



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2167 OF 2024

WITH

INTERIM APPLICATION (L) NO.25969 OF 2024

1. Lakhani Housing Corporation ]  
Private Limited A company registered ]  
under the Companies Act, 1956 having its ]  
office at Satra Plaza, 18<sup>th</sup> floor, Plot No.20, ]  
Sector 19D, Vashi, Navi Mumbai 400 705. ]
  2. Sunny Vijaykumar Lakhani ]  
of Mumbai Indian Inhabitant having his ]  
office at Satra Plaza, 18<sup>th</sup> floor, Plot No.20, ]  
Sector 19D, Vashi, Navi Mumbai 400 705. ]
- ..... Petitioners

V/s.

1. State of Maharashtra ]  
Through Government Pleader ]  
Original Side, High Court, Bombay. ]
2. Housing Department of the State of ]  
Maharashtra through its Secretary ]  
having their address at Madam Kama ]  
Marg, Hutatma Rajguru Chowk, ]  
Mantralaya, Mumbai – 400 032 ]
3. Maharashtra Housing & Area Development ]  
Authority established under the ]  
Maharashtra Housing & Area Development ]  
Act, 1976, Having its office at Griha Nirman ]  
Bhavan, Kalanagar, Bandra (E), ]  
Mumbai 400 051. ]
4. Nilkanth Co-operative Housing Society ]  
Limited, in respect of Building No. 1, ]  
having its registered address at Building ]  
No. 1, Punjabi Colony, G.T.B. Nagar, ]  
Mumbai – 400 037. ]

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5. Vijay Punjab Co-operative Housing Society Limited in respect of Building No. 2, having its registered address at Building No. 2, Punjabi Colony, G.T.B. Nagar, Mumbai – 400 037. ]  
] ] ] ] ]
6. Jai Durga Co-operative Housing Society Limited, in respect of Building No. 3, having its registered address at Building No. 3, Punjabi Colony, G.T.B. Nagar, Mumbai – 400 037. ]  
] ] ] ] ]
7. Mehr Co-operative Housing Society Limited, in respect of Building No. 4, having its registered address at Building No. 4, Punjabi Colony, G.T.B. Nagar, Mumbai – 400 037. ]  
] ] ] ] ]
8. Prithvi Punjab Co-operative Housing Society Limited in respect of Building Nos. 5 to 10, having its registered address at Building No. 5 to 10, Punjabi Colony J.K. Bhasin Marg, G.T.B. Nagar, Sion, Koliwada, Mumbai- 400 037. ]  
] ] ] ] ]
9. Vijay Punjab Building No. 11 Co-operative Housing Society Limited, in respect of Building No. 11, having its registered address at Building No. 11, Punjabi Colony, G.T.B. Nagar, Mumbai – 400 037. ]  
] ] ] ] ]
10. Vijay Punjab Building No. 12 Co- operative Housing Society Limited in respect of Building No.12, having its registered address at Building No.12, Punjabi Colony, G.T.B. Nagar, Mumbai – 400 037. ]  
] ] ] ] ]
11. Vijay Punjab Building No. 13 Co-operative Housing Society Limited, in respect of Building No. 13, having its registered address at Building No. 13, Punjabi Colony,] ]  
] ] ] ] ]

- G.T.B. Nagar, Mumbai – 400 037. ]
12. Vijay Punjab Building No. 14 Co-operative ]  
Housing Society Limited, in respect of ]  
Building No. 14, having its registered ]  
address at Building No. 14, Punjabi Colony, ]  
G.T.B. Nagar, Mumbai – 400 037. ]
13. Vijay Punjab Building No. 15 Co- operative ]  
Housing Society Limited, in respect of ]  
Building No. 15, having its registered ]  
address at Building No. 15, Punjabi Colony, ]  
G.T.B. Nagar, Mumbai – 400 037. ]
14. Vijay Punjab Building No. 16 Co-operative ]  
Housing Society Limited, in respect ]  
of Building No. 16, having its registered ]  
address at Building No. 16, Punjabi Colony, ]  
G.T.B. Nagar, Mumbai – 400 037. ]
15. Vijay Punjab Building No. 17 Co-operative ]  
Housing Society Limited, in respect of ]  
Building No. 17, having its registered ]  
address at Building No. 17, Punjabi Colony, ]  
G.T.B. Nagar, Mumbai – 400 037. ]
16. Vijay Punjab Building No. 18 Co-operative ]  
Housing Society Limited, in respect of ]  
Building No. 18, having its registered ]  
address at Building No. 18, Punjabi Colony, ]  
G.T.B. Nagar, Mumbai – 400 037. ]
17. Vijay Punjab Building No. 19 Co-operative ]  
Housing Society Limited, in respect of ]  
Building No. 19, having its registered ]  
address at Building No. 19, Punjabi Colony, ]  
G.T.B. Nagar, Mumbai – 400 037. ]
18. Amar Co-operative Housing Society ]  
Limited in respect of Building No.20, ]  
having its registered address at Building ]  
No.20 /955, Punjabi Colony, G.T.B. ]  
Nagar, Sion (East), Mumbai – 400 037. ]



**CORAM : A. S. GADKARI AND  
KAMAL KHATA, JJ.  
RESERVED ON : 23<sup>rd</sup> October 2024.  
PRONOUNCED ON : 19<sup>th</sup> November 2024.**

**JUDGMENT (Per : Kamal Khata, J) :-**

1) In the heart of Mumbai, in Sion Koliwada, lies a sizeable plot of land by Mumbai standards, measuring 45,308.58 square meters (approximately 11.20 acres), commonly known as Guru Teg Bahadur Nagar ("the subject land"). This land once held 25 buildings that housed around 1,200 occupants, originally refugees from Pakistan. Due to the dilapidated condition of these buildings, the BMC demolished them between 2019 and 2022. Consequently, the land has remained vacant for over five years.

2) The residents sought Government intervention for the redevelopment of the property, which led to a Cabinet Decision and the issuance of a Government Resolution to that effect. MHADA was appointed as the planning authority responsible for overseeing the redevelopment of the subject land. Subsequently, MHADA issued an e-Tender to select a Construction and Development Agency (C & D A) for the redevelopment project.

3) Through this Petition, the Petitioners, Lakhani Housing Developers Private Limited ("Lakhani"), who are developers claiming vested rights in the subject land, seek a Writ of Certiorari to set aside the Cabinet Decision, the Government Resolution, and the e-Tender issued by MHADA

for the redevelopment of the subject land.

Brief facts:

4) By a Cabinet Decision dated 14th February 2024, the State of Maharashtra (Respondent No.1) appointed MHADA as the special planning authority to redevelop the 25 buildings at the Guru Teg Bahadur Nagar Cooperative Society in Sion Koliwada, Mumbai. The original decision, in Marathi, is annexed at page 56, with an English translation provided at page 62. The relevant portion of the decision is available in Marathi on page 60 and is extracted below:

**सायन कोळीवाडातील  
सिंधी निर्वासितांच्या 25 इमारतींचा पुनर्विकास**

सायन कोळीवाडातील सिंधी निर्वासितांच्या 25 इमारतींचा पुनर्विकास करण्याचा निर्णय आज झालेल्या मंत्रिमंडळ बैठकीत घेण्यात आला. यामुळे गेल्या अनेक वर्षांपासून येथील रहिवाशांना स्वतःचे घर मिळण्याचा मार्ग मोकळा झाला. बैठकीच्या अध्यक्षस्थानी मुख्यमंत्री एकनाथ शिंदे होते.

या वसाहतींचा पुनर्विकास करण्यासाठी गुरु तेग बहादूर नगर सहकारी संस्था स्वीपन करण्यात आली असून या ठिकाणी 41 हजार 500 चौ. मिटर क्षेत्रावर 25 इमारती व त्यात 1200 सदनिका होत्या. या इमारती पाडून टाकण्यात आल्या आहे. मात्र रहिवाशांच्या व्यतिरिक्त उर्वरीत जमिनीवर व्यावसायिक झोपड्यांचे अतिक्रमण आहे.

म्हाडामार्फत कन्स्ट्रक्शन ॲंड डेव्हलपमेंट एजन्सी नेमून या जमिनीवरील इमारतींचा पुनर्विकास करण्यात येईल. यासाठी म्हाडाला विशेष नियोजन प्राधिकरण म्हणून मान्यता देयात आली आहे. या पुनर्विकासासाठी प्रत्येक इमारतीतील किमान 51 टक्के किंवा पुनर्वसन योजनेमधील एकूण भाडेकरू किंवा रहिवाशांच्या किमान 60

टकके भाडेकरुंची सहमती आवश्यक आहे. या संदर्भात गृहनिर्माण विभागाच्या अपर मुख्य सचिवांच्या अधिक्षतेखाली उच्चाधिकार समिती हा प्रकल्प राबविण्यावर संनियत्रण ठेवेल.

5) A Government Resolution (GR) was subsequently issued on 23rd February 2024, recording this decision. The original GR, in Marathi, is annexed at page 75, with an English translation on page 80. Since it is under challenge, the relevant portion from page 76 in Marathi is extracted below:

3. सदर भूखंडाचा पुनर्विकास निविदा पध्दतीने म्हाडोन अंतिम केलेल्या C & D Agency मार्फत होणार असल्यामुळे, विनियम 33(9) मधील तरतुदीनुसार पुनर्विकासासाठी योजनेत समाविष्ट इमारतीचे प्रत्येक इमारत निहाय किमान 51% अथवा योजनेतील एकूण भाडेकरू / रहिवाशी यांचे किमान 60% भाडेकरू रहिवाशांची पुनर्विकासास सहमती आवश्यक आहे. तसेच, प्रस्ताव सादर करतांना 70% क्षेत्राच्या विकास हक्काचा पुरावा सादर करणे आवश्यक असल्याने सदर पुनर्विकास प्रकल्प राबविण्यापूर्वी रहिवाशांकडून म्हाडाद्वारे पुनर्विकासास सहमती देण्याबाबत कधीही न बदलता येणारे संमतीपत्र (Irrevocable Consents) म्हाडास सादर करणे बंधनकारक राहिल. त्याचप्रमाणे या मिळकतीचा विकास म्हाडामार्फत करण्याच्या अनुषंगाने जमीनमालक/रहिवाशी/संबंधित सहकारी संस्था, म्हाडा व विकासक (C & D A) यांच्या मध्ये त्रिपक्षीय करारनामा करण्यास मंजुरी देण्यात येत आहे.

6) The GR specifies that MHADA will implement the redevelopment project under Regulation 33(9) of the Development Control

and Promotion Regulations for Greater Mumbai, 2034 (DCPR), by appointing a Construction and Development Agency (C & D A) through a tender process as provided in the DCPR. The GR requires at least 51% of each building's residents, or 60% of the total tenants/residents across all buildings, to consent to the redevelopment. Additionally, it mandates that the C & D A must provide MHADA with proof of the right to develop at least 70% of the area, along with irrevocable consents from residents agreeing to MHADA's redevelopment plans, before the project can proceed.

6.1) The GR further stipulates that the tender documents must specify, as a minimum requirement, that the selected C & D A must build and provide rehabilitation units free of charge, offer the highest housing stock/premium to MHADA, and meet all financial and physical conditions specified in the tender.

7) Mr. Madon learned Senior Counsel for the Petitioners submitted that initially the land belonged to the President of India. Punjabi and Sindhi refugees who proposed to settle in Mumbai, after the partition, were sold 1200 residential tenements in these 25 buildings. Sanad's were executed in favour of some of the purchasers between the period 1954 and 1987. The conveyances were executed by the President of India in favour of the purchasers in accordance with the provisions of Rules 42 and 33 framed under Displaced Persons (Compensation and Rehabilitation) Act, 1954.



These Sanad's/Conveyances clearly indicate that the transfer was absolute and thus the lands were freehold. No rights of any nature whatsoever were reserved in favour of the President of India, except the right to remove mines and minerals from the lands on which the buildings stood. The residents subsequently themselves formed the Cooperative Housing Societies.

7.1) It is undisputed that the buildings, which were approximately 60 to 66 years old, were in an extremely dilapidated condition and classified as C-1 by the BMC. Demolition notices were issued under Sections 353(b) and 354 of the BMC Act. In light of these conditions, the Petitioners approached members of these buildings (as societies were not formed) with proposals for redeveloping these buildings.

7.2) He contends that the Petitioners have obtained consents of 909 out of 1200 members. The Petitioners have also executed individual agreements with some of these members. Consequently, some societies (subsequently formed) and individual members have given their consents to the Petitioners for the redevelopment of their building. In all, he submits, the Petitioners have consents from 5 societies namely Building Nos. 13, 20, 22, 23 and 24 to redevelop their buildings.

7.3) Mr. Madon argued that his clients' rights would be severely prejudiced by virtue of this cabinet decision and the subsequent GR. His

primary contention is that the cabinet decision and the GR are based on the incorrect assumption that the subject land belongs to the government. He asserts, that the land does not belong to the government but rather to the societies. He submits that the cabinet decision and GR based on a wrong premise ought to be set aside.

7.4) He further submits that, since Lakhani has invested a substantial amount—approximately Rs.17,30,74,831—over several years and has already obtained the consent of numerous members, Lakhani should be permitted by MHADA to develop the land without a tender process. He emphasizes that the Lakhani's' efforts and expenditures cannot be disregarded, as it has taken them years to bring all elements together.

7.5) He asserts that it would be unjust if, after such extensive efforts, the benefits are transferred to another builder through a tender process initiated by MHADA. Therefore, he requests that the Petition be granted as prayed.

8) The learned Advocate General representing MHADA (Respondent No.3) submitted that, the Petitioners have no locus to file the Petition. He submitted that the Petitioners proceed on the assumption evinced in paragraph 5(b) at page 6 of the Petition, that the members have not formed themselves into a Cooperative Housing Societies yet. This assumption, he submits is incorrect. The Societies have been formed and

some of them are represented by another Advocate. He submitted that undisputedly the buildings were dilapidated and declared as C-1 category requiring immediate evacuation and demolition.

8.1) He submitted that the Petitioners drew support of their contentions from individual agreements that belonged to an era when the societies were not in existence. Now the scenario is different, societies are formed. Moreover, the BMC has demolished the buildings during the period 2019 to 2022.

8.2) He submits that the so-called agreements relied upon by Petitioners are neither stamped nor registered. Thus have no evidentiary value. The Petitioners have not obtained resolutions from the societies after their formation. The amount of Rs.17.31 crores (approximately) purportedly spent was in many ways a trivial amount for a project whose estimated costs is Rs.2,930.77 crores for a total rehabilitation construction area of 90,066 sq.mts and estimated saleable area is 1,52,841.60 sq. mts. (seen at pages 435 and 436). Consequently, the Petitioners would have no locus to file the Petition.

8.3) Dr. Saraf relied upon the case of *Panama Builders & Developers Pvt. Ltd. Vs. Nutan Kalpana Co-op. Housing Society Ltd. (2023 SCC OnLine page 1085)* particularly paragraph 42 to point out that the Single Bench of this Court had rightly rejected a similar contention raised by the present Petitioners that it would be imperative for the general body of the society to

accept and honour development agreements executed by the individual members. He submitted that it is well settled that once the society is formed individual members will have no say in the matter. He submitted that the Petitioners clearly failed in the attempt to make out a case.

8.4) In response to the contention that MHADA had no authority to redevelop the subject lands owned by the societies, Dr. Saraf relied upon the provisions of Development Control Regulations Act 2034 more particularly Regulation 33 (9) sub-clause 4. He submitted that what is contemplated under 33(9) sub-clause 4 is that if the competitive authority could garner 51% of each building or 60% of the overall scheme involved in the cluster development scheme, the BMC or MHADA could undertake redevelopment. For ease of reference DCR 33(9) sub-clause 4 is extracted below:

***“33(9) Reconstruction or redevelopment of Cluster(s) of Buildings under Cluster Development Scheme(s)(CDS):***

***For reconstruction or redevelopment of Cluster(s) of buildings under Cluster Development Scheme(s)(CDS) in the Island City of Mumbai undertaken by (a) the MHADA or the MCGM either departmentally or through any suitable agency or (b) MHADA/MCGM, jointly with land owners and/or Co op. Housing Societies of tenants/occupiers of buildings and/or Co-op. Housing Society of hutment dwellers therein, or (c) land owners and/or Co- op. Housing Society of tenants/occupiers of buildings and/ or Co- op Housing Society of hutment dwellers, independently or through a Promoter /Developer, the FSI shall be 4.00 or the FSI required for rehabilitation of existing tenants/occupiers plus incentive FSI whichever is more as per the provisions of this Regulation as***

*follows:*

*“4(a) Redevelopment or Reconstruction under CDS may be permitted in pursuance of an irrevocable notarized written consent by eligible tenants/ occupiers of all authorized buildings not less than 51 percent of each buildings 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.*

*The Developer shall be required to submit along with the CDS proposal, proof of ownership or procurement of Drs in respect of at least 70% of the land under the proposed CDS (excluding Municipal Roads if maintained as existing in proposed CDS) and it shall be mandatory for him to submit such proof of ownership or procurement of development rights in respect of the balance area within one year from the date of issue of the LOI.*

*(b) All the eligible occupants/tenants of the building(s) undergoing redevelopment shall be rehabilitated in the redeveloped building(s).”*

8.5) Dr. Saraf argued that the tender process was only an open invitation for developers to participate in the redevelopment of the subject property through MHADA, and this process would not disadvantage the Petitioners. He explained that if the Petitioners truly secured the consent and support of the majority society members, they would hold a competitive edge over others in bidding for the redevelopment assuming they met the tender's other conditions. As MHADA, is a State under Article

12 of the Constitution, it cannot make an exception for the Lakhani group by bypassing the established tender process and favour them. There is no legal basis to allow the Petitioners to take over the entire redevelopment especially because the documents relied upon by the Petitioners are untenable in law. Dr Saraf concluded that the Petitioners are welcome to bid for the redevelopment of the said project like other developers and submitted that the Petition should be dismissed.

9) Dr. Chandrachud represented 14 of the 25 societies of the subject land and supported contentions of MHADA. He pointed out page 9 sub-clause (e) of the Petition to submit that, the Petitioners had only annexed Minutes of the Annual General Meeting/ Special General Meeting (AGM/SGM) of the societies of building numbers 20, 22, 23 and 24. He argued that the Petitioners' reliance on multiple documents such as, agreement cum undertaking, indemnity, irrevocable consent, irrevocable power of attorney in their favour held no evidentiary value, as these were unregistered though mandatorily required. Referring to the "Irrevocable Consent" at page 213 of the Petition and particularly paragraph 4 thereof, clearly envisages members executing a development agreement in Petitioners favour after formation and registration of a new society. This exercise was not done. He argued that the Petitioners themselves had admitted that the Petitioners merely had a purported contractual right. He argued that the Petitioners were aware that the agreements were

necessarily required to be registered which was admittedly not done. The fact that the development agreement was neither stamped nor registered as admitted and averred by the Petitioners in paragraph 7 at page 18 of the Petition is an acknowledgement of their limitations regarding their rights against the individual members.

9.1) He further submitted that a bare perusal of the Development Agreement (DA) at page 312 of the Petition evinced that there were blanks in the documents, thus incomplete, and would therefore have no evidentiary value. The DA also evinced that the Petitioners had merely obtained individual consents and the conveyance in the name of the society was neither granted nor recorded in the PR Card. By entering into the DA the members of the society had merely agreed to enter into and execute the DA for recording that the members were agreeable to the terms and conditions of Petitioners and for consideration received the society and existing members had agreed to grant to the developer development rights with respect to their property. It also evinced that the developer had agreed to acquire the development rights with respect to the subject property in accordance with the DA terms.

9.2) He submitted that in the Affidavit in reply at page 602, the averments clearly evinced the stand of the 14 societies that, in absence of a proper resolution and payment of stamp duty and the registration of the documents, such documents relied upon by the Petitioners were invalid and

not binding upon the other societies. He then submitted that the Petitioners have themselves admitted that the Societies do not have a clear title as could be evinced from paragraph 39 page 884 of the Affidavit in Rejoinder filed by the Petitioner on 12<sup>th</sup> August, 2024. He submitted that admittedly the Petitioners had not commenced any redevelopment of the societies even for those who had given consent to the Petitioners for redevelopment of their buildings. He submitted that the Petitioners had not even offered transit accommodation to those who were dishoused on account of the demolition since 2019 or 2022 as the case may be. He submitted that the Petitioners were aware that the individual contracts could be terminated and therefore he submitted that the Petitioners have reserved their rights to take appropriate steps towards enforcing contracts against the individual members which can be evinced at paragraph 13 page 867 of the Affidavit in Rejoinder dated 12<sup>th</sup> August, 2024.

9.3) Dr. Chandrachud thereafter pointed out that the Petitioners have themselves acknowledged that there are signatures of 716 residents of the total 1200 residents of buildings 1 to 25 who have signed the declaration to permit MHADA to redevelop the buildings through the tender process. He submitted that the Petitioners therefore could not feign ignorance of a sizable majority having now approached the MHADA for its redevelopment.

9.4) Dr. Chandrachud then relied upon *Daman Singh and Ors Vs*



*State of Punjab and Ors. [(1985) 2 SCC 670]* more particularly paragraph 11 to submit that once the societies were formed, the individual members would have no say in the matter. He reiterated that the petitioners would have to obtain resolutions from those societies permitting the Petitioners to redevelop its properties. He therefore submitted that the Petitioners would have to claim their rights by instituting civil suits against those individuals who had entered into contract with the Petitioners. He therefore submitted that in any event the Petition deserved to be dismissed with costs.

10) Mr. Ahmed learned Advocate appearing for Respondent No.21 submitted that the said Respondent supports the Resolution and majority of Societies represented by Dr. Chandrachud.

11) In rejoinder, Mr. Madon submitted that they had already brought their Claim to the notice to the Government. He maintained that MHADA in law cannot claim any authority on the subject land. He reiterated that the resolution was passed on the basis that Government was the owner completely ignoring the record and Sanad's evincing that the subject land belonged to the society. He vehemently argued that Government or MHADA (a State under Article 12 of the Constitution) cannot behave like a private developer enticing/persuading individuals/societies to breach their individual contacts with the Petitioners by floating such tenders. Such an action would be contrary to the public policy and the law.

11.1) With reference to the judgment in the case of *Daman Singh* (supra) he submitted that this judgment was not applicable in the facts of this case as it did not prohibit the individual members before formation of the Societies to enter into an agreement for redevelopment with the developer.

11.2) Undisputedly, he submitted that the individuals had entered into Agreements with the developers prior to the formation of the society and such a contract was legally valid and binding contract. Moreover, both parties had acted in furtherance to the agreement executed by individuals in different forms. He submitted that the developer had taken steps to transfer the land from the Government to the Society. Substantial amounts were paid by Lakhani's and were undisputedly received by the individuals in furtherance of the agreements.

11.3) These steps were undertaken on the basis of the "Irrevocable Consents" one of which is annexed at page 217 under clause (b) paragraph 20 of the Petition. Under the clause the members had agreed not to do any act whereby right, title and interest of the developer for redevelopment shall be affected in any manner. It was also agreed that such a clause would also be mentioned in the development agreement or any other documents executed. Furthermore, under clause 20(e) the members had given consent to execute the development agreement and other documents required by the developers and that those documents would not be challenged in the

future. He therefore submitted that the individual members were duty bound by their contracts and could not be enticed to renege on the same.

11.4) He submitted that way back on 1<sup>st</sup> January 2020, the Petitioners Architect had submitted the proposed layout plan and submitted documents to the Chief Engineer of the BMC. To this, Dr. Saraf submitted that the proposal put up by the Petitioners was rejected.

12) In our view, the Petition is not maintainable. The Petitioners only recourse lies against the individuals — not against MHADA which was merely issuing an e-Tender for redevelopment of the subject land.

13) Undisputedly, at the behest of 716 out of the 1200 residents who agreed to have the property redeveloped through Maharashtra Government's Nodal agency, (as reflected in the Petition at paragraph 5 (cc) at page 30) a Cabinet decision and the subsequent GR was taken. It appears to us that, the Respondent No.1 has taken into consideration the plight of the majority of flat occupants while taking the said Cabinet Decision and passing the Resolution. This is evident. The Declarations were submitted sometime in March 2022 the Cabinet decision was taken on 14<sup>th</sup> February 2024 and the GR was issued thereafter on 23<sup>rd</sup> February 2024.

13.1) Now, DCR 33(9)(b) read with sub-clause 4 (as highlighted in bold above) is unambiguous and gives rights to the State to develop lands as provided therein. DCR 33(9)(b) provides that MHADA/MCGM, jointly with landowners and/or Co-op Housing Societies of tenants/ occupiers of

buildings independently or through a Promoter/Developer may pursue reconstruction or redevelopment of cluster (s) of buildings under the cluster development scheme in the island city of Mumbai.

14) The e-Tender floated by MHADA evidently, was only in furtherance to the object of the GR. The implementation of the Cabinet decision, GR and e-tender were stayed pending filing of Affidavit by State and MHADA by an order dated 17<sup>th</sup> April 2024.

15) We have noticed, in the Affidavit in reply dated 11<sup>th</sup> July 2024 that, 692 residents were out of their homes since 2019 and the Petitioners have failed to take steps since 2013. We observe that there is a delay in the Cabinet taking a decision on the representations made by the residents of GTB Nagar. Then a delay in not communicating instructions to their Advocates, delay in filing replies and consequently on account of an injunction by the Court since April 2024. At the end of the day, the citizens have continued to suffer.

16) The tender process for appointing a developer cannot be delayed merely because the Petitioner claims to have obtained consents from individual members to develop the property. These consents were old and, in any case, predated the formation of the societies. We believe that the Petitioners have not approached the Court with full transparency and have presented half-truths, potentially misleading the Court. It is acknowledged that the Petitioners were aware, they would need to obtain

development rights from the newly formed societies to have any legitimate claim. This requirement has not been fulfilled.

17) We do not see any valid grounds for the Petitioners to prevent MHADA from issuing a tender for the redevelopment of the property. The Petitioners have produced no documents with sufficient evidentiary value to support their claims and contentions in court. At most, the documents provided could serve as corroborative evidence for the Petitioners' claimed rights, title, or interest in the subject land, but this would still need to be established before a Civil Court. As things stand, the Petitioners' rights, if any, would pertain only qua the individuals who have signed contracts and allegedly received compensation from the Petitioners. This is evident from the declarations attached and the statements made in the Petition.

18) In such circumstances, the Petitioners notifying their claim to the State does not prevent or restrict the State from acting in the public interest by making a Cabinet decision to propose the redevelopment of the property in accordance with the law and appointing MHADA as the planning authority to oversee this redevelopment. In our view, the provisions under DCR 33(9)(b), read with sub-clause 4, as argued by Advocate General Dr. Saraf, renders the Petitioners' case entirely untenable. Whether the subject land belongs to the individuals or society, or to the State, is irrelevant to this matter.

19) We see no prejudice being caused to the Petitioners. The Petitioners retain the right to participate in the tender process and if they have indeed secured consents from individuals, this would place them in an advantageous position. We find no merit in Mr. Madon's argument that MHADA has, in any way, induced or enticed individuals to breach their contracts with the Petitioners.

20) The Petitioners have overlooked the signed representations submitted by individuals to the Government, requesting redevelopment of the subject land through MHADA, the Government-appointed nodal agency. Notably, the buildings were demolished between 2019 and 2022, and at least 692 members have been without housing for over five years, with the remaining members displaced for two years. Out of the 25 societies involved, at least 14 are opposing the Petitioners in this matter and we are informed that, around five societies are currently dysfunctional.

21) We make no comment regarding the Petitioners' liberty to proceed with the redevelopment of properties for which they allegedly hold valid consents from certain societies. However, the Petitioners have failed to produce supporting documents for their claims, as noted by MHADA on page 440. The State has taken appropriate actions and according to us there is no fault on its part.

22) We are of the view that the Petitioners have not approached the Court with clean hands, as they have presented partial truths that could mislead the Court. The Petitioners claim to have obtained 909 consents; however, on page 278—a tabulated statement attached to the petition—only 798 individuals are shown to have executed documents. Furthermore, in paragraph (cc) on page 30, the Petitioners state that 716 individuals have signed declarations seeking Government intervention for the redevelopment of the subject land. Given that there are 1,200 occupants, there is a clear discrepancy and the Petitioners could not accurately claim to have 909 consents.

23) Secondly, the Petitioners, in paragraph (n)(i) on page 13 and at page 362, claim to have disbursed approximately Rs.9.35 crores as Corpus fund to various occupants. However, upon closer examination of the DA on page 328, it appears that the corpus was to be disbursed as follows:

Rs.1,50,000/- was payable on execution of the PAA and

Rs.2,00,000/- was payable on procuring the OC .

A simple mathematical calculation shows that if Rs.9.35 crores were divided by Rs.3.5 lakh, the result would be approximately 267. This implies that if the full corpus amount of Rs.3.5 lakh had indeed been paid to each individual, only approximately 267 people would have received the corpus from a total disbursement of Rs.9.35 crores. Despite the clause in the

Development Agreement (DA), the Petitioners have made statements suggesting that they have paid the corpus to all consent-givers, which appears misleading. It seems intended to mislead the Court, as the Court is not expected to verify these claims through calculations.

24) Besides this, in their rejoinder on page 879 the Petitioners have shifted stance, now claiming that a portion of the corpus was paid to the occupants. If that is the case, the Petitioners have not explained the basis on which they paid the corpus to the occupants without executing the PAA. The statements do not complement each other.

25) It is settled law that a Petitioner who fails to disclose information which is within the special knowledge tantamount to fraud as has been held in *SP Chengalvaraya Naidu versus Jagannath [(1994) 1 SCC 1]*. The Petition could have been dismissed on this ground alone. However, we have dealt with it on merits.

26) In the light of the aforesaid circumstances, the Petitioners if at all have a right to pursue their remedy against individual members in accordance with law. No Writ will lie against MHADA for floating the proposed e-Tender. There is no merit in the Petition and is accordingly dismissed.

27) In view of disposal of Petition, Interim Application (L) No.25969 of 2024, pending herein does not survive and is accordingly disposed off.



28) At this stage, learned Counsel for the Petitioner requested stay of the effect and implementation of present Judgment for a period of four weeks, so as to enable the Petitioner to test the correctness of the present Judgment before the Hon'ble Apex Court.

29) We are unable to accede to such request on account of the fact that atleast 692 flat owners/residents of the said GTB Nagar are out of their legitimate houses for more than five years. Moreover, the Petitioners have not come to the Court with clean hands as observed herein above. Thus, the said request is rejected.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)