

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

WRIT PETITION NO.4641 OF 2025

Hi-Rock Construction Pvt. Ltd. }.. Petitioner

Versus

1. Municipal Corporation of Greater }
Mumbai, }
2. Assistant Commissioner, }
Estate Department, MCGM }
3. Al-Makkah Coop. Housing Society (Prop.) }
through its Chief Promoter }
Mr. Sudhir Chavan, }
4. NDW Real Estates Ventures LLP }
5. Savera Co-op Housing Society (Proposed) }.. Respondents

WITH

WRIT PETITION (LODGING) NO.16815 OF 2025

Hi-Rock Construction Pvt. Ltd. }.. Petitioner

Versus

1. Municipal Corporation of Greater }
Mumbai }
2. Assistant Commissioner, }
Estate Department, MCGM. }
3. Al-Makkah Coop. Housing Society (Prop.) }
through its Chief Promoter }
Mr. Sudhir Chavan, }
4. M/s NDW Real Estate Ventures LLP }
5. Savera Co-op Housing Society (Prop) }.. Respondents

WITH

WRIT PETITION (LODGING) NO.16761 OF 2025

Al-Makkah Co-op. Housing Society (Prop.) }
through its Chief Promoter, }
Sudhir T. Chavan. }.. Petitioner

Versus

- | | | |
|--|---|----------------|
| 1. Municipal Corporation of Greater
Mumbai Corporation. | } | |
| 2. Assistant Commissioner,
Estate Department, MCGM. | } | |
| 3. Hi-Rock Construction Pvt Ltd. | } | |
| 4. NDW Real Estate Ventures LLP | } | |
| 5. Savera Co-op Housing Society (Prop) | } | .. Respondents |

Mr. Aspi Chinoy, Senior Advocate with Mr. Adil Parsurampuriah i/b. Mr. Prashant Parsurampuriah, Advocates for the Petitioner in WP/4641 of 2025.

Mr. Ashish Kamat, Senior Advocate with Mr. Adil Parsurampuriah i/b. Mr. Prashant Parsurampuriah, Advocates for the Petitioner in WPL/16815/2025.

Mr. Som Sinha with Ms. Oorja Dhond i/b. Ms. Komal R. Punjabi, Advocates for Respondent-BMC in WP/4641/2025.

Mr. Anil C. Singh, Additional Solicitor General with Ms. Oorja Dhond, Mr. Adarsh Vyas, Mr. Krishnakant Deshmukh, Ms. Rama Gupta and Mr. Rajatt Nagre i/b. Ms. Komal R. Punjabi, Advocates for Respondent-BMC.

Mr. Sanjay Jain with Mr. Aseem Naphade, Mr. Chittesh Dalmia, Advocates for Respondent No. 3 in WP/4641/2025.

Mr. Rohaan Cama with Mr. Mutahhar Khan, Mr. Karan R., Ms. Rujuta Patil and Mr. Yohaana Shah i/b. Negandhi Shah & Himayatullah, Advocates for Respondent No. 4 in all Writ Petitions.

Mr. Mayur Khandeparkar with Mr. Yash Dhakad i/b. Mr. Pratik K. Shah, Advocates for Respondent No. 5 in all Writ Petitions.

**CORAM : SHREE CHANDRASHEKHAR, C.J. &
GAUTAM A. ANKHAD, J.**

DATE : 4th MAY 2026

Per, Gautam A. Ankhad, J.

The petitioner-Firm challenges the legality and correctness of the impugned letter dated 18th February 2025 issued by the respondent no.2 who is the Assistant Commissioner, Estate Department, M.C.G.M., whereby the proposal dated 19th May 2022 submitted by the petitioner-Firm for redevelopment of the subject property came to be rejected. The prayers in Writ Petition no.4641 of 2025 are quoted:

- “(a) That this Hon’ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon’ble Court under Article 226 of the Constitution of India, calling for the records and proceedings of the impugned letter/communication dated 18th February 2025 (Exh. X) issued by respondent no.2 and after examining the legality, correctness and/or validity of the same, be pleased to declare the same as illegal and unconstitutional;*
- (b) That this Hon’ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction of this Hon’ble Court under Article 226 of the Constitution of India calling for the records and proceedings of the impugned letter/communication dated 18th February 2025 (Exh. X) issued by respondent no.2 and after examining the legality, correctness and/or validity of the same, be pleased to quash and set aside the same;*
- (c) That this Hon’ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon’ble Court under Article 226 of the Constitution of India calling for the records and proceedings of the impugned letter/communication dated 18th February 2025 (Exh. X) issued by respondent no.2 and after examining the legality, correctness and/or*

validity of the same, be pleased to restrain the respondents from acting upon or in furtherance of the same;

- (d) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India restraining respondent nos.1 and 2 from accepting, further processing or considering any other proposal other than the petitioner's for redevelopment of the subject property (Exh. A);*
- (e) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India directing respondent nos.1 and 2 to further process and issue all necessary permissions/sanctions in furtherance of the petitioner's proposal dated 19th May 2022 (Exh. F) for redevelopment of the subject property (Exh. A);*
- (f) That this Hon'ble Court be pleased to declare the circular dated 17th November 2020 (Exh. Y) as illegal, unconstitutional and ultra virus the provisions of the Development Control and Promotion Regulations 2034."*

2. The petitioner has also filed Writ Petition (Lodging) no.16815 of 2025 seeking the following further consequential reliefs:

- “(a) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India calling for the records and proceedings of impugned letter dated 8th May 2025 (Exh. A) and the impugned Notesheets and impugned acceptance letters dated 20th May 2025 (Exh. B) after examining the legality, correctness and/or validity of the same be pleased to declare the same as illegal and unconstitutional;*
- (b) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of certiorari or a writ in the nature*

of certiorari or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India calling for the records and proceedings of the impugned letter dated 8th May 2025 (Exh. A) and the impugned Notesheets and impugned acceptance letters dated 20th May 2025 (Exh. B) and after examining the legality, correctness and/or validity of the same, be pleased to quash and set aside the same;

- (c) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ , order or direction of this Hon'ble Court under Article 226 of the Constitution of India calling for the records and proceedings of impugned letter dated 8th May 2025 (Exh. A) and the impugned Notesheets and impugned acceptance letters dated 20th May 2025 (Exh. B) and after examining the legality, correctness and/or validity of the same, be pleased to restrain the respondents from acting upon or in furtherance of the same;*
- (d) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India restraining respondent nos.1 and 2 from accepting, further processing or considering any other proposal other than the petitioner's said proposal for redevelopment of the subject property;*
- (e) That this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India directing respondent nos.1 and 2 to further process and issue all necessary permissions/sanctions in furtherance of the petitioner's said proposal for redevelopment of the subject property."*

3. In support of the above two writ petitions, Al-Makkah Co-op. Housing Society (Proposed) who is supporting the petitioner's proposal for redevelopment has filed Writ Petition (Lodging) no.16761 of 2025 seeking identical reliefs as sought for by the petitioner in the aforesaid petitions.

4. For the sake of convenience, the array of the parties and the facts mentioned in Writ Petition No.4641 of 2025 are referred to in this order.

5. The subject property being land bearing C.S. no.1968, 1/1969 and 1/1975 of Byculla Division situate at B.J. Marg, Jacob Circle, Byculla, Mumbai – 400 011 and owned by the Municipal Corporation of Greater Mumbai is occupied by the tenants, slum dwellers and other persons. The respondent no.3 which is a proposed society of the aforesaid persons appointed the petitioner-Firm as its developer to redevelop the subject property. After obtaining the required consents, the petitioner-Firm submitted a proposal dated 19th May 2022 with necessary documents to the respondent nos.1 and 2 under Regulations 33(7)/33(9) of the Development Control and Promotion Regulations, 2034. On 30th November 2022, the aforesaid proposal of the petitioner-Firm was scrutinized by the respondent no.2 and in an internal file noting, it is recorded that the petitioner-Firm had necessary consents for processing its proposal.

6. On 31st January 2023, 4th December 2023 and 12th December 2023, the petitioner-Firm addressed reminders to the respondent no.2 on the status of its proposal, however no decision was communicated to it.

7. On 15th January 2024, the respondent no.4 which is also a developer along with the respondent no.5 which is a proposed society submitted a competing proposal under

Regulation 33(9) for redevelopment of the subject property. On 24th and 29th April 2024, the petitioner-Firm and the respondent no. 3 objected to this proposal on several grounds. On 11th July 2024, the respondent nos.1 and 2 declined to process the respondent no.4's proposal stating that the petitioner-Firm's proposal was pending consideration. On 12th August 2024, the respondent no.2 by its letter once again informed the respondent no.4 and its architect that their proposal cannot be considered as the proposal of the petitioner was under consideration. The relevant portion reads as under:

"Sir,

Please refer your letter dated 15th January 2024.

With the reference to subject proposal, it may be stated here that Architect M/s. S.G. Dalvi and Associates vide their application dated 19th May 2022 already submitted a redevelopment proposal under 33(9) of DCPR 2034 on the subject property behalf of AI-Makka CHS (Proposed) and which is under consideration. Hence application under reference submitted by you cannot be considered at this stage.

For information please.

*Yours faithfully,
Sd/- 12-8-2024
(M.M. Salunke)
Admn. Officer (Society)
Estate Department"*

8. Despite this, on 15th August 2024, the respondent no.4 filed a second proposal, prompting the petitioner-Firm and the respondent no.3 to lodge a complaint on 9th December 2024, including on the ground that several documents relied upon by the respondent no.4 were forged. It is in this backdrop that the respondent no. 2 issued notice dated 13th February 2025 convening a hearing on

21st February 2025 to hear the objections raised against the second proposal of the respondent no.4.

9. Mr. Aspi Chinoy and Mr. Ashish Kamat, learned senior advocates appearing for the petitioner-Firm and the respondent no.3, respectively, submit that without any indication as to the status of the proposal of the petitioner-Firm, the hearing on 21st February 2025 was conducted, whereas the respondent nos.1 and 2 had purportedly rejected the petitioner-Firm's proposal by a letter dated 18th February 2025, which was in fact communicated to it only on 22nd February 2025, i.e., after the hearing. Mr. Chinoy assailed the process adopted by the respondent no.1 and 2 and submits that no prior notice or opportunity was afforded to the petitioner-Firm prior to the rejection of its proposal. The notice was given for hearing the petitioner-Firm's complaints on the proposal submitted by the respondent no.4. Secondly, none of the officers of the respondent no.2 disclosed to the petitioner-Firm at the said hearing, that the petitioner-Firm's proposal had already been rejected on 18th February 2025. This was the first communication received from the respondent no.2 on the petitioner-Firm's proposal which had remained pending since 2022. At no point, the petitioner-Firm was put on notice on any deficiencies in its proposal and a different yardstick has been adopted by the respondent nos.1 and 2 while dealing with the proposal of the petitioner-Firm. The timing and manner of the decision disclose arbitrariness and a pre-determined approach only to facilitate the rival

proposal of the respondent no.4. In addition to the above, Mr. Kamat, the learned senior counsel appearing for the petitioner in Writ Petition (L) No.16815 of 2025 submits that the rejection of the petitioner-Firm's proposal is founded on an incorrect allegation that the petitioner-Firm had secured only 38.19% consent of principal tenants and the finding is *ex facie* contrary to records prepared by the respondent nos.1 and 2 as referred above. It is further contended that there is no explanation for the alleged sudden rejection of the petitioner's proposal pending for over two years and that too without a hearing. In any case, the consents granted in favour of the petitioner are valid and ought to have been considered by the respondent no.2. The consequential decisions in the impugned note dated 8th May 2025 and 20th May 2025 are contrary to record as the tenants had already given irrevocable consents to the petitioner and could not give alleged consents to the respondent no.4.

10. On the other hand, Mr. Anil Singh, the learned Additional Solicitor General of India contends that due process has been followed and as the petitioner-Firm lacked the requisite consent of 60% of principal tenants, its proposal has been rejected. He submits that the respondent nos.4 and 5 have the required consents and hence their proposal came to be accepted and further directions have been passed on 8th May 2025 and 20th May 2025 by the respondent nos.1 and 2 to proceed with their scheme for redevelopment.

11. Mr. Mayur Khandeparkar and Mr. Rohaan Cama, learned counsels appearing for the respondent nos.4 and 5 supported the submissions of the learned Additional Solicitor General and contend that the petitioner-Firm was aware of the deficiencies in its proposal. This is evident from a reading of the contemporaneous correspondence exchanged with the authorities. In any case, no interference is called for as the proposal of the respondent nos. 4 and 5 fulfills the necessary requirements in law.

Reasons and Findings:

12. After having heard the learned counsel for the parties, we have formed an opinion that the pre-determined decisions taken by the respondents nos.1 and 2 are liable for interference by this Court. The controversy in these matters revolve around a limited issue, namely, the legality, fairness and transparency of the decision making process adopted by the respondent nos.1 and 2 while dealing with the petitioner-Firm's proposal. In view thereof, we refrain from adjudicating upon the disputed factual issue as to whether the petitioner-Firm or the respondent no.4 possesses the requisite percentage of consents from the tenants.

13. The record indicates that when the petitioner-Firm submitted its proposal, the respondent no.2 recorded in its internal noting dated 22nd November 2022 that the petitioner-Firm had the necessary consents for processing the proposal. The relevant portion reads as under:

“ 4a) *Redevelopment of reconstruction under CDS may be permitted in pursuance of and irrevocable registered written consent by eligible tenants / occupiers of all authorized buildings not less than 51 percent of each building or 60 percent overall of the scheme involved in the CDS. Consent as aforesaid of tenants/occupiers for reconstruction or redevelopment shall not be required, if MHADA/ MCGM undertakes redevelopment, on its own land, directly without any developer.*

In this case total tenants of this scheme are 288 and Architect M/s S.G. Dalvi & Associates submitted 174 no. of Consents which comes 60.41% which is more than 60% consents required as per regulation.

There are also 74 slum Dwellers on subject plot out of which 68 slum dwellers has submitted consents for the subject redevelopment scheme under Reg. 33(9) of DCPR 2034.”

14. The aforesaid noting of the respondent no.2 clearly indicates that, respondent no.2 found the petitioner-Firm’s proposal eligible for processing. Significantly, despite the proposal remaining pending for more than two years thereafter, no communication was addressed to the petitioner-Firm either pointing out deficiencies, calling for clarification, or intimating that the proposal suffered from any disqualification on account of inadequate consents.

15. The subsequent conduct of the petitioner-Firm also indicates that it was proceeding on the legitimate belief that its proposal continued to remain under active consideration. In one of the reminder letters issued on 4th December 2023, the petitioner-Firm through its Architect sought a status update of its proposal and requested for expeditious processing of its proposal. The said letter is quoted:

“Respected Sir,

As mentioned in point no.02 in above reference letter as per your suggestion, we have submitted new proposal under DCPR 33(9) and under the provisions of DCPR-2034 in respect of Municipal tenanted property as mentioned hereinabove on dated 4th May 2022. Also, we have already submitted more than 60% of Original Consents and we will fulfill the requirement of 60% Principal Tenants Consents at the time of inventory till consent verification.

Also, as we requested you to process the file to Legal Department to check the legality about the requirement of 51% Principal Tenants. AS per that the file is sent to Legal Department for confirming the legality, the reply from Legal Department is not yet received. We request you to put a reminder to Legal Department to issue their remarks at earliest.

Hence as the acceptance is pending from long period of time, we requested you to kindly look into this matter and process this proposal under DCPR 33(9) of DCPR 2034 at the earliest. We are ready to pay necessary scrutiny charges for the same (if any).

Thanking you,

*Yours faithfully,
M/s. S.G. Dalvi & Associates,
Sd/-
Architect
Puja Hemant Varma
(CA/2013/58723)”*

16. In the said letter, the petitioner-Firm specifically referred to the issue regarding the legal requirement of principal tenants consents and requested the respondent no.2 to obtain legal clarification from its Legal Department. The petitioner also expressly stated that more than 60% consents had already been submitted and that any further requirement would be complied with at the stage of inventory and consent verification. Importantly, even after receipt of this reminder communication, the respondent no.2 neither rejected the proposal nor called upon the

petitioner-Firm to remove any alleged defect or inconsistency. The silence maintained by the authority lends support to the petitioner's contention that its proposal was being processed and had not been found ineligible.

17. Mr. Khandeparkar, the learned counsel for the respondent no.5 sought to rely on the above-referred letter dated 4th December 2023 and contended that the petitioner's letter contains an inherent contradiction insofar as the petitioner-Firm claimed to have already submitted more than 60% consents while simultaneously stating that the requirement of consent of the principal tenants would be fulfilled at the stage of verification. We are unable to accept the said submission. Firstly, the communication must be read as a whole and in the context in which it was addressed, i.e, while seeking clarification on the legal position regarding the nature of consents. Secondly, and more importantly, if the respondent no.2 considered the petitioner's proposal deficient or contradictory on any aspect, fairness required the authority to call upon the petitioner-Firm to furnish clarification on the same. Admittedly, no such opportunity was ever granted.

18. The arbitrariness in the actions of the respondent no.2 becomes even more apparent from the subsequent events. While the petitioner-Firm's proposal remained pending consideration, the respondent no.2 by its decision dated 11th July 2024 and 12th August 2024 rejected the first

proposal submitted by respondent no.4. Within a few days thereafter, i.e. on 15th August 2024, the respondent no.4 submitted a second proposal. This was protested by the petitioner-Firm *vide* its written objections. Acting upon such objections, the respondent no.2 issued a notice dated 13th February 2025 fixing a hearing on 21st February 2025 specifically in relation to the complaints and objections raised against the second proposal of the respondent no.4. The relevant portion of the said letter reads as under:

“Gentleman,

By direction, this is to inform you that this office is hereby scheduled a hearing regarding various complaints received against the redevelopment proposal submitted by M/s. NDW Real Estate Ventures LLP, on Friday, 21st February 2025 at 3.00 pm in the Chamber of Asstt. Commissioner (Estates), BMC Head Office, 4th Floor, Annex Building, Mahapalika Marg, Fort, Mumbai-400001.

You are hereby requested to remain present for the hearing with all relevant file papers and correspondence in the above subject matter please.

Sd/-

(M.M. Salunke)

Admn. Officer (Society)”

19. The notice dated 13th February 2025 expressly indicated that the hearing was convened regarding “various complaints received against the redevelopment proposal submitted by M/s. NDW Real Estate Ventures LLP”. In our view, the entire process adopted by the respondent no.2 stands vitiated by lack of procedural fairness, transparency

and adherence to the principles of natural justice. As on 13th February 2025, admittedly the petitioner-Firm's proposal was still under consideration. If the respondent no.2 had formed an opinion that the petitioner-Firm's proposal suffered from deficiencies or was liable to be rejected, procedural fairness demanded that the petitioner-Firm be specifically put to notice of the alleged defects and ought to have been heard before any adverse decision was taken. No such procedure was followed. The hearing fixed for 21st February 2025 was confined to hearing of the petitioner's objections against the rival proposal submitted by the respondent no.4 and nothing more.

20. What further aggravates the matter is that the impugned decision dated 18th February 2025 is stated to have been issued prior to the hearing dated 21st February 2025, but was admittedly received by the petitioner only after the hearing. We cannot comment on whether the decision was ante-dated, but the reasons for this approach appear to be obvious. We are informed that no minutes of the hearing dated 21st February 2025 were maintained. The surrounding circumstances indicate that the rejection of the petitioner-Firm's proposal was neither transparent nor *bona fide*. If the proposal had in fact already been rejected on 18th February 2025, there was no reason for the respondent no.2 not to disclose the same to the petitioner-Firm at the hearing held on 21st February 2025. On the contrary, the petitioner-Firm participated in

the proceedings concerning the rival proposal, thereby reinforcing its case that its own proposal remained under active consideration.

21. The above actions of the respondent no.2 disclose a clear departure from fair procedure. The petitioner-Firm's proposal came to be rejected without prior notice, without disclosure of alleged deficiencies, without a hearing and in an opaque manner which deprived the petitioner of an effective opportunity to defend its own proposal. Such action of the respondent no.2 is manifestly arbitrary and violative of the principles of natural justice. We agree with the submissions of Mr. Chinoy that the decision-making process is actuated by malice in law, inasmuch as statutory power has been exercised by the respondent no.2 in an unfair, unreasonable and procedurally improper manner. No explanation was forthcoming from the learned Additional Solicitor General as to why, a hearing was granted in respect of objections to the rival proposal, but no such opportunity was extended to the petitioner-Firm.

22. This is no virtue in a statutory authority to say that it has acted *bona fide* and followed the law. The State and its instrumentalities are under a constitutional obligation to act fairly, reasonably and free from arbitrariness, whether in the discharge of statutory, administrative or contractual functions. The expression "malice in law" refers to the exercise of statutory power for an unauthorised purpose or on irrelevant considerations, or in disregard of settled

principles governing fair decision-making. Judicial review in such matters is directed not at the merits of the decision itself, but at the legality and propriety of the process by which the decision has been arrived at. When tested on these principles, the impugned actions of the respondent nos.1 and 2 cannot be sustained.

23. For the above reasons, Writ Petition no.4641 of 2025 is allowed in terms of prayer clause (b) and the impugned decision dated 18th February 2025 is quashed. The consequential decisions of the respondent no.2 dated 8th May 2025 and 20th May 2025 challenged in Writ Petition (Lodging) no.16761 of 2025 and Writ Petition (Lodging) no.16815 of 2025 are also quashed. Writ Petition (Lodging) no.16761 of 2025 and Writ Petition (Lodging) no.16815 of 2025 are also allowed in terms of prayer clause (b).

24. The respondent nos.1 and 2 are directed to provide an opportunity of hearing to the petitioner-Firm in Writ Petition no.4641 of 2025 and Writ Petition (Lodging) no.16761 of 2025 as to the factual aspects of consents and the legal requirement in the light of the affidavits and documents placed before it. If a decision is taken against the petitioner in Writ Petition no.4641 of 2025 and Writ Petition (Lodging) no.16761 of 2025, the respondent no.1 shall forthwith inform all the parties of the same. Only after a fortnight thereafter, the respondent no.2 shall proceed to take a decision on making an assessment on the proposal filed by the respondent nos.4 and 5.

25. Writ Petition no.4641 of 2025, Writ Petition (Lodging) no.16761 of 2025 and Writ Petition (Lodging) no.16815 of 2025 are allowed to the aforesaid extent.

26. There shall be no order as to costs.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]