.

iii) After recording of the proposed Slum Rehabilitation scheme by Chief Executive Officer (SRA) the premium charges paid by the Developer to BMC will be refunded.”

8. It appears on plain reading of the impugned order that the High Court declined to entertain the writ petition filed by the petitioners on the ground of alternative remedy available with the petitioners and also for the reason of disputed questions of fact could not have been gone into in exercise of Writ jurisdiction.

9. Prima facie, we are of the view that at least the Order dated 10-1-2024, referred to above, was amenable to judicial review.

10. The High Court ought to have looked into the legality and validity of the Order dated 10-1-2024.

11. Issue notice, returnable on 28-11-2025.

12. Dasti service, in addition, is permitted.

13. In the meantime, the parties shall maintain status- quo.”

4. We heard Mr. Pradeep Aggarwal, the learned counsel appearing for the petitioners, Mr. Atmaram Nadkarni, the learned senior counsel appearing for the respondent nos.1,2,4 and 5 respectively and Mr. Abhikalp Pratap Singh, the learned counsel appearing for the respondent no.3.

5. Mr. Nadkarni very fairly submitted that in view of what has fallen from this Court, as recorded in the order dated 31.10.2025, referred to above, the High Court may be requested to look into the legality and validity of the order dated 10.1.2024 passed by the respondent no.1 withdrawing the NOC. He would submit that let this order be subjected to judicial reviewability.

6. In view of the aforesaid, the impugned order passed by the High Court is modified to the extent that the High Court shall hear the parties insofar as challenge to the order dated 10.1.2024 is concerned in accordance with law.

7. All contentions are kept open to be canvassed before the High Court.

8. We request the High Court to hear the parties as regards the challenge to the order, referred to above, preferably within a period of eight weeks from today.

9. In the case of any difficulty, it shall be open for the petitioners to pray for appropriate interim relief before the High Court.

10. It is needless to clarify that we have not gone into the merits of the matter.

11. In view of the aforesaid, the Special Leave Petition stands disposed of.

12. Pending application(s), if any, stand disposed of.”

3. Briefly the facts are as follows:-

i. Petitioner No. 1 is a Chief Promoter of the proposed Co-operative Housing Society (CHS) and Petitioner No.2 is a partnership firm carrying on business as builders and developers. It is the Petitioners' contention that as per development plan of Development Control and Promotion Regulation 2034 (DCPR 2034) of P-North Ward, a part of the land bearing CTS No. 558B is reserved for a municipal office, premises for disaster management facility and also part of it is designated for an existing municipal chowky. Also a part of the said land is affected by setback area of 12.20 meters (road widening) and 18.30 meters regular line, as the said land is situated in a residential zone.

ii. The Petitioners contend that there are a total of 134 slum dwellers who have formed the society of which Petitioner No. 1 is a Chief Promoter. Petitioner No. 1- Society submitted a Slum Rehabilitation Scheme (S.R. Scheme) originally through an earlier developer appointed by it. However, since the said developer could not implement the SR scheme, Petitioner No. 2- Developer was recognized as a new developer by Respondent No. 3- Slum Rehabilitation Authority (SRA). Petitioner No.2- Developer was appointed in the year 2016 by a General Body Resolution dated 27th February 2016 passed by Petitioner No. 1- Society. In pursuance of the said General Body Resolution, the Society executed a power of attorney, development agreement and granted consent in favour of Petitioner No. 2- Developer. After the appointment of Petitioner No.2 as the developer, the Petitioner No. 2- Developer put up the proposal before Respondent No. 3-SRA for redevelopment of the slums in respect of plot bearing CTS No. 558/B, 558/B 1 to 40, village Malad East, Taluka Borivali (hereinafter referred to as the “said land”). The Municipal Corporation is admittedly the owner of the entire land in question. As stated aforesaid, part of the said land was reserved for a Municipal Office and Disaster Management Facilities and a Municipal Chowky. Post submission of the proposal by Petitioner No. 2-Developer to Respondent No.3-SRA, the SRA directed Petitioner No. 2-Developer to obtain NOC for Annexure-II from Respondent No. 1-Municipal Corporation of Greater Mumbai (MCGM)/ Brihanmumbai Municipal Corporation (BMC).

iii. On 16th September 2017, the Deputy Collector, SRA issued a letter of even date to the Assistant Municipal Commissioner P/North and Competent Authority,

i.e. Respondent No. 5 requesting to issue Annexure II in respect of the Petitioner No. 1 Society. After issuing the draft Annexure-II dated 30th October 2018, the Assistant Municipal Commissioner P/North & Competent Authority addressed a letter dated 4th February 2019 to the Estate department of the MCGM/ BMC for issuance of NOC for certification of final Annexure II.

iv. On 3rd September 2021, the concerned department of MCGM after obtaining an opinion from the legal department of MCGM, took a decision that all the required NOCs were to be given to Petitioner No. 2-Developer and the S.R. scheme was operative. In pursuance of the aforesaid letter dated 3rd September 2021 and after following all the procedures and due diligence, the Estate Department of MCGM/ BMC issued NOC dated 31st December 2021 under the title “NOC to issue Annexure-II for S.R. Scheme” in respect of the Petitioner No. 1- Society. The said NOC was issued by placing reliance on all the earlier decisions and deliberations which had taken place in the concerned department of MCGM.

v. It is the Petitioners’ contention that after issuance of the NOC dated 31st December 2021 certifying the final Annexure II by MCGM, the Estate Department of MCGM/ BMC was well aware that an area of 4705 sq. mtrs was available to them to build the Municipal Office and Disaster Management Facilities and Municipal Chowky and a chart to that effect was prepared by the Estate Department of MCGM/ BMC.

vi. On 9th February 2022 on the basis of the NOC dated 31st December 2021, the Assistant Municipal Commissioner P/North Ward and the Competent Authority addressed a letter of even date to the Deputy Collector (W.S.) SRA and certified

the final Annexure II and forwarded a copy thereof to the Deputy Collector, SRA for further issuance of Letter of Intent (LOI). It is the Petitioners' contention that in the said certified Annexure II dated 9th February 2022 issued by the Assistant Municipal Commissioner P/North Ward and Competent Authority, a total number of 79 slum dwellers were shown as eligible and 34 were shown as ineligible.

vii. On 11th November 2022, after receiving the final Annexure II, Respondent No. 3-SRA issued LOI of even date in favour of Petitioner No. 2-Developer by imposing a condition to obtain D.P. Remark from MCGM before obtaining Intimation of Approval (IOA).

viii. On 6th January 2023, the Architect of Petitioner No. 2-Developer made an application submitting the plans showing Built-up Area (BUA) of the BMC office to the Executive Engineer (D.P.) P & R Ward for issuance of sanction of the D. P. Department. However, it is the Petitioners' contention that the Petitioners did not receive any reply to the aforesaid application.

ix. Since the Petitioners did not receive any reply on their application dated 6th January 2023 from the Executive Engineer (D.P.), P & R Ward and no sanction was issued, a legal notice dated 28th July 2023 was addressed to the Executive Engineer , Development Plan (D.P.), P & R Ward through their authorized representative requesting issuance of sanction of the Development Plan Department within seven days of receipt of the notice.

x. On 12th September 2023, the MCGM replied to the legal notice dated 28th July 2023 (supra) and informed the Petitioners that the office of the Estate Department of the MCGM/ BMC has been informed to take further necessary action at their end. It is the Petitioners' contention that there was no comment made in the said letter insofar as the plans submitted by the Petitioners by the application dated 6th January 2023.

xi. Being aggrieved by the inaction on the part of the Executive Engineer (D.P.), P & R Ward of not granting sanction to the Petitioners' plan, the Petitioners filed Writ Petition (L) No. 26148 of 2023 before this Court for issuance of directions to the Executive Engineer (D.P.), P & R Ward to issue necessary sanction of the D.P. Department to the building plans submitted by the Petitioner No. 1-Society and Petitioner No. 2-Developer.

xii. It is the Petitioners' contention that on 18th October 2023, an affidavit in reply of even date was filed in the said Writ Petition by Respondent No. 1-MCGM, wherein a letter dated 6th September 2023 addressed by the Municipal Commissioner to the CEO, SRA requesting him to cancel the LOI dated 11th November 2022 issued in favour of the Petitioners, was disclosed for the first time. To bring on record the aforesaid letter dated 6th September 2023, the Petitioners amended the said Writ Petition.

xiii. It is the contention of the Petitioners that there was a meeting dated 2nd February 2023, which was attended by the Assistant Engineer, MCGM and Member of Legislative Assembly (MLA) of the said area, which was never informed to the Petitioners and it is only on the RTI application dated 19th

October 2023 made by the Petitioners that the Petitioners, were made aware of the said meeting dated 2nd February 2023.

xiv. On 8th November 2023, this Court passed an order of even date on Writ Petition (L) No. 26148 of 2023 disposing of the Petition on the statement made by the learned Counsel on behalf of Respondent No. 1- MCGM, on instructions, that the order dated 6th September 2023 is withdrawn. The order dated 8th November 2023 reads thus:-

“1. Mr Chinoy has instructions to state that the impugned order at page 30A stands withdrawn. It is of 6th September 2023. The Municipal Corporation of Greater Mumbai (“MCGM”) will issue a fresh show cause notice to the Petitioners and will afford the Petitioners a hearing and then pass an order thereafter.

2. Mr Vashi’s contention that the Municipal Commissioner has no authority in law to issue such a notice is for the present kept open. Mr Vashi is at liberty to urge that point if necessary in any later proceedings.

3. The Petition is disposed of. No costs.”

xv. Pursuant to the order dated 8th November 2023, a show cause notice dated 29th December 2023 was issued and served on the Petitioner No. 2-Developer whereby the Petitioners were asked to show cause “as to why the NOC dated 31st December 2021 issued by the Estate Department of the MCGM/ BMC in favour of the Petitioners should not be cancelled”. In the said show cause notice, the reason for cancellation of the NOC was primarily on the ground that the Petitioners after the grant of the NOC dated 31st December 2021, had failed to satisfy the requirements of conditions of the LOI as per proposal submitted by the Petitioners. The said show cause notice also alleged that Petitioner No. 2-Developer was aware of the fact that that the required area of

4705 sq. mtrs. in one building and floor plate of minimum 1300 sq. mtrs. on each floor is to be constructed by the Petitioners, which was informed to the Petitioner No. 2-Developer in the meeting held on 20th December 2023. The show cause notice also referred to the earlier meetings dated 27th April 2023, wherein the Petitioners were asked to provide the feasible plan/proposal that can satisfy the requirements of the BMC Ward Office. Since the Petitioners had failed to satisfy the aforesaid conditions, the Petitioners were asked to show cause as to why the NOC dated 31st December 2021 should not be cancelled.

xvi. It is in pursuance of the aforesaid show cause notice that the order dated 10th January 2024 came to be passed by the Additional Municipal Commissioner, MCGM/ BMC i.e. Respondent No.4 (hereinafter referred to as the “impugned order”) cancelling the NOC and also taking over the construction of the Municipal Ward Office building by MCGM/BMC along with rehabilitation of existing affected eligible structures as per the prevailing policy of BMC at BMC’s costs.

4. The Petitioners being aggrieved by the aforesaid impugned order, have filed the present Petition.

5. Earlier, as noted above, a co-ordinate Bench of this Court by its order dated 20th June 2025, dismissed the Petition filed by the Petitioners. The relevant paragraphs of the said order reads thus:-

“3) *A bare perusal of the Order dated 10th January 2024 demonstrates that it is well-structured and reasoned and does not exhibit any bias or perversity. The Respondents have followed the*

due process of hearing the parties and thereafter has terminated the developer i.e. Respondent No.2.

4) Upon hearing Mr. Tiwari and perusing the Petition, we enquired how the Petition was maintainable. The learned Advocate was unable to demonstrate any right that the slum society or, worse still, even the Petitioner No.2-developer possessed under Article 14 of the Constitution of India to file the Petition.

5) Having examined the papers on record, we find that the grounds raised would require detailed examination of the parties' claims which are essentially in the nature of a private dispute. The disputed issues concerning the planning and design of the building, specifically how the building should or should not be structured, are not the issues to be decided within the jurisdiction of this Court under Article 226 of the Constitution of India. Such matters squarely fall within the realm of the Brihanmumbai Municipal Corporation (BMC). Likewise, the developer's contentions regarding deviations in the plans due to the floor plate or the size of the plot cannot be adjudicated by this Court.

5.1) Furthermore, the slum society has no right to select or determine the developer, which is a prerogative of the BMC in consultation with the Slum Rehabilitation Authority (SRA).

6) It would be appropriate to observe that, the slum colonies are creations of slumlords and a direct result of the State's inaction through its Municipal Corporation and the police, who bear principal responsibility for their removal as stated by the Single Bench of this Court in Reverend Father, Peter Paul Fernandes, Parish Priest and Sole Trustee of the Church of St. Francis Xavier vs. State of Maharashtra reported in AIR 1991 Bom 445, Abdul Majid Vakil Ahmad Patvekari vs. Slum Rehabilitation Authority reported in 2021 SCC OnLine Bom 13719, Abdul Aziz vs. AGRC reported in 2024 SCC OnLine Bom 744 and Bishop John Rodrigues vs. State of Maharashtra & Ors reported in 2024 SCC OnLine Bom 1632.

7) Would we be justified in granting this Petition and permitting these squatters or slum dwellers, who are ex facie illegal occupants and who have no lawful entitlement to the land in the first place, to dictate the choice of their developer and impose terms on the State? The answer is an emphatic negative.

8) We therefore find that, this Petition is a guise filed by the developer himself under the cover of the slum dwellers designed solely to continue his appointment. It is evident that, this is in essence a private dispute. The real motive behind filing this Writ

Petition is to circumvent the appropriate legal remedy of filing a civil suit for termination of the contract, which is a private dispute at its core.

9) We find no justification to interfere with the decision of the Respondents. Accordingly, the Petition is dismissed.”

6. As stated above, the Petitioners filed a Special Leave Petition (SLP) (C) No. 31485 of 2025 against the aforesaid order which was decided by the Supreme Court by its order dated 28th November 2025 (reproduced in paragraph 2 above). It is in the above backdrop, that we proceed to decide this Petition.

7. We have heard Mr. Girish Godbole, learned Senior Counsel for the Petitioners, Mr. Jagdish Aradwad (Reddy), learned Counsel for Respondent No.3-SRA and Mr. Joel Carlos, learned Counsel for the Respondent No. 1- MCGM. With the assistance of the Counsels for the respective parties and on perusal of the impugned order and the records, we proceed to dispose of the present Petition.

8. Mr. Godbole on behalf of the Petitioners has assailed the findings as given in the impugned order on the ground that the same is passed without appreciating the facts and not considering that the Petitioners had at all times satisfied the conditions as prescribed in the NOC dated 31st December 2021. He further submitted that acting on the NOC dated 31st December 2021, the LOI dated 11th November 2022 was issued to the Petitioners and the Petitioners had accordingly made a plan and submitted it to the Executive Engineer (D.P.), P & R Ward on 6th January 2023. It was also his submission that the NOC dated 31st December 2021 was issued because a request was received from the Assistant Municipal Commissioner, P/North Ward for issuance of NOC for the purposes of

SR Scheme on the said land. Thereafter, a proper procedure and legal opinion was sought and only after that, the NOC dated 31st December 2021 was issued subject to the conditions contained therein. The said conditions were incorporated in the LOI dated 11th November 2022 and all the reservations which were made for the benefit of the MCGM/BMC were complied with by the Petitioner. He also submitted that the impugned order has not taken into consideration all these facts and the actions taken by the Petitioners subsequent to the issuance of the NOC and the LOI. It is his further contention that it is only on a complaint by local MLA/busybody that the MCGM/ BMC has sprung into action and cancelled the NOC which was legitimately issued in favour of the Petitioners. It is his submission that the Petitioners were under the legitimate expectation that the NOC had been issued in their favour and hence had arranged their business affairs in the said manner and the cancellation of the NOC had altered their position vis-a-vis the redevelopment of the S.R. Scheme thereby causing huge financial loss. It was further his submission that the impugned order needs to be quashed and set aside, and the Petitioners be granted NOC and allowed to carry on the redevelopment of the S.R. Scheme.

9. Mr. Joel Carlos, learned Counsel for the Respondent No. 1-MCGM has vehemently opposed the submissions as made by the learned Counsel for the Petitioners. It is his primary contention that the MCGM/ BMC is the owner of the said land and it is well within their rights to not only grant NOCs but also revoke NOCs if the situation so demands. It is his vehement submission that MCGM/ BMC being the owner of the land has the first right and say in respect of the

development and exploitation of the said land. He also submitted that the NOC and the LOI categorically placed a condition that the developer had to comply with the conditions stipulated therein and specifically the condition that the plot is reserved for public purposes i.e. Municipal Ward Office, Disaster Management Facilities and Municipal Chowky had to be complied with. He further submitted that the Petitioner No. 2-Developer from the date of issuance of the NOC dated 31st December 2021 till the issuance of show cause notice dated 29th December 2023 has taken no steps to redevelop or build the Municipal Chowky or the Disaster Management Facility or the Municipal Ward Office as stipulated in the NOC and LOI. He also submitted that there were other specific conditions in the LOI like that the Petitioners were under an obligation to get necessary permissions and submit plans and applications to the concerned authorities which the Petitioners have failed to do. He has drawn our attention to the conditions in the LOI dated 11th November 2022 and more specifically to condition Nos. 33 and 53 which read thus:-

“33. That you shall submit the NOC from CFO, NOC from E.E.(T & C) and NOC from Ch. Eng. (M&E) of MCGM.

53. That you shall submit the concurrence from AC P/N, Ch. Officer (DM) & Municipal Architect for proposed Plans of Municipal Office Building + Disaster management Facility + Cyclone Shelter Center + Municipal Chowky before asking plinth C.C.”

10. He therefore submitted that these conditions have not been complied with by Petitioner No. 2-Developer and hence the impugned order has been passed on a correct appreciation of the facts. He has also placed reliance on the affidavit dated 5th December 2024 filed by one Mr. Kiran Dighavkar, the Assistant

Commissioner, P North Ward Office Liberty Garden, Malad (West), Mumbai.

The relevant paragraphs of the said affidavit are reproduced hereinbelow:-

“7. I say that from the record the correct facts are as follows

(a) The total plot area is 4501.30. As per the Development Plan the Plot is reserved for the public purpose of RO11.3 + RO 3.1 (Municipal office + Disaster Management Facilities). However substantial portions of the plot are occupied by Slum Dwellers.

(b) Currently, the P North Ward comprises the entire Malad West to Malad East and extends upto Madh island. This is too large an area to be administered by a single ward office. Accordingly it has been decided to split the P/North ward into P/West and P/East. The existing ward officer at P North situated at Malad west is already inadequate given the expanse of the area and the growing population that it has to cater to. It is therefore necessary and essential for another ward office building to be constructed on the Malad East side for the new P- north East ward. The current plot is located near to the Malad east railway station and is the only plot available in that area with a reservation for a Ward Office. There is an urgent need to construct BMC P/East office building for providing basic facilities and amenities to the citizens which are about six lakhs in the said ward and for which there is an increasing demand.

(c) On 11.11.2020, the Developer had submitted plans for the proposed area to be constructed on 500 sq. mtrs of the total plot and at the time of submission itself, the developer was informed that the said proposal plan was not acceptable given the requirements of BMC and also the developer was made aware that the plans would have to be approved by the user department which is the Assistant Commissioner of ward Office and therefore the file was being processed for the limited purpose of the NOC to be issued by the Estate Department.

d) BMC had vide its letter dated 31.12.2021 given its NOC for the issuance of the Annexure II for the said plot for the proposed S.R. Scheme to various conditions including that as the plot is reserved for Public Purposes [Municipal Office + Disaster Management facilities and Municipal Chowky], the Chief Engineer DPs specific remarks would be obtained before issuance of IOA by the SRA [Condition (c)] and that the Developer would hand over the built up amenity of Municipal Office, Disaster Management Facility + Municipal Chowky having a built up area of 4705 sqmtrs in one building and that the plan of the said building would be got approved from Municipal Authorities for size and shape [Condition (1)]

(e) The Annexure II dated 08.02.2022 issued by the Assistant Commissioner P/North Ward also reiterated that the Developer shall comply with all the conditions mentioned in the NOC dt 31.12.2021.

(f) SRA had issued Letter of Intent dated 11.11.2022 to the Petitioners for proposed Slum Rehabilitation Scheme under Regulation 33(10) on Slum Plots and Regulation 30 for non-slum plot. The said LOI has mentioned in Condition No. 8 about D.P. remarks wherein it is stated that the plot under SR scheme is affected by reservation of Existing Municipal Chowky (EMS 1.2), Municipal Officer+Disaster Management Facilities (R.O. 1.3 + R.O. 3.1) and also affected by setback. The Developer shall obtain required NOC from concern departments of BMC as per LOI condition no.33 and as per condition no.53, the concurrence from Assistant Commissioner (Ward Officer), P/North, Chief Engineer Officer (Disaster Management) and Municipal Architect for roped plans of Municipal Office Building + Disaster Management Facility + Cyclone Shelter Centre + Municipal Chowky is required. It is also seen that the LOI issued by SRA on 11.11.2022 is expired which is valid for 3 months and is not re- validated.

(g) Accordingly, a meeting dated 2.2.2023 was held wherein even the SRA officials were present and it was the submission of the Asst. Engineer SRA that the developer has not submitted any plans for construction. Accordingly 7 meeting was held on 17.4.2023 wherein the representative of the Developer was present wherein the- said representative was informed that the Plan forwarded was unacceptable inasmuch as it provided for a narrow building [100 sq mtrs areas on either side of the staircase / lift well] of 20 storeys with only one staircase , situated at the back of the plot. The Developers representative/ Architects were required to submit revised plans for the municipal building with a substantially enhanced floor area and lesser height / floors , as well as two staircases. The building was also required to be relocated to the North side of the plot to have maximum frontage and accessibility from 3 Roads i.e. the Haji Bapu Road, Nevetia Road, and 12.20m DP road. It was seen that the draft plans submitted by Architect/Developer are not as per provision of DCPR 2034. As the land is owned by BMC and the proposed building thereon is for Ward Office building as stated aforesaid, the developer was informed to provide for the area which can be used as the public administrative building for P/East Ward as there cannot be one composite building for BMC ward office and the residential PAP tenements. As aMunicipal Ward office, the aspect of fire safety, security and safety of public in general is of utmost importance and has to be considered as a top priority. For easy access and convenience of people the public administrative building should not be highrise and shall be restricted to limited floors.

(h) Further, he was informed that the Municipal Office building has to be designed to accommodate 18 number of departments, their record rooms, conference meeting hall, separate area for Corporators, Disaster Management Facility, and cyclone shelter etc. Also, it should be convenient to the public and also for their easy movement. The draft plans submitted were with inadequate provisions of staircase, improper frontage, inadequate open spaces, light and ventilation, inadequate parking which is not suitable for Ward office building. The minimum buildable area on each floor shall be minimum 1300 sq. mtrs. as perrecently constructed H/West administrative office building. The administrative office building should be designed with due consideration of current population of approximately 6 lakh people and for the need of future population for the next decade atleast. Thereafter, the Petitioners Architects had contacted the office of the Executive Engineer (DP) which had nothing to do with the USER department on a number of occasions. The Petitioners Architects had not submitted a revised proposal but had instead sought approval of the submitted proposal. In view of the failure of the Petitioners/ Architects to submit the requisite Revised Plan, the BMC decided in Aug & Sept 2023 to revoke the sanction granted to the Petitioners and to directly take up the task of constructing the urgently needed requisite new Ward Office building, by rehabilitating the eligible slum dwellers in accordance with law. Accordingly, a letter dated 6.9.2023 was issued by the Municipal Commissioner to the CEO SRA for revocation of the LOI.

8. I say that the order of the Ld Municipal Commissioner was placed before this Hon'ble Court in WP L. 26148 of 2023. After hearing both sides, since the Petitioners were not heard before passing of the order dated 6.9.2023 the Ld. Counsel for the BMC on instructions made a statement that a hearing would be given to the Petitioners.

9. Accordingly the Developer was called upon to provide their explanation by the letter dtd. 07.12.2023. A reply dated dt. 14.12.2023 came to be filed by the Petitioner and thereafter based on the material 'pleas before the Ld. Additional Commissioner, the Additional Commissioner issued a show cause letter dated 29.12.2023 calling upon the Petitioner as to why his NOC should not be cancelled and a hearing was provided for on 2.1.2024.

10. After hearing both sides, the Ld. Additional Commissioner by a speaking order dated 10.1.2024 was pleased to cancel the NOC dated 31.12.2021 and has further directed the refund of premium charges to the Developer.

11. It is therefore stated that given the conduct of the Petitioner as stated show it is obvious that the Petitioner has been unable to complete the project and the BMC has decided to complete the

project on its own. The Petitioner does not have any constitutional right in the project and therefore cannot invoke the writ jurisdiction of this Hon'ble Court."

11. Mr. Aradwad (Reddy), the learned Counsel for Respondent No. 3-SRA has supported the contentions made by Mr. Joel Carlos, the learned Counsel for the MCGM/ BMC. He has also placed on record an order dated 4th March 2025 passed by Respondent No. 3-SRA which is a detailed order, and which also considers the impugned order thereby cancelling the LOI dated 11th November 2022 issued in favour of Petitioner No.2-Developer subject to the final outcome of the present pending Writ Petition. He has submitted that the said order also has categorically held that Petitioner No. 2-Developer failed to provide feasible plan for more than a year after issuance of the LOI dated 11th November 2022. Considering that Petitioner No. 2-Developer failed to comply with the obligations as given in the LOI, it was his contention that the order dated 4th March 2025 passed by Respondent No. 3-SRA cancelling the LOI in favour of the Petitioners also needs to be considered and upheld.

12. In rejoinder to the aforesaid submissions made on behalf of the MCGM/BMC and the SRA, Mr. Godbole, submitted that on 9th February 2022, the Assistant Municipal Commissioner P/North Ward and the Competent Authority themselves had written a letter to the Deputy Collector (W.S.), SRA and served the final Annexure-II and instructed the deputy Collector (W.S.), SRA to take further necessary actions in respect of the S.R. Scheme. He also drew our attention to the letter dated 6th January 2023 addressed to the Executive Engineer

(D.P.) P & R Ward submitting the plan showing BUA of BMC Office to be handed over to the BMC and to issue the necessary NOC at the earliest. It was therefore his contention that the Petitioner had not flouted condition Nos. 33 and 53 of the LOI dated 11th November 2022 as contended by Respondent No. 1-MCGM/ BMC and that the impugned order had failed to take into consideration this crucial fact rendering the same liable to be quashed and set aside.

13. Having heard learned Counsel for the parties. On a careful consideration of the facts and the earlier orders passed by this Court and after giving anxious consideration to the issue at hand, we are of the considered view that in the facts and circumstances of the case, the impugned order which is a well-reasoned order, does not warrant interference of this Court. We are further of the view that the conduct of the Petitioners throughout the proceedings smacks of non-compliant behavior on the part of the Petitioners when it came to abiding/ complying with the specific conditions of the NOC dated 31st December 2021 and the LOI dated 11th November 2022. As pointed out by Mr. Carlos, the learned Counsel appearing on behalf of the Respondent No. 1-MCGM/ BMC, it is the MCGM/ BMC's land and they are the original owners of the said land and therefore the right of the owner of the land is a preferential right which needs to be of paramount importance, especially in a S.R. Scheme. Thus, the rights of slum dwellers who are encroachers are subservient to the rights of the owners/MCGM qua the redevelopment. The developer appointed by Petitioner No.1-Society cannot have any independent rights. The rights of the developer are in fact contractual rights under a pure contractual arrangement, it has with Petitioner

No.1-Society. It is surprising as to how it can even maintain a Petition being arrayed as Petitioner No.2.

14. This position in law has been consistently upheld by this Court in **Indian Cork Mills Pvt. Ltd. Vs. State of Maharashtra and others**¹, **Bishop John Rodrigues Vs. State of Maharashtra**² and as upheld by the Supreme Court in **Tarabai Nagar Co-op. Hsg. Society (proposed) Vs. State of Maharashtra & Ors.**³ Further, this Court in a recent decision passed in the case of **Nesco Ltd. Vs. State of Maharashtra**⁴ has followed the aforesaid decisions and held that the preferential rights of redevelopment vests with owner/landowner. The relevant paras of **NESCO Limited Vs. State of Maharashtra** read thus:-

11. At the outset, we may observe that it is not in dispute that the land in question is a private land in respect of which the petitioner enjoys valuable rights under Article 300A of the Constitution. It is Mr. Chinoy's submission that merely for the reasons there exists slum structures on the petitioner's land, the slum dwellers without recognition of the petitioner's preferential right in respect of the land and more particularly in respect of any redevelopment, could not have made a proposal to the CEO SRA for acquisition of the said land. It is Mr. Chinoy's submission that the legal position in this regard stands well settled in the decision of this Court in the **Indian Cork Mills Pvt. Ltd.** (supra) in which the co-ordinate Bench of this Court, in regard to such preferential rights, made the following observations:

"62. That a preferential right for redevelopment is so vested in the owners/landholders and/or occupants is further clear in view of a conditional power/authority created with the SRA to undertake redevelopment of the slum rehabilitation area in a two-fold manner firstly by exercising power under sub-section (1) or (2) of Section 13 which is to re-develop the land by entrusting it to any agency on a failure of the landholder or the occupant in not coming forward within a reasonable time with a scheme for re-development; and when application of Section 13(1) and (2) do not fetch any result by re-developing or carrying out development under the slum rehabilitation

¹ 2018 SCC Online Bom 1214

² 2004 SCC Online Bom 1632

³ 2025 SCC OnLine 1795

⁴ Writ Petition No.1018 of 2017

scheme in any slum rehabilitation area by resorting to acquisition of the land under section 14 as applicable with modification under Chapter I-A. It is thus clear that the object and purpose which the provisions of Section 3B(4)(e), Section 13(1) and (2), Section 12(10) and Section 14 (as modified by under Chapter IA) is to achieve and bring about an effective redevelopment of slum rehabilitation area.

63. Thus, from the legislative scheme of the amended provisions it can be clearly inferred that the rights so conferred under these provisions on the owner/landholder/occupant cannot be usurped directly by putting into operation the acquisition machinery, simply because such power exist on the statute book. The exercise of such power within the scheme of Chapter I-A is required to be resorted by due adherence to the said provisions which have created and recognized the legitimate rights in the owners, landholders and occupants to undertake re-development. The power to acquire land is also required to be exercised in a fair manner and certainly in the context of the present statutory scheme, when the object and purpose for which acquisition is to be undertaken can be achieved by other methods and for which the statute has made the requisite provision for achievement of such purpose.

.....

100. We also cannot accept the submission as urged on behalf of the society that since the society has submitted a scheme prior to the petitioner's scheme, the preferential right in favour of the petitioner does not survive. This submission pre-supposes that there is a preferential right in the petitioners to redevelop the said land.....”

12. Mr. Chinoy has also drawn the Court’s attention to the decision of the Division Bench of this Court in **Bishop John Rodrigues** (supra) in which referring to the decision in **Indian Cork Mills Pvt. Ltd.** (supra) in the similar context the Court made the following observations:

“101. In these circumstances, when valuable private rights as guaranteed under Article 300A of the Constitution to an owner of the land are being deprived under the garb of slum rehabilitation, there has to be an insurmountable situation on record of the SRA or for any reasonable body of persons to come to an unimpeachable conclusion that the only and only remedy and/or avenue in a given case is to acquire the private land and not permit the owner of the land to undertake the development. The CEOSRA has an onerous obligation to reasonably, non-arbitrarily, and objectively deal with the valuable property rights of private citizens who are dragged in such situation that the monsters of encroachment and persons supporting them take the rule of law in their hands in depriving the land owner of his right to property. They forget that there is a rule of law and there are Courts and any such attempt to dent the rule of law can be dealt with iron hands. We may also add that if the official machinery was to act as per

law, today we would not have been confronted with the situation of an international city like Mumbai being also known for its slums on private and public lands [See the observation of the Court in High Court on its own motion (In the matter of) Jilani Building at Bhiwandi v. Bhiwandi Nizampur Municipal Corporation.

102. Be it so, in our opinion, a cumulative reading of the provisions under Chapter-I-A does not, in any manner, depict a legislative intent that the moment the private land is declared as a slum and a cooperative society of slum dwellers is formed, no opportunity whatsoever is required to be granted to the owner of the land to undertake development of the land. In fact, primary obligation on the CEO-SRA as also for the slum rehabilitation society is to issue a notice to the owners of the land specifying the period/a time bound schedule i.e. 120 days as contemplated under Section 13(1) of the Slum Act. This would be the basic necessity before a owner could be deprived of its constitutional rights under Article 300A before applying the statutory 120 days as contemplated under Section 13(1) of the Slum Act either from the declaration of the slums as the slum rehabilitation area or any insistence on the part of the society and which may not be to the knowledge of the owner. In our opinion, the petitioner would be correct in its contention that Section 13(1) would be required to be read in the context of what has been observed by the Division Bench of this Court in *Indian Cork Mills Pvt. Ltd. v. State of Maharashtra* (supra), in as much as, for a valid acquisition under Section 14, the pre-requisite would be an opportunity to call upon the owner of the land to come forward with a scheme to undertake the redevelopment by putting him to a notice that a rehabilitation scheme if not submitted by him, would be a circumstance which would be taken against him so as to take steps to acquire the land. The Division Bench had held that such notice to the land owners was imperative, considering the plain reading of Section 14(1) of the Slum Act. The observations of the Division Bench in that regard are already noted by us hereinabove.

.....

111. We may also observe that such contention of the society that the moment the land in question, which is of private ownership, is declared as a slum and after coming into force of Regulation 33(10) of the DCR would mandate steps to be taken to develop the land, would also be required to be held to be fallacious. As stated hereinabove, it cannot be expected that the owner of the land would instantly possess the necessary wherewithal, or would have no opportunity to mobilise/organise himself to undertake a redevelopment. Thus, it is ill-conceivable that an instant development of such land from the resources of a private person can automatically be foisted. Such an argument also lacks discernment to any ground realities in which the owner of the land in a given situation may find himself, under the scheme of the things.

118. If this be the position, then certainly, the slum dwellers merely by forming a society cannot assert that their rights are higher than the rights of the owners of the land and as successive Division Benches of this Court has held that the rights of the slum dwellers cannot be elevated (as if they are the owners of the property), so as to control the rights of the owners of the land under the garb of rehabilitation and through the resources of a developer, foist/dictate compulsory acquisition of land against the owner. The acquisition of the land for rehabilitation of slum dwellers can also never be on a pedestal and/or of a status of an acquisition of the land for public purposes in relation to public project to be undertaken by the State in exercise of its powers of eminent domain. This for two reasons firstly, it is a private group of persons (slum developers) who would be the beneficiary of such land acquisition and the second beneficiary would be the developer who would reap bonanza of a huge Floor Space Index (FSI) in undertaking construction of commercial/saleable premises. Thus, the only beneficiaries of such acquisition of private persons, the Government would spend a meager amount of compensation to be paid as per Section 17 of the Slum Act. Despite this clear position, quite unfortunately, the experience in relation to acquisition under the Slum Act is quite different. It is completely misunderstood, misapplied, misinterpreted or abused by the authorities; this considering the proliferation of litigation in this regard, concerning private lands as encroached, and what is happening to public lands is a mystery which can never be resolved.

.....

121. Thus, a conclusion can be reached that the process of acquisition of private land under the Slum Act is quite draconian with minimal say to the owners of the land coupled with enormous discretion conferred on the CEO, SRA, leaving an enormous scope and window, for large scale arbitrariness and illegality. Considering such parameters, there is an onerous obligation on the State Government not to have a mechanical approach in processing proposals from the CEO SRA and to very minutely examine each and every proposal and reach to a subjective satisfaction for reasons to be recorded in writing as to whether the proposal for acquisition as being put up by the CEO, SRA is fair, reasonable and non-arbitrary. In the present case, valuable land of the petitioner situated at Bandra is being acquired for merely 35 slum dwellers. It is quite astonishing as to why in such a situation, the SRA would not grant an opportunity to the petitioner to undertake redevelopment of its own land and rehabilitate the slum dwellers and in fact, resort to a compulsory acquisition of the petitioner's land under Section 14 of the Slum Act."

(emphasis supplied)

13. Mr. Chinoy has brought to our notice a recent decision of the Supreme Court in **Tarabai Nagar Co-op.Hsg.Society (proposed)** (supra)

wherein the Supreme Court was considering a challenge to the decision of the Division Bench of this Court in **Indian Cork Mills Pvt. Ltd.** (supra). In upholding the said decision of this Court, the Supreme Court recognized the position in law that the land owner would have preferential right to undertake development, and if any acquisition of the land declared as slum rehabilitation area is sought to be undertaken without recognition of the preferential right of the owners of the land, such acquisition would be required to be held to be illegal. The relevant observations are required to be noted which read thus:

“77. In this context, we deem it appropriate to clarify at this stage that Section 14 empowers the State Government to acquire land if necessary to enable the SRA to carry out development under the SR Scheme. It is writ large on the text of Section 14 that the State can invoke its power to acquire the land, if it is necessitated, as per the SRA, for the implementation of a Scheme.

83. Rather, any process to acquire the land shall have to be kept in abeyance till such time as the owner's preferential right to develop it stands extinguished. Since it is open to the owner to file its own SR Scheme within a reasonable time and the proposal of the owner, if valid and complete, would take primacy, it cannot be said that there is any legal necessity to acquire the land. If acquisition is allowed to take place at this stage, it will jeopardise the preferential right of the landowner. It is only when the owner declines to undertake development or to support any third-party development, thereby foregoing its preferential right, that such a necessity would actually arise. There can thus be no doubt that, as long as the owner is willing to undertake development in exercise of its preferential right, the acquisition cannot proceed.

84. This can also be harmoniously read in conjunction with the requirement for a notice-cum-invitation to the owner, as set out in Section 13. Until the SRA has invited the owner to submit an SR Scheme, the owner's right to develop the land cannot be said to have closed. In such a case, the subsisting preferential right cannot be frustrated or undermined by initiating the acquisition process.”

14. Also in a further decision of the Supreme Court in **Saldanha Real Estate Pvt. Ltd. Vs. Bishop John Rodrigues & Ors.**⁵ the decision of this Court in **Bishop John Rodrigues** (supra) has been upheld. In a context similar to the present case, the following are the questions which had arisen for consideration of the Supreme Court.:

“D. Issues

⁵ 2025 SCC OnLine SC 1794

16. Having regard to the issues already adjudicated upon in Tarabai (supra), we deem it appropriate to confine our analysis to the following three questions:

- I. Whether the High Court has rightly rejected Kadeshwari Society's preliminary objection?
- II. Whether the 2018 Amendment impacts the law laid down in Indian Cork Mills (supra) and as reiterated in Tarabai (supra)?
- III. Whether, in the facts of the instant case, the High Court rightly set aside the notice dated 29.10.2021 and the order dated 29.03.2022?"

15. In answering the aforesaid issues on the validity of the acquisition, the Supreme Court recognized the preferential rights of the owners of the land (Bishop Rodrigues). The relevant observations as made by the Supreme Court are required to be noted which read thus:

E.3 Issue III: Validity of Acquisition

26. This Court in Tarabai (supra) has unequivocally established that: (i) the private owner of an SR Area has a preferential right to develop it; (ii) the SRA must invite the landowner to come forward with a redevelopment proposal and give them reasonable time to do so before the said preferential right extinguishes; and (iii) the State or the SRA cannot move to acquire the land before the preferential right of the owner is extinguished. These principles will also apply mutatis mutandis to the case in hand.

27. Consequently, there vests a preferential right in favour of the Church Trust, over and above the SRA, occupants, or other stakeholders, to develop the Subject Land. The Trust ought to have been invited by the SRA to submit a proposal and undertake such redevelopment after the declaration dated 29.12.2020 was issued. Thus, the SRA cannot proceed for acquisition of the Subject Land unless (i) such a notice-cum-invitation is extended, and (ii) thereafter, the right of the Church Trust is extinguished if it fails to submit a redevelopment scheme within the prescribed period of 120 days.

28. The High Court has held that there was no compliance of these preconditions by the SRA before initiating the acquisition, and the entire process was liable to be invalidated. The High Court has further found from the conduct of the Appellants that the acquisition proceedings arose from an exercise of power in bad faith. We, therefore, now proceed to examine whether the High Court was right in drawing such a conclusion.

... ..

32. The inevitable consequence of the SRA's omission to issue a separate notice under Section 1329 is that the Church Trust's preferential right to redevelop the Subject Land remains intact. In the absence of a valid notice or opportunity, there existed no legal basis to

extinguish this right. The acquisition was, therefore, vitiated in law, falling afoul of the prescribed procedure.”

20. Before parting we would be failing in our duty if we do not remind the Slum Authority as also the appropriate officer of the State Government as to the responsibility the law would cast on the Chief Executive Officer as also the officials of the State Government before the draconian powers under Section 14 of the Slum Act, are exercised. Such powers can never be undertaken at the behest of unscrupulous elements and discarding the legal rights of private landlords when the land inundated by slums is of private ownership. The significant observations as to what happens in reality is echoed by this Court in **Bishop John Rodrigues** (supra) when the Court made the following observations:-

“119. It also cannot be overlooked that the acquisition of private land under the Slum Act has a large element of discretion being made available to the CEO, SRA as also to the State Government, object of which as stated herein above, is not of some acquisition for a public purpose, much less of a monumental nature, but for a private purpose that is rehabilitation of a limited number of slum dwellers accompanied with a private benefit which the developer would reap. The nature of the compulsory acquisition under the Slum Act, hence, is not to achieve a public purpose but purely private. Thus, the rudimentary principles on which a decision to acquire land for a public purpose are premised, is certainly not the consideration when it comes to acquisition of private land under the Slum Act. We may observe that the method of acquisition under the Slum Act is also quite draconian in as much as after the objections are raised by the person interested against the acquisition, it is completely the discretion of the competent authority (CEO, SRA) to inform the Government of the inclination towards acquisition and the Government forming an opinion that the land is required to be acquired and accordingly the land would be acquired by publishing a notice to that effect in the Official Gazette.”

21. In the aforesaid context, the Supreme Court in **Saldanha** (supra) has made the following significant observations which need to be borne in mind by the officials of the SRA:-

“48.Nevertheless, for some inexplicable reason and with a sense of uncharacteristic urgency, which again speaks to the invisible but pervading influence of the powerful private developer, the SRA has forsaken the basic tenets of equity and recommended the acquisition.

49. Throughout this case, the SRA and its CEO appear to have abandoned their public duty to uphold the Rule of Law and protect

the rights of the landowner. On the contrary, the facts reveal a prejudiced attempt by the SRA to undermine legislative and judicial efforts and hand over the Subject Land and the benefits of its rehabilitation to Saldanha. Such actions of a public authority, marred by collusion and connivance and motivated by extraneous profit interests of private builders, are highly depreciable and underline the possibility of bureaucratic misuse of statutory provisions.

50. The facts of the instant case compel us to infer that Saldanha's overreaching influence went beyond the slum-dwellers' proposed society. In its attempt to take over the Subject Land, the developer appears to have gotten the typically slow-moving bureaucratic wheels of the SRA to run at full speed. Moreover, Saldanha was able to achieve this manoeuvre at a time when the entire country was under lockdown and the machinery of governance was overwhelmed by the unprecedented challenges of the COVID-19 pandemic.

51. These circumstances underpin the need for practical and actionable safeguards in a legal system involving competing interests among private parties. The Slums Act, while providing wholesome protection to slum dwellers and their homes and livelihood, does not give such express protection to the interests of the owner of the land. The ensuing vacuum, as we have seen in these appeals, allows opportunistic developers to swoop in, exploit the circumstances of the poor slum dwellers, manipulate the hand-in-glove authorities, and enrich themselves off the helpless owner's land.

52. Keeping the facts of this case and the obviously colourable conduct of the Appellants in mind, the acquisition proceedings cannot be allowed to sustain. As such, the High Court has rightly nipped these proceedings in the bud, protecting the statutory rights and interests of the Church Trust over the Subject Land and preventing the Appellants from illegally grabbing it.”

15. We are therefore in agreement with the aforesaid contentions as canvassed by Mr. Carlos that the Respondent No. 1- MCGM/ BMC being the owner of the subject land will have preferential ownership and it is well within their powers to use and exploit the said land and give NOCs/LOIs subject to fulfillment of a condition by the intending developer i.e. Petitioner No. 2- Developer in the present Petition. We are further of the view that condition Nos. 33 and 53 of the LOI dated 11th November 2022 required Petitioner No.2 –

Developer to get required NOC from the concerned department of Respondent No. 1- MCGM/ BMC with concurrence from the Assistant Municipal Commissioner (Ward Officer), P/North, Chief Engineer Officer (Disaster Management) and Municipal Architect for proposed plans of Municipal Office Building, Disaster Management Facility, Cyclone Shelter Centre, Municipal Chowky.

16. It is seen from a perusal of the records that Petitioner No. 2- Developer has breached these conditions and has not sought necessary permissions and therefore the cancellation of the NOC by the impugned order has been rightfully done. Further, we are of the view that Petitioner No. 2- Developer has not taken any steps to submit any feasible plans for almost a year from the date of the LOI dated 11th November 2022 which was granted in favour of the Petitioners.

17. This, to our mind, shows the lackadaisical attitude on the part of the Petitioners and therefore it would not lie in their mouth now to contend/canvass that they have complied with all the conditions of the NOC and the LOI. The impugned order therefore has rightly taken into consideration all these aspects and the findings therein do not require disturbance/interference. We are of the view that once the NOC/LOI was issued with a specific condition that the subject land is reserved for public purposes i.e. Municipal Ward Office, Disaster Management Facilities and Municipal Chowky, the Petitioner No. 2-Developer was under an obligation to hand over the said amenities to Respondent No. 1-MCGM/ BMC. The non-compliance thereof by Petitioner No. 2-Developer has rightly rendered

cancellation of the NOC as held in the impugned order. The relevant findings in the impugned order are reproduced below:-

18. *In response to the show cause notice the developer AND/ OR his representatives appeared before me on 2.1.2024 and relied on the same submissions as filed by them on 14.12.2023 but however did not come up with any new plan as to how the entire requirement of the BMC could be fulfilled. The developer also did not submit any document to show that the user department i.e. the Ward Officå has approved his plans. In fact in this hearing as well as in the previous hearing the Architect of the Developer made a candid admission that it is not feasible for them to construct the building as the BMC's requirement.*

19. *The Developer and his representatives also stated that the BMC would have no jurisdiction to pass this order as the LOI was issued and therefore the BMC would not be a planning authority in the said matter.*

20. *During the hearing, their Architect and Project Manager were called upon to make submissions on the plans submitted by them. A bare perusal of the draft plans submitted by Architect/ Developer would show that they are not as per provision of DCPR 2034 and is not acceptable for Public Building of Ward Office. It was clearly pointed out by the expert officials of the BMC that as the said proposed building will be used as the public administrative building for P/East Ward, there cannot be one composite building for BMC ward office and the residential PAP tenements as the Architect was suggesting a composite building. As a Ward office, the aspect of fire safety, security and safety of public is of utmost importance has and to be considered as a top priority. convenience For easy access and of people the public administrative building should be highrise not and shall be restricted to limited floors. Further, the Municipal Office building has to be designed to accommodate 18 number of departments, their record rooms, conference meeting hall, separate area for Corporators, Disaster Management Facility, and cyclone shelter etc. Hence, the minimum buildable area on each floor shall be minimum 1300 sq. mtrs. as per recently constructed H/West administrative office building. The administrative office building should be designed with due consideration of current population of approximately 6 lakh people and futuristic population after 50 years. However, looking into urgency for the said project, the feasibility of project was discussed on the plan earlier submitted by the Architect and it was admitted by the Architect himself that the proposed project at the said plot is not viable considering the requirement of BMC. However, neither representative/ did the: Developers Architects satisfy come up with a plan to show that they can with the requirements of the BMC nor are they willing to state that they are unable to do the same, leaving the entire project in a limbo and causing colossal waste of the BMC's resources.*

21. *The proposed plan submitted by the Architect of the Petitioner for one composite building of ward office alongwith PAP tenements with inadequate open space, Municipal Chowky and A Disaster Management*

Facility is not viable. The citizens of P/Bast ward can't be deprived of basic amenities and services which-need to be provided from ward office from this area. SRA had issued Letter of Intent (LOI) dtd. 11.11.2022 to the Petitioners for proposed Slum Rehabilitation Scheme under regulation 33(10) on Slum Plots and regulation 30 for non-slum plot. The said LOI has mentioned in Condition no.8 about D.P remarks wherein it is stated that the plot under SR Scheme is affected by reservation of "Existing Municipal Chowky (EMS 1.2), Municipal Officer + Disaster Management Facilities (R.O. 1.3 + R.O. 3.1)" and also affected by setback. And shall obtain required NOC from concern departments of BMC as per condition no. 33. As per condition No, 53, the concurrence from AC P/N, Ch. Officer (DM) & Municipal Architect for proposed Plans of Municipal Office Building + Disaster Management Facility + Cyclone Shelter Centre + Municipal Chowky is required. It is also seen that the LOI issued by SRA on 01.11.2022 is expired which is valid for 03 months and is not re-validated till date. Thus, the developer cannot merely state that he has submitted a plan and therefore the same should be considered as accepted because there was not specific rejection.

(emphasis applied)

22. The ward office of P/North Ward has been divided due to the high density of population and vast area within the jurisdiction of P/North ward to P/East and P/West. The P/East ward at Malad (East) is therefore to be built on this plot bearing CTS No. 558/B and 558/B 1 to 40. which is the only plot having reservation for. Municipal Office building at Malad (East).

(emphasis applied)

23. Thus, as per the aforesaid LOI conditions, the Petitioners alongwith other conditions, were required to construct and handover the Municipal ward office as per the reservation and was in addition 24. required to construct 132 PAP tenements.

(emphasis applied)

24. In the written reply dated 12.12.2023. the Developers representative/ Architects try to put forth a case that the Developers representative/ Architects had submitted a proposal which was approved by various BMC officials on 27.7.2021 and by the Hon'ble Municipal Commissioner on 29.12.2021. This contention is false to the knowledge of the Developers representative/Architects, as stated in the earlier part of this order that at that stage the proposal was under consideration only for the purposes of NOC of the Estates Department and it was made amply clear to the Developers representative/ Architects that the actual proposal for the building will have to be approved by the User Department i.e. the Ward Office. Infact even in the letter dated 22.12.2022 it was clearly communicated to the developer that he must submit the details of the proposal to be submitted to the SRA showing the built up area for the BMC office. What further negates the case of the developer is that the developer thereafter submitted plans vide his letter

received on 6.1.2023 and its non acceptance was not only discussed in the meeting dated 2.2.2023 but was even communicated to the Developers representative/ Architects in the meeting dated 17.4.2023. Therefore, the contention that the plans were already approved on 27.12.2021 is false to the knowledge of Developers representative/ Architects.

25. Till the time of hearing the developer had submitted plans having 200 square meters of floor plate which cannot accommodate a single department on same floor, the staff of the same department /section has to sit on different floor as the floor plate is very small. Moreover composite public office building with Slum Rehabilitation tenements will create safety, security issues. The said plans are with inadequate provisions of staircase, improper frontage, inadequate open spaces, light and ventilation, 8 level of parking (including 3 underground) which is not suitable for Ward office building which will be used by general public. Hence, the plans cannot be accepted as proposed. Hence, under no circumstances could the said plans be considered to have been accepted.

26. Now, after the hearing was conducted on 02.01.2024 a representation is submitted by the Developer/Architect on 08.01.2024 alongwith plans. The plans submitted are not duly signed by the Developer/Architect and are not in consonance with the provisions of DCPR -2034. The layout plans, area statement, FSI calculation, elevation of the structure, etc. are also not submitted alongwith plans. Further, it was clearly mentioned in show cause notice dtd. 29.12.2023 that the floor plate required is minimum 1300 sqmt. However, the plans submitted are showing plot area of 1300 sqmt and floor plate of 8000 sqft. The developer in spite of this entire span of events from the date of LOI, has not even placed this plan with the User Department to understand their needs.

27. Hence, it need not be stated that the plans cannot be accepted as proposed and in fact they seem rather a formality or after thought of the developer with not even a semblance of a building plan vis a vis its legality or acceptability. Infact the manner in which it is just submitted in the inward post the conclusion of the hearing shows the lack of any seriousness on part of the developer in ensuring that the project commences. Thus, it is seen that the proposal submitted by Developer is not feasible in view of the BMC's requirement as has been indicated and for the reasons stated above.

28. As far as the submission of the developer that the BÌÑ would have no jurisdiction to pass this order as the LOI was issued and therefore the BMC would not be a planning authority in the said matter, in my view, the same is entirely erroneous as the LOI is, issued only based on the NOC issued by the BMC. Infact the NOC issued by the BMC was obviously conditional and was not a form of irrevocably giving its rights to the developer to carry out development as he pleases. It is inherent that if the BMC has the power to grant an NOC for the development of its property it will also have right to revoke the same, therefore such an argument of the Developer cannot be accepted as it would tantamount to

giving the rights of the BMC unconditionally in the hands of private developer. In my view, the BMC's interest are paramount and private developers cannot be allowed to usurp the same under the guise of a slum scheme. I am of the considered view that the developer has no inherent right to develop the property of the BMC under the guise of just taking an NOC from the BMC. Incase if the developer claims that he has an absolute right then he must be able to show that such a right was granted to him by the General Body of the Corporation as per the provisions of the MMC Act. An NOC cannot and will not create any irrevocable right much less a right in the land in favour of the developer as it would run contrary to the spirit of the Act. The rights of the BMC and its authorised tenants under the MMC Act can only be transferred by way of the procedure as prescribed in the Act, anything lesser, like an NOC is of no aid to the developer. I therefore, reject this argument put forth by the developer.

29. Infact it is clear that even as on date the Developers representative/ Architects are unable to put forth a plan which can be even considered for the purposes of a BMC Ward office. This incapacity of the Developers representative/ Architects is causing inordinate delay in providing amenities to thousand of citizens who have to travel for over an hour to reach the current ward office location and is adversely affecting the administration.

30. The BMC as a corporation cannot remain silent to the aspect that the Developer wants to use the BMC's land for this project and is unable to even provide a feasible plan for the past more than a year after issuance of an LOI which has also lapsed. Just merely stating that a plan was submitted somewhere in the past and then sitting over it without any action was definitely not the purpose of granting an NOC for this project. The developer ought to have had a proactive and persuasive role in ensuring that by now the requirements of the user department were met and the building ought to have been under construction. Having seen the record of the BMC and the approach of the Developers representative/ Architects, continuing with such a developer would, in my view be against the monetary and administrative interest of the AIN. The BMC is losing out providing services of a ward office to lakhs of people due to the lackadaisical attitude of the developer whose only interest is to ensure that the BMC gets a raw deal in the form. of a ward office which does not even match with its current requirement. I am therefore satisfied that the developer has failed in all aspects to show that the developer can be continued in this project or that the developer can be trusted with building a ward office of BMC standards.

(emphasis applied)

18. These findings in the impugned order therefore do not warrant interference as the same have been rendered on a complete and proper appreciation of the facts of the case.

19. In the light of the above discussion, we have no hesitation in holding that petitioner no.2-developer had miserably failed to comply with the conditions of the NOC and the Letter of Intent (LOI). The impugned order dated 10th January 2024 is based on the correct findings, which are borne out by the record. We find no infirmity whatsoever, legal or otherwise, to interfere with the same. The present petition hence deserves to be dismissed. It is, accordingly, dismissed. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)