

**(2025) 12 SC CK 1649**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 14512 Of 2025 (Arising Out Of Special Leave Petition  
(Civil) No. 3405 Of 2025)

Jyoti Builders

APPELLANT

Vs

Chief Executive Officer & Ors

RESPONDENT

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**Date of Decision :** 02-12-2025

**Acts Referred:**

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —  
Section 3A, 3A(1), 3B, 3C, 3D(c)(i), 4, 14, 14(1), 17, 44, 45, 46, 51, 53, 54, 55, 56,  
135, 136

Monopolies And Restrictive Trade Practices Act, 1969 — Section 2(19), 152

**Citation :** (2025) 12 SC CK 1649

**Hon'ble Judges :** J.B. Pardiwala, J;K.V. Viswanathan, J

**Advocate :** Shyam Divan, Kavin Gulati, Anish Agarwal, Yogesh Adhia, Pooja Kane, Pratik Kumar Chakma, Natasha Bagga, Abhinav Maurya, Jitendra Jain, Yashvardhan Singh, Mohith S Kumar, Dushyant Sharma, Siddhartha Dave, Pallavi Sharma, Arundhati Mukherjee, Vikas Singh, Sr. Vinay Navare, Shubhranshu Padhi, Bharat Jain, Purvesh Buttan, Karan Batura, Nikhil Vijay Adkine, Himanshu Buttan, Tuhina Kakkar, Prachi Bhutani, Aniesh Jadhav Abhikalp Pratap Singh, Amol Nirmalkumar Suryawanshi, K Parameshwar, Palash Singhai, Pragya Prakash Upadhyay, Harshal Sareen

**Final Decision :** Disposed Of

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**Judgement**

J.B. Pardiwala, J

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Judicature at Bombay (Original Ordinary Civil Jurisdiction) dated 18.12.2024 by which the writ petition filed by the appellant herein seeking to challenge the orders passed by the respondent No. 1 herein dated 03.10.2022 and respondent No. 3 herein dated 07.10.2024 respectively came to be dismissed.

3. Over and above the challenge to the two orders referred to above, the appellant also prayed before the High Court for a writ of mandamus directing the

respondent Nos. 1 and 3 herein respectively to implement the order dated 26.02.2015 passed by the respondent No. 1 herein i.e. the Chief Executive Officer, Slum Rehabilitation Authority (CEO-SRA).

4. This litigation has a chequered history. The facts are quite complicated. In such circumstances, we need to give a fair idea about this litigation which, according to the High Court, was a third round of litigation between the parties.

#### FACTUAL MATRIX

5. The dispute in the present case relates to a parcel of land admeasuring 2,005 sq. mts. bearing CTS No.620/A/1A/1(Part) (now renumbered as CTS No. 620/A/1A/1B/1 and 620/A/1A/1B/2) of Village Malad in Taluka Borivali, Mumbai Suburban District ("Subject Property").

6. The Subject Property was originally owned by F.E. Dinshaw Trust. Since there were hutments on the Subject Property and the same had no proper hygiene and sanitation, it was declared as a slum on 26th November, 1987 under Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "Slum Act").

7. On 25th March, 1991, the Development Plan of 1991 for Mumbai was published, wherein the Subject Property was reserved for Recreational Ground ("RG"). The Subject Property even today is reserved for RG.

8. The respondent No. 5, i.e., Phuldai R. Yadav claims to have purchased the Subject Property from the Trust on 18th September, 1991 under a distressed sale for an amount of Rs. 1,06,000/-. Within a period of 6 months from the date of purchase, the respondent No. 5 is said to have entered into a Memorandum of Understanding (MOU) dated 9th February, 1992 ("1992 MOU") for sale of the Subject Property with the appellant's predecessor in interest viz. Harishree Enterprises ("Harishree Enterprises"). The respondent No. 5 is said to have granted her consent to Harishree Enterprises for redevelopment. It is the case of the appellant that such act on the part the respondent No. 5 is a pointer that she was not interested in developing the property herself or in any case, had waived her preferential right, if any, to redevelop the slum land i.e. the Subject Property way back in the year 1992.

9. Initially, Harishree Enterprises propounded the slum scheme on a larger property consisting of seven plots of land, admeasuring 19456.7 sq. mts. ("Larger Property"). The Subject Property is one of the said seven plots. The 1992 MOU was considered as grant of consent by the owner for the proposed redevelopment as per the prevailing law. The other six plots of land are either owned by the appellant's predecessor (and thereafter the appellant) or the development rights/consent for the slum scheme had been given for the same.

10. Accordingly, a survey was undertaken to identify the number of slum dwellers. As per the survey, 34 slum dwellers were found to be residing on the Subject Property.

11. On 30th January 1997, Certified Annexure-II ("Annexure II") was issued by the SRA in respect of the slum dwellers of the Larger Property including the Subject Property. Annexure II contains a plan on which slum scheme is to be implemented. The plan annexed to Annexure II includes the Subject Property and contain names/details of 34 slum dwellers who had their hutments on the Subject Property.

12. On 3rd September, 1997, a Letter of Intent ("1997 LOI") was issued in favour of Harishree Enterprises for implementation of the Slum Scheme on Larger Property, which includes the Subject Property.

13. In the meantime, there was an agreement between Harishree Enterprises and one M/s. Vikas Housing Ltd. ("Vikas Housing") for joint development. This led to a dispute, which, in turn, was ultimately resolved through Consent Terms dated 3rd August, 2000. In accordance with the consent terms, Vikas Housing became entitled to develop 12606.7 sq. mts. ("Project Property"), which includes the Subject Property. The said Consent Terms came to be subsequently registered. In the present appeal we are not concerned with the balance portion of the Larger Property which came to Harishree Enterprises's share as per the Consent Terms.

14. The appellant claims to have acquired its rights from Vikas Housing for Project Property. On 9th August, 2005, a revised LOI came to be issued in favour of the appellant thereby sanctioning slum scheme on Project Property and Annexure II was certified. The plan includes the Subject Property. The 34 slum dwellers whose hutments were on the Subject Property were included in the Annexure II issued to the appellant.

15. A Public Notice dated 8th June, 2004 was issued by the SRA intimating the public at large that a Letter of Intent with respect to the Project Property including the Subject Property had been issued to Harishree Enterprises for rehabilitation and redevelopment of slum dwellers.

16. Thereafter four Rehabilitation Buildings were constructed between the year 2005 and 2011 and the Occupation Certificate (OC) for the fifth Rehabilitation building was issued by the SRA in the year 2022.

17. On 26th February, 2015 ("2015 Order"), a detailed order came to be passed by the CEO-SRA after giving notice to and hearing to all the concerned including the respondent No. 5 (Phuldai, the then owner) inter alia holding that the Slum Scheme of the appellant had substantially been implemented on the entire area covering the Project Property admeasuring 12,606 sq. mts. (including the Subject Property) and that a substantial number of slum dwellers had already been accommodated and in furtherance of the slum scheme, the Subject Property was liable to be acquired in the interest of the slum scheme and the slum dwellers on the Subject Property had to be rehabilitated by the appellant. It further states that the respondent No. 5 (Phuldai) would be entitled to monetary compensation amount after acquisition. The 2015 Order never came to be

challenged by the respondent No.5 (Phuldai) and thus, has attained finality.

18. Accordingly, on the application filed by the society of the slum dwellers, a survey for demarcation of the Subject Property was carried out by the Officers of SRA and requests were made by the Slum Societies for acquisition of the Subject Property from time to time as per the 2015 Order. It is the case of the appellant that the Full Occupation Certificate for the sale building in favour of the appellant was not granted on the ground that the Subject Property of the respondent No. 5 (Phuldai) was yet to be acquired under Section 14 of the Slum Act and handed over to MCGM.

19. On 26th March, 2022, the respondent No. 5 (Phuldai) sold the Subject Property to the respondent No. 4 ("Alchemi Developers"). According to the appellant, it was sold on the pretext that there are slum dwellers on the Subject Property who are required to be rehabilitated. It is alleged by the appellant that the subject property was sold with the knowledge that the slum scheme had already been implemented. However, the respondent No. 4 (Alchemi Developers) has now floated its own scheme giving a list of 34 persons, most of whom, according to the appellant, have already been rehabilitated.

20. The subject matter of the present dispute is only to the extent of 2005 sq. mts. i.e. the Subject Property which was owned by the respondent No. 5 (Phuldai) and which has belatedly been acquired by another builder, i.e. respondent No. 4 (Alchemi Developers) on 26th March, 2022 with knowledge that the Slum Scheme on the area of 12606.7 sq. mts., i.e. the Project Property, including Subject Property, had fully been implemented by rehabilitating 498 slum dwellers. It is the case of the appellant that the SRA has changed its earlier consistent stand till the issuance of letter dated 14th March, 2022 only after the respondent No. 4 (Alchemi Developers) acquired rights from the respondent No. 5 (Phuldai), i.e. after March 2022.

21. In such circumstances referred to above, the appellant invoked the writ jurisdiction of the High Court and questioned the legality and validity of the orders passed by the respondent No. 1 (CEO-SRA) granting sanction to the respondent No. 4 (Alchemi Developers) and refusal to implement the 2015 Order referred to above.

#### JUDGMENT OF THE HIGH COURT

22. The High Court first looked into Section 14(1) of the Slum Act. Section 14 relates to the power of State Government to acquire land. Section 14 of the Slum Act reads thus:-

"14. Power of State Government to acquire land

(1) Where on any representation from the Competent Authority it appears to the State Government that, in order to enable the Authority to execute any work of improvement or to redevelop any slum area or any structure in such area, it is necessary that such area, or any land within adjoining or surrounded by any such

area should be acquired the State Government may acquire the land by publishing in the Official Gazette, a notice to the effect that the State Government had decided to acquire the land in pursuance of this section:

Provided that, before publishing such notice, the State Government, or as the case may be, the Competent Authority may call upon by notice the owner of, or any other person who, in its or his opinion may be interested in, such land to show cause in writing why the land should not be acquired with reasons therefor, to the Competent Authority shall, with all reasonable despatch, forward any objections so submitted together with his report in respect thereof to the State Government and on considering the report and the objections, if any, the State Government may pass such order as it deems fit.

1(A) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.

(2) When a notice as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances."

23. The High Court took notice of the proviso to Section 14 of the Slum Act which imposes an obligation on the State Government to consider the SRA's report as well as the objections that might have been raised by the owner as regards the acquisition. Based on such material, the State Government would thereafter proceed to pass an appropriate order as it may deem fit. The High Court observed that the State could have proceeded with the acquisition subject to the conditions prescribed in the proviso contained under Section 14 of the Slum Act referred to above. The High Court recorded that indisputably the State Government had failed to take steps contemplated under Section 14(1) referred to above despite the order dated 26.02.2015. However, according to the High Court, it was too late in the day now for Jyoti Builders (appellant herein) to assert that the State Government should be directed to acquire the subject property. In other words, the finding returned by the High Court is that the respondent No. 5 (Phuldai) was never called upon to develop the subject property in accordance with Section 14 of the Slum Act. The High Court noted that Jyoti Builders (appellant herein) had failed to take necessary steps for a period of seven years i.e. between 2015 and 2022. The High Court had also returned the finding that the attempt now being made by Jyoti Builders is to acquire the subject property by back door entry. If Jyoti Builders at all intended to acquire the subject property, it could have purchased it. It is when Jyoti Builders failed to purchase the subject property, then respondent No. 4 (Alchemi Developers purchased it.

24. The High Court thereafter considered the question whether the respondent No. 4 herein (Alchemi Developers) had submitted a scheme for the subject property. According to the appellant herein, the respondent No. 4 (Alchemi Developers) is responsible for dragging one and all to this litigation. The

appellant has levelled serious allegations against the respondent No. 4 alleging that it managed with the authority concerned. However, the High Court returned the finding that since the rights of respondent No. 5 (Phuldai), the owner of the subject property, were yet to be adjudicated upon, the respondent No. 4 (Alchemi Developers) would be entitled to submit its scheme for redevelopment.

25. The third issue that the High Court addressed itself was whether the subject property was included in the slum scheme. In this regard, the High Court returned the finding that subject property is not included in the slum redevelopment scheme.

26. In such circumstances referred to above, the final conclusion arrived at by the High Court reads thus:-

"14) Additionally, even as per Jyoti the benefits of subject property were excluded. Furthermore, in light of Citispace vs. State of Maharashtra ("Citispace") Order dated 31" July 2002 in Writ Petition No 1152 of 2002 read together with the Order dated 25th July 2014, no new scheme could be implemented on the land reserved for garden. This was the view of the CEO SRA in Order dated 26th February 2015 where he noted the following:

"Further with regard to the land owned by Respondent No. 2 viz. Shrimati Phuldai R Yadav, the record shows that the said land is reserved for recreation ground and therefore the same cannot be developed in view of the order dated 31-7-2002 passed by the Honourable High Court at Bombay in Writ Petition No. 1152 of 2002 [Citispace v State of Maharashtra]. However since the land is occupied and encroached by the Slum Dwellers, they are required to be rehabilitated as Project Affected Persons and it is the responsibility of the developer to handover the RG plot of land to MCGM."

It was only after 1st March 2022 that an owner could propose a scheme for such property. Therefore, the question of Phuldai attempting to propound a scheme post SRA's order of 26th February 2015 does not arise.

15) Regarding the contention of Mr. Kadam that, the CEO SRA whilst passing the Order dated 3rd October 2022 had reviewed the Order dated 26th February 2015, - we reject it outrightly. We clarify that the CEO SRA acted solely in compliance with the Court's directive to examine the contentions raised by Jyoti and Alchemi in Jyoti's Petition itself, which opposed the implementation of S R Scheme on the subject property by Alchemi. The CEO SRA's role was limited to addressing the rival contentions and did not involve reopening or reconsidering the earlier decision. Therefore Mr Kadam's claim that the CEO SRA "reviewed" the matter is unfounded and is hereby rejected. Consequently, the judgements of Kapra Mazdoor Ekta Union (supra), Deoki Nandan Parashar (supra) and Chiranjilal Shrilal Goenka (supra) cited by Mr. Kadam will render no assistance to the Petitioner.

16) We agree with Mr. Chinoy's argument that Jyoti has already benefitted from

accommodating the slum dwellers under the scheme by receiving necessary FSI under the Rules. Therefore, the cost of relocation has effectively been compensated to Jyoti.

17) The AGRC has rightly asked the SRA to 'look into' the matter. We now expect that the SRA will not adopt a contrary stance, especially after recording that the slum dwellers on Phuldai's plot have been already allocated apartments.

18) Considering the case from another perspective, in our view, first Harishree and now Jyoti's intent appears on usurping Phuldai's land in some form or manner and to deprive her of her legitimate benefit under the law.

18.1) It is undisputed that prior to the slum scheme proposed by Harishree, a MoU was entered into between Phuldai and Harishree with the intent to purchase Phuldai's land for consideration. For reasons unknown, that MOU failed. However, Harishree proceeded with the slum scheme, assuming they would acquire Phuldai's land at a later stage. A significant portion of the plot (approximately 1905 sq. mtrs.) remained vacant, as evidenced by the MOU. The LoI's issued from time-to-time further confirm this fact.

19) A comparison of LoI dated 4th June 2004 and 9th August 2005 reveals that not only was the area of the plot reduced, but the number of slum dwellers slated for rehabilitation was also reduced from 574 to 472. It is undisputed that the conditions outlined in the LoIs required Harishree - and later Vikas - to produce title documents and clear the land concerning Phuldai Yadav's plot. Since this was not accomplished, the utilization of the FSI was kept in abeyance.

20) Pausing here for a moment, we ask ourselves: what remained on the plot apart from FSI? There were only 34 slum dwellers on a specific portion of the subject property that needed rehabilitation. It is undisputed that this plot was reserved for garden and HD purposes, meaning that the land had to remain open and vacant. The FSI was, therefore, the only component to be utilised - either on the same plot or elsewhere.

21) As the FSI of the said plot was kept in abeyance, it raised a significant question about the land's inclusion in the scheme. The LoIs clearly demonstrate that the SRA was not convinced about Harishree's or Jyoti's title to the subject property. Even the CEO SRA's order dated 26th February 2015 noted that Jyoti will have to give clear title to MCGM. In our view it meant that Jyoti was required to acquire it and that which its predecessors had intended and based on which proposed the scheme.

22) We believe that Harishree and now Jyoti, assumed they would purchase the land from Phuldai and, in anticipation relocated the slum dwellers. However, the critical question is, if someone decides to relocate and clear the slum dwellers from someone else's plot, can they subsequently claim beneficial rights of the plot? In our view, the answer is in the negative. Notably, Phuldai was never called upon to develop the subject property as per Section 14(1) of the Slums

Act. There is an inexplicable delay in enforcing the 26th February 2015 Order.

23) What Jyoti did during seven years between 2015 to 2022? In our opinion, seeking acquisition now appears to be an attempt at a backdoor entry. If Jyoti intended to acquire the property, they could have purchased it. They did not and Alchemi did. Therefore, any benefit or loss concerning the property rightfully belongs to Alchemi alone.

24) Jyoti cannot claim a right over the property simply because they rehabilitated the slum dwellers. At best, they are entitled to compensation, which, in our view, has already been provided by granting them an equivalent and/or adequate area for sale.

25) We reiterate that we find no error or illegality in the AGRC's findings that would warrant setting them aside. We thus concur with the findings of the AGRC. In view of the above deliberation, we find no merits in the Petition and therefore dismiss it."

27. In such circumstances referred to above, the appellant is here before this Court.

#### SUBMISSIONS ON BEHALF OF THE APPELLANT

28. Mr. Shyam Divan, the learned senior counsel appearing for the appellant, broadly submitted the following:-

(a) Subject Property is not excluded from the appellant's predecessor's slum scheme of 1997 and the same continues to be an integral part of the appellant's slum scheme till date.

(b) No new slum scheme could have been propounded and/or sanctioned in favour of the respondent No. 4 (Alchemi Developers) as there are no slum dwellers to be rehabilitated.

(c) The SRA does not have jurisdiction to entertain or approve the respondent No. 4's scheme.

(d) As per the appellant's scheme, the entire subject property is required to be handed over to the MCGM as a Recreational Ground (i.e. open green land), whereas the respondent No. 4 (Alchemi Developers) has applied for slum rehabilitation scheme under DCPR 2034 and, if the same is approved, then the respondent No. 4 would construct upon 65% of the RG area and would keep only 35% vacant as RG. As per the learned senior counsel, this would lead to reduction of RG in the city of Mumbai which already has been very low per capita green spaces. In such circumstances, the respondent No. 4's scheme ought not to have been accepted.

(e) A slum scheme in Mumbai was implemented as per Regulation 33(10) of DCR 1991 till 2018 and thereafter as per Regulation 33(10) of DCPR 2034 (both provisions are in pari materia). Appendix (IV) of DCR 1991 and DCPR 2034

allows redevelopment of slum properties by slum dwellers (self-redevelopment), through a developer, owner, public authorities or NGOs. Thus, consent of owner is not mandatory for implementation of slum scheme. In the event the owner does not consent or redevelop the property, it can be acquired by the State Government on the recommendation of the SRA. The owner gets compensation as per Section 17 of the Slum Act.

(f) By 2015 Order, the CEO-SRA could be said to have adjudicated the lis between the respondent No. 5 (Phuldai) and the appellant. After hearing the respondent No. 5 (who belatedly objected to the continuation of implementation of slum scheme), and considering the rival contentions between the parties, by the 2015 Order, the CEO-SRA held that the slum scheme of appellant has progressed substantially and therefore the Subject Property cannot be excluded from the scheme. The CEO-SRA saying so issued directions to the Dy. Collector SRA to take steps for acquiring the Subject Property under Section 14 of the Slum Act for the effective implementation of the appellant's slum scheme. There was no challenge to the 2015 Order; the same attained finality; and as such, could not have been revisited either by the parties or slum authorities respectively. The respondent Nos. 4 (Alchemi Developers) and 5 (Phuldai) respectively were aware that the 2015 Order is binding on them. To overcome this, they have gone to the extent of misinterpreting the 2015 Order by misconstruing the words 'carve out'. The words 'carve out' have to be read in the context of the finding and conclusion of the 2015 Order, which is to include the same and not exclude from the slum scheme. As such, the purport of 2015 Order is that the property should be "demarcated" i.e. carved out for the purpose of acquisition and handing over the same to BMC. The demarcation was already undertaken on 6th October, 2016. The 2015 Order does not in any manner suggest "taking out" the Subject Property out of the appellant's scheme.

(g) In such circumstances referred to above, the power of the SRA under Section 14 of the acquisition is also coupled with duty to acquire the Subject Property. Such a duty has been recognized by this Court in the case of (i) State of Uttar Pradesh v. Jogendra Singh, 1963 SCC OnLine SC 96, and (ii) State of Tamil Nadu v. Governor of Tamil Nadu & Anr., 2025 SCC OnLine SC 770.

29. Mr. Divan, the learned senior counsel further highlighted the SRA's diametrically opposite stance before and after the respondent No. 4 proposed its alleged illegal scheme which, according to him, is evident from the following:-

(a) From the year 1997 to 2022:

The SRA's stand prior to Alchemi Developers coming in picture is as follows:

(i) All the LOIs issued by the SRA clearly show that the Subject Property is part of the appellant's slum scheme.

(ii) The SRA included 34 slum dwellers on the Subject Property in the Annexure II of the appellant's slum scheme.

(iii) The SRA directed rehabilitation of the said 34 slum dwellers in the rehab component of the appellant's slum scheme.

(iv) By an Order dated 26th February, 2015, the SRA directed acquisition of the Subject Property and stated that the respondent No. 5 (Phuldai) would be entitled to monetary compensation after the acquisition.

(v) In pursuance of 2015 Order, the Subject Property was demarcated by CTS Officer on 6th June, 2015.

(vi) When the appellant requested for grant of Occupation Certificate in respect of the Sale Building No. 4, the SRA (respondent No.1) vide its letter dated 14th March, 2022 stated that the request for Occupation Certificate cannot be granted as RG is not handed over and that the Subject Property is yet to be acquired under Section 14(1) of the Slum Act.

(vii) On 20th April, 2022 the Tehsildar from the office of SRA gave an opinion stating that necessary steps towards acquisition should be taken with respect to the Subject Property as per 2015 Order and in fact enclosed a draft Notice to be issued under Section 14 (1) of the Slum Act and sent the same to the CEO-SRA for further process.

(viii) On 27th May, 2022 the Chief Legal Consultant of SRA gave his opinion and stated that the Subject Property be acquired as per 2015 Order.

(ix) From 2015 till 2022, it was a consistent stand of the SRA that the Subject Property forms part of the appellant's scheme and thus was required to be acquired under Section 14(1) of the Slum Act for the benefit of the Slum Scheme of the appellant.

(b) Events post Alchemi Developers - respondent No. 4 coming into picture:-

30. According to Mr. Divan, the moment another builder i.e. respondent No. 4 came into picture and started pursuing its slum scheme on the Subject Property, the office of SRA made a complete volte face which can be seen from the following:

(i) On 26th March, 2022 the respondent No. 5 (Phuldai) sold the Subject Property to the respondent No. 4 (Alchemi Developers).

(ii) Thereafter, in March-April 2022, the respondent No. 5 applied for implementation of the Slum Scheme on the Subject Property based on fraudulent list of slum dwellers (persons who were already rehabilitated by the appellant). The true and correct status of list of the slum dwellers submitted by the respondent No. 5 in its scheme is set out by the appellant. This list, relied upon by the appellant at every stage, from CEO-SRA to this Court, has not been denied by the respondent No. 4.

(iii) After respondent No. 4 started pursuing its slum scheme, the SRA made a complete volte face and started contending that the Subject Property is excluded

from the slum scheme and 2015 Order need not be implemented, and the Subject Property should form part of the respondent No. 5's scheme, despite holding that all the slum dwellers had already been rehabilitated.

(iv) After the new developer came into picture, the respondent No. 1 (SRA) has taken a stance which is contradictory to the order dated 26th February, 2015 and the same amounts to review of its own order i.e. order of his predecessor.

31. According to Mr. Divan, the CEO-SRA (respondent No. 1) could not have taken the orders passed by his predecessor in review as no such power is provided under the statute. He would submit that the order dated 03.10.2022 passed by the CEO-SRA holding that acquisition of the Subject Property as per the 2015 Order need not be undertaken amounts to review of the 2015 Order directing acquisition of the Subject Property.

32. He would thereafter contend that the findings returned by the High Court to the effect that the appellant had already availed the FSI benefit insofar as rehabilitation of 34 slum dwellers is concerned could be said to be perverse. In this regard, he submitted that a perusal of the LOI would indicate that the entire FSI benefit arising out of the Subject Property is kept in abeyance. He would submit that the slum scheme is implemented by the developer under the Slum Act. The developer gets dual benefit - first rehabilitating the slum dwellers and secondly entitlement to FSI for implementation of slum scheme. He strongly contended that the entire FSI for the Subject Property has been kept in abeyance. He asserted that, on the other hand, the respondent No. 4 (Alchemi Developers) seeks benefit of the entire FSI without implementing the slum scheme or the clearing slum. According to Mr. Divan, this is something absolutely illegal.

33. In the last, Mr. Divan contended that the respondent Nos. 4 and 5 respectively have misled this Court by submitting that 34 slum dwellers on the subject property have been rehabilitated as Project Affected Persons i.e. PAPs. According to him, the slum dwellers of the subject property are part of Annexure II issued to the appellant and therefore they have been rehabilitated in rehab component under the slum scheme and cannot be rehabilitated as PAPs as per the orders and directions of the respondent No. 1.

34. In such circumstances referred to above, Mr. Divan, the learned senior counsel appearing on behalf of the appellant herein submitted that there being merit in his appeal, the same may be allowed and appropriate relief may be granted.

#### SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1 and 2

35. Mr. Siddharth Dharmadhikari, the learned counsel appearing for the respondent Nos. 1 and 2 respectively vehemently submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order.

36. It was submitted that the subject property does not form part of the appellant's slum scheme. As per Regulation 33(10) of DCR 1991 and Guidelines issued in the year 1997, a slum scheme could have been submitted only with the consent of the "owner" or after acquiring the same in accordance with Section 14(1) of the Slum Act.

37. It was argued that indisputably the true and correct position in tabular format is as under:-

Sr. No.

Plot No.

Map @ pg. 1004

Area Sq. m.

Purpose

1.

CTS No. 620/A/1A/1A/3

Dark Green

2700

Owned by appellant & included in Scheme. Satisfies the RG requirement

2.

CTS No. 620/A/1A/1B/1 CTS No. 620/A/1A/1B/2

Light Green

2005

Owned by R4 and excluded from scheme on 04.04.2000 on request of predecessor of appellant

38. It was argued that indisputably the respondent No. 5 namely Phuldai was the owner of the subject property. According to the learned counsel, the predecessor in title of the appellant had misrepresented to have obtained the consent from the owner i.e. Phuldai on the basis of an unregistered MOU between the appellant's predecessor (Harishree Enterprises) and the respondent No. 5 (Phuldai). It was pointed out that the records reveal that the respondent No. 5 (Phuldai) had terminated the unregistered MOU in 1995 itself. Such termination was challenged by Harishree Enterprises before the Civil Court by filing Civil Suit No. 1514 of 1995 which later came to be dismissed.

39. In so far as obtaining occupation certificate for the Final Sale Building in Slum Scheme is concerned, the learned counsel submitted that the appellant is not required to hand over the subject property. It was submitted that it is

absolutely incorrect on the part of the appellant to say that the appellant has been put to a specific condition to acquire or hand over the Light Green portion i.e. subject property (2005 sq. m.) for further compliance of Full Occupation Certificate.

40. It was vehemently submitted by the learned counsel appearing for the respondent Nos. 1 and 2 respectively that since the subject property stood excluded from its Slum Scheme, the respondent No. 1 could not have insisted on any such condition for the purpose of issuing the occupation certificate. However, it was clarified that the appellant was liable to hand over the Dark Green Portion admeasuring 2700 sq. mts. as Recreational Ground (RG).

41. It was argued that in accordance with the direction issued by the respondent No. 1 vide order dated 26.02.2015 the appellant had declared the 34 slum dwellers residing on the subject property as Project Affected Persons (PAPs). In lieu of the appellant handing over PAP's to SRA, the appellant has been compensated in accordance with the policy with equivalent FSI for Sale Component. The appellant had already utilised such FSI generated against PAP and had constructed its Final Sale Building.

42. It was next submitted that the appellant had at no point of time ever challenged the directions issued by the CEO-SRA to rehabilitate the 34 slum dwellers as PAPs. It was argued that the subject property has now been purchased by the respondent No. 4 (Alchemi Developers) from the respondent No. 5 (Phuldai) i.e. the original owner of the subject property and thus, the respondent No. 4 has a vested right to have the first choice to undertake a slum rehabilitation scheme and only upon failure to do so, the State Government may acquire the land. The learned counsel submitted that the respondent No. 4 (Alchemi Developers) as the lawful owner had already exercised its preferential right and was implementing the scheme by including the subject property as part of its scheme. In such circumstances referred to above, there is no question at this point of to acquire the subject land.

43. In such circumstances referred to above, the learned counsel appearing for the respondent Nos. 1 and 2 prayed that there being no merit in the present appeal, the same may be dismissed.

#### SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 4

44. Mr. Vikas Singh, the learned senior counsel appearing for the respondent No. 4 (Alchemi Developers) vehemently submitted that the subject property has been lawfully purchased by Alchemi Developers for a valuable consideration. It is alleged that the appellant is trying to usurp the subject property without paying any consideration. It was argued that the 34 slum dwellers were part of the scheme in 1996-97. However, they came to be excluded in 2000. The mere existence of the 34 slum dwellers in the Annexure II would not establish anything. Further, the SRA had expressly directed the appellant to rehabilitate them as PAPs.

45. It was further argued that if there are no slums on the subject property, the SRA would not have any jurisdiction to acquire the subject property with a view to hand over the same to MCGM. In the last, it was submitted that the subject property was never a part of the scheme of the appellant. The appellant on its own and without any permission from the planning authority rehabilitated the slum dwellers. The appellant should not be permitted to take advantage of its own wrong.

46. In such circumstances referred to above, the learned senior counsel prayed that there being no merit in the present appeal, the same may be dismissed.

#### SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 6 AND 8 RESPECTIVELY

47. Ms. Pallavi Sharma, the learned counsel appearing for the respondent No. 6 - Gokuldharm Ekta SRA Co-operative Housing Society Limited and the respondent No. 8 - Shree Gokuldharm Durgadevi Vikas SRA Co-op Housing Society Ltd. respectively ("Slum Societies") submitted that the 34 slum dwellers who were in the subject property owned by the respondent No. 5 (Phuldai) and also other slum dwellers on the larger property which was being developed by Harishree Enterprises had given their consent for slum rehabilitation scheme by the Harishree Enterprises. The slum dwellers had also executed agreements for permanent alternate accommodation with Harishree Enterprises. The respondent No. 5 (Phuldai) had never approached the slum dwellers to redevelop the subject property.

48. It was pointed out that the appellant herein acquired the rights to redevelop the property admeasuring 12,606 sq. mts. including the subject property. All the slum dwellers on the property admeasuring 12,606 sq. mts. have been rehabilitated in the rehab building constructed by the appellant herein. The main concern expressed by the Slum Societies is with respect to the loss of the open recreational ground. According to the Slum Societies, the subject property is reserved for recreational ground. The slum scheme of the appellant under the 1991 DCR envisages the subject property which is in front of the slum rehabilitation building entirely as open space for recreation as RG.

49. However, according to the learned counsel, as per the scheme of the respondent No. 4 (Alchemi Developers) which is under DCPR 2034, the respondent No. 4 proposes to construct on 65% of the subject property. If the respondent No. 4's scheme is allowed, the 498 slum dwellers and even general public would lose 65% of recreational ground i.e. about 1,303 sq. mts. out of the subject property. This would cause grave prejudice to the slum dwellers. According to the learned counsel, this aspect is not considered by the respondent Nos. 1 and 2 respectively including the High Court.

#### SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 5 (ORIGINAL OWNER OF SUBJECT PROPERTY)

50. Mr. K. Parameshwar, the learned senior counsel appearing for the respondent

No. 5 (Phuldai) fully supported the respondent No. 4 (Alchemi Developers). It was argued that the respondent No. 4 as a purchaser of the subject property from the respondent No. 5 has a preferential right to redevelop the subject property and the SRA is obliged under law to invite the respondent No. 4 (Alchemi Developers) to come forward with a redevelopment proposal. It was argued that the State should not have ordered to acquire the subject property before extinguishment of the preferential right. It was argued that each of the LOIs specifically excluded the subject property or, in other words, the subject property is not reflected in any manner as a part of the scheme. It has been admittedly confirmed by the SRA. The learned counsel provided us with the details of the LOIs as under:-

"a) LOI dt. 03.09.1997 which was revised (pursuant to complaints by R5) and a fresh LOI dt. 02.08.1999 was issued in favour of Harishree Enterprises for slum development of the larger property.

b) Revised LOI dt. 04.06.2004 was issued in favour of Harishree Enterprises, superseding earlier LOI dt. 02.08.1999 (cl. 39) - see cl. 23, 25, and 35. Cl. 35 is extracted:

"35. That you shall not claimed FSI of plot adm. 2005.00 sq. mts. Kept in abeyance till the dispute between Harishree & Smt. Phulday Yadav is decided by Court."

c) LOI dt. 09.08.2005 - see cl. 33:

"33. You shall not claim FSI of plot admeasuring 2005.00 sq. mt. kept in abeyance till the dispute between M/s Vikas Housing Ltd. & M.s Harishree Enterprises & Smt. Phuldai Yadav is decided by Court."

d) LOI dt. 28.09.2017 in favour of the appellant (i.e., present developer) makes no mention of the subject property, as a part of the scheme. A copy of this LOI, however, is conspicuously absent and suppressed by the appellant in the present pleadings."

51. It was submitted that the fact that the subject property does not figure in the last LOI dated 28.09.2017 has been taken note of by the High Court in its impugned judgment. The appellant having acted on this very LOI that excluded the subject property to implement its slum redevelopment scheme cannot now seek to contest the right qua the same subject property as it was owned by the respondent No. 5 and later purchased by the respondent No. 4.

52. In the last, it was submitted that the SRA vide letter dated 04.01.2008 had directed the appellant to submit a revised scheme after excluding the subject property. It was pointed out that the appellant vide its letter dated 15.01.2008 had stated in so many words that it was not utilising or taking benefit of the subject property and therefore there was no need to submit a revised scheme.

53. In such circumstances referred to above, the learned senior counsel

submitted that there being no merit in the present appeal, the same may be dismissed.

## ANALYSIS

54. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we would like to address ourselves on three pivotal issues namely:-

(i) Whether we should issue a mandamus to the State Government to acquire the subject property in accordance with Section 14(1) of the Slum Act keeping in mind the order dated 26.02.2015 passed by the Chief Executive Officer-Slum Rehabilitation Authority?

(ii) Whether the appellant is entitled to full Occupation Certificate for the final sale building in the slum scheme upon handing over the portion of land admeasuring 2700 sq. mts. meant for Recreational Ground (RG) identified as the dark green portion?

(iii) Whether the appellant has been fully compensated by granting an equivalent and/or adequate area (FSI) for sale by the State Government?

55. Before advertng to the rival submissions canvassed on either side, we must look into few relevant provisions of the Maharashtra Regional Town Planning Act, 1966 (for short, "MRTP Act") and the Slum Act respectively.

56. Section 2(19) of the MRTP Act reads thus:-

"2(19) "Planning Authority" means a local authority; and shall include:-

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40; and

(b) in respect of slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act."

57. Proviso to Section 152 of the MRTP Act provides as under:-

"152. Powers of Planning Authority or Development Authority to be exercised by certain officers.-

x x x x

..... Provided further that, the State Government may by a notification in the Official Gazette, delegate any of the powers exercisable under sections 44, 45, 46, 51, 53, 54, 55, 56, 135 and 136 of this Act by the Slum Rehabilitation Authority appointed under the Maharashtra Slum Act (Improvement, Clearance and redevelopment) Act, 1971 acting as Planning Authority, to the Chief Executive Officer of the Slum Rehabilitation Authority."

58. Section 3B of the Slum Act reads thus:-

"3B. Slum Rehabilitation Schemes.- (1) The Slum Rehabilitation Authority concerned, with the previous sanction of the State Government, shall prepare or amend the general Slum Rehabilitation Scheme for the areas specified under sub-section (1) of section 3A, for rehabilitation or relocation of protected occupiers and other occupiers of the building in such areas.

(2) The general Slum Rehabilitation Scheme prepared or any amendment to it under sub-section (1), shall be published in the Official Gazette, by the concerned Slum Rehabilitation Authority, as draft general Slum Rehabilitation Scheme or draft amendment to general Slum Rehabilitation Scheme, for the area specified under sub-section (1) of section 3A, for the information of general public, inviting objections and suggestions, giving reasonable period of not less than thirty-days but not more than forth-five days, for submission of objections and suggestions, if any, in respect of the Scheme.

(3) The Chief Executive Officer of the concerned Slum Rehabilitation Authority shall, within sixty days consider the objections and suggestions, if any, received within the specified period in respect of the said draft general Slum Rehabilitation Scheme or any draft amendment to the general Slum Rehabilitation Scheme and after considering the same and after carrying out such modification as deemed fit or necessary, finally publish said general Slum Rehabilitation Scheme or such amendment to it, with the approval of the State Government, in the Official Gazette.

(4) The general Slum Rehabilitation Scheme published under sub-section (3) shall be deemed Development Control Regulations under the provisions of Chapter III of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), for the said area and the provisions of the general Slum Rehabilitation Scheme shall prevail over the Development Control Regulations, published under the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966).

(5) The Slum Rehabilitation Scheme so notified under sub-section (3) shall, generally lay down the parameters for declaration of any land as the Slum Rehabilitation Area and indicate the manner in which rehabilitation of the occupants of the area declared as Slum Rehabilitation Area shall be carried out. In particular, it shall provide for all or any of the following matters, that is to say,-

(a) the parameters or guidelines for declaration of land as the Slum Rehabilitation Area;

(b) basic and essential parameters of development of Slum Rehabilitation Area under the Slum Rehabilitation Scheme;

(c) provision for obligatory participation of the owners, landholders and occupants of the land declared as the Slum Rehabilitation Area under the approved Slum Rehabilitation Scheme in the implementation of such Scheme;

(d) provision relating to transit accommodation or entitlement of compensation in lieu of transit accommodation to the slum dwellers pending development of the Slum Rehabilitation Area;

(e) provision relating to allotment of tenements either in-situ or otherwise, on development free of cost to the protected occupiers of the building in such Slum Rehabilitation Area;

(f) provision relating to allotment of tenements either in-situ or otherwise, on ownership or on rent, to the other non-protected occupiers up to the 1st January 2011, subject to the availability of tenements as per the terms and conditions and guidelines so notified in the Official Gazette, by the Chief Executive Officer with the prior approval of the State Government;

(g) scheme for development of the Slum Rehabilitation Areas under the Slum Rehabilitation Scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the option available to the Slum Rehabilitation Authority for taking up such development in the event of non-participation of the landholders or occupants;

(h) provision regarding sanction of Floor Space Index and transfer of development rights, if any, to be made available to the developer for development of the Slum Rehabilitation Area under the Slum Rehabilitation Scheme;

(i) provision regarding non-transferable nature of tenements for a certain period, etc.

(6) The Chief Executive Officer of the Slum Rehabilitation Authority, with prior approval of the State Government shall, regulate procedure for appointment and registration of developers for implementation of the Slum Rehabilitation Scheme as per the rules prescribed by the State Government, from time to time. The Chief Executive Officer or the Slum Rehabilitation Authority, as the case may be, may register any person or an association of persons registered under the Partnership Act, 1932 (9 of 1932) or a company registered under the Companies Act, 2013 (18 of 2013), as a developer in the prescribed manner for the implementation of Slum Rehabilitation Scheme."

59. Section 4 of the Slum Act reads thus:-

"4. Declaration of slum areas:-(1) Where the Competent Authority is satisfied that-

(a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise; or

(b) the buildings in any area, used or intended to be used for human habitation are-

- (i) in any respect, unfit for human habitation; or
- (ii) by reasons of dilapidation, overcrowding, faulty arrangement and design of such building, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area, the Competent Authority may, by notification in the Official Gazette, declare such area to be a slum area. Such declaration shall also be published in such other manner (as will give due publicity to the declaration in the area) as may be prescribed.

Explanation.- For the purposes of clause (b), the expression "buildings" shall not include,-

(a) cessed buildings in the island City of Mumbai as defined in clause (7) of section 2 of the Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977), or old buildings belonging to the Corporation;

(b) buildings constructed with permission of the relevant authority at any point of time;

(c) any building in an area taken up under the Urban Renewal Scheme.

(2) In determining whether buildings are unfit for human habitation for the purposes of this Act, regard shall be had to the condition thereof in respect of the following matters, that is to say,-

- (a) repairs;
- (b) stability;
- (c) freedom from damp;
- (d) natural light and air;
- (e) provision for water-supply;
- (f) provision for drainage and sanitary conveniences;
- (g) facilities for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid, if, and only if, it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

(3) Any person aggrieved by a declaration made under sub-section (1) may, within thirty days after the date of such declaration in the Official Gazette, appeal to the Tribunal. No such appeal filed after the expiry of thirty days as aforesaid shall be entertained.

(4) When an appeal is presented under sub-section (3), the Tribunal shall, by a public notice published in a newspaper in the Marathi language circulating in the local area in which the slum area situated and also displayed at some

conspicuous place in the slum area, call upon the residents of the slum area to file their objections, if any, to the appeal within a period of fifteen days from the date of publication of such public notice in the newspaper as aforesaid, either by themselves or through any association of residents in the slum area of which they are members.

(5) On expiry of the period of fifteen days as aforesaid the Tribunal shall fix a day for hearing the appeal and inform the appellant about the same by letter under certificate of posting and the residents of the slum area by displaying the notice of hearing at some conspicuous place in the slum area and upon hearing the appellant and the residents or representative of their association in the slum area, if present, or on considering the written objections, if any, made by such residents or association, if absent, the Tribunal may, subject to the provisions of sub-section (6), make an order either confirming, modifying or rescinding the declaration; and the decision of the Tribunal shall be final.

Explanation.- For the purposes of sub-section (4) and this sub-section, the expression "any association of residents in the slum area" means a society, if any, of such residents registered under the Societies Registration Act, 1860 (XXI of 1860) or under the Maharashtra Co-operative Societies Act, 1960 (Mah. XXI of 1961).

(6) While deciding the appeal the Tribunal shall ignore the works of improvement executed in such slum area by any agency of the Government or any local authority after the declaration thereof as such slum area by the Competent Authority under sub-section (1)."

60. The scheme of the Slum Act indicates that it is a beneficial legislation and emphasizes on the protection of the occupiers (slum dwellers) by making a provision for redevelopment and rehabilitation. Accordingly, Section 4 of the Slum Act contemplates for an area to be declared as a 'slum area'. Section 3B contemplates a Slum Rehabilitation Authority ("SRA") to prepare a Slum Rehabilitation Scheme, which shall be deemed to be the Development Control

Regulations made under the MRTP Act.

61. The MRTP Act has been amended to provide that the SRA shall be treated as a Planning Authority for areas declared as slums Accordingly, Regulation 33(10) of DCR 1991 has been framed to deal with SRA Schemes.

62. The DCR 1991, i.e. Regulation 33(10) read with Appendix IV thereto provides for the redevelopment of the slum dwellers through the owners/developers/cooperative societies of slum dwellers, whereby 70% consent of the slum dwellers is to be obtained 'in a viable stretch at one place to join a rehabilitation scheme' (Clause 1.15. of Appendix IV). In lieu of the developer clearing slums, constructing and handing over flats to the slum dwellers, it is entitled to an incentive FSI which can be commercially utilized by the developer undertaking redevelopment by constructing buildings/buildings for sale in open market known

as 'free sale component'.

63. This Court in *Tarabai Nagar Co-Op. Hog. Society (Proposed) v. State of Maharashtra & Ors.* reported in 2025 SCC OnLine SC 1795 considered the entire scheme of the Slum Act and held that the owner possesses a preferential right to redevelop the SR Area; that the SRA is duty-bound to invite the owner to submit a SR Scheme, and that any acquisition is not warranted until such right stands extinguished. The relevant extracts are as follows:

"82. [...] the owner has a preferential right over other stakeholders to develop an SR Area. If the owner then chooses to exercise this right by submitting and implementing a valid SR Scheme, issues involving rights over the property would not arise. It is, thus, not fathomable that when the landowner is implementing an SR Scheme on its own, a necessity to acquire the land could arise.

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 13.46. 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.

x x x x

87. When an SR Area has been notified under Section 3C(1) of Chapter I-A51 and its development through an SR Scheme is conceptualised, whereunder there is an inbuilt preferential right of an owner to carry out redevelopment, the power of acquisition under Section 1452 would not operate in an independent silo; rather, it must derive meaning and effect from the principles prevailing throughout the legislative scheme of Chapter I-A".

64. Following the decision in *Tarabai* (supra), this Court in *Saldanha Real Estate Pvt. Ltd. v. Bishop John Rodrigues & Ors.*, reported in 2025 SCC OnLine SC 1794 reiterated these principles. The relevant paragraphs are extracted for convenience:

"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.

x x x x

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."

65. It is not in dispute that in the development plan issued by the Town Planning Authority, the subject property was reserved for the purpose of Recreational Ground. One order passed by the Bombay High Court dated 31.07.2002 in Writ Petition No. 1152 of 2002 titled Citispace & Ors. v. State of Maharashtra was brought to our notice. The order reads thus:-

"Heard parties.

2. Respondent No. 2 is directed to file an affidavit disclosing necessary information as claimed in prayer clauses (c)(i) to (xiii) of the writ petition.

3. Adjourned for four weeks. In the meantime, until further orders, no new rehabilitation scheme be sanctioned without the permission of this Court in respect of open spaces which are reserved for gardens, parks, playgrounds, recreational spaces, maidans, no-development zones, pavements, roads and carriageways."

66. Thus, it appears that the High Court had passed an order of injunction referred to above on use of lands reserved inter alia for Recreation Ground

meant for the implementation of Slum Rehabilitation Scheme. This very fact is also recorded in the order dated 26.02.2015 passed by the CEO-SRA. Such injunction continued till 01.03.2022. In such circumstances, there was no occasion for the respondent No. 1 SRA to acquire the subject property. This fact has been acknowledged by the appellant and the same is evident from the letter dated 07.03.2022 addressed by the appellant i.e. within 7 days from the date the injunction referred to above came to be vacated. In such circumstances, it is clear that till 01.03.2022 nothing could have been done.

67. In the meantime, the respondent No. 5 namely Phuldai transferred her title rights in the subject property in favour of the respondent No. 4 (Alchemi Developers). The respondent No. 4 (Alchemi Developers) submitted its proposal for implementation of the slum rehabilitation scheme. It is also not in dispute that the respondent No.4 (Alchemi Developers) submitted its proposal for development of the subject property on 05.04.2022 and the same was accepted in accordance with law as there was no slum scheme proposal on the subject property.

68. In such circumstances referred to above, the appellant for the first time on 25.07.2022 filed a Writ Petition (L) No. 23703 of 2022 seeking a mandamus for the purpose of acquisition of the subject property relying on the CEO-SRA's order dated 26.02.2015.

69. We should also take notice of the fact that the respondent No. 5 (Phuldai) had executed a Memorandum of Understanding dated 09.02.1992 with Harishree Enterprises (predecessor developer) to sell the subject property and granting consent to redevelop the same. This MoU came to be terminated in 1995. The termination of the MoU led to filing of a suit being Suit No. 1514/1995 by Harishree Enterprises on the original side of the Bombay High Court for specific performance of the MoU. This suit came to be dismissed for default on 06.04.2000 by the Bombay High Court and thus attained finality. On 26.03.2022, the respondent No. 5 (Phuldai) executed a registered conveyance deed in favour of the respondent No. 4 (Alchemi Developers) for the subject property.

70. We are of the view that it is too late in the day, or to put it in other words, it will be too much if we at this point of time direct the authority concerned to acquire the land under Section 14 of the Slum Act on the basis of the CEO-SRA's order dated 26.02.2015.

71. In such circumstances referred to above, we decline to grant any relief to the appellant insofar as the prayer for acquisition of the subject property is concerned.

72. It is well settled that the power of the State Government to acquire land under Section 14 read with Section 3D(c)(i) of the Slum Act is subject to preferential right, if any, of the owner. This issue has been set at rest by this Court in Tarabai Nagar Co-Op. Hog. Society (supra). In the said case, exactly the very same argument was canvassed by Mr. Shyam Divan, the learned senior

counsel appearing for the appellant therein that even if there is a preferential right in favour of the owner, the same would not militate against the power of the State to acquire the land under Section 14 of the Slum Act. This Court while negating such contention observed as under:-

"77. In this context, we deem it appropriate to clarify at this stage that Section 1445 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.

78. To explicate, the SRA, in line with the scheme envisaged by the Slums Act, is not only authorised but also responsible for ensuring that development is undertaken in SR Areas. In furtherance of this objective, it invites developers to submit SR Schemes. In the event no developer comes forward, the SRA can take over the development itself. To achieve this, it would undoubtedly need to utilise the land in the SR Area for various purposes, such as preparing temporary or permanent transit residences, construction work, setback area, and access roads.

79. However, when tasked with such an endeavour, the SRA may face instances where the owner is unwilling to accede to the redevelopment of the land. In such situations, as per the 1997 Guidelines and Regulation 33(10), a consent or no-objection certificate from the owner is mandatory for any proposal to be considered. By withholding such consent, the landowner has the ability to perpetually stall the entire redevelopment.

80. This instance illustrates how it may become necessary for the State to acquire land using its eminent domain for the purpose of facilitating slum rehabilitation. E.3.2 Interplay with the Owner's Rights

81. Given the above backdrop, what becomes important for us to ascertain is whether such necessity can arise before the landowner's preferential right to redevelop is extinguished.

82. As already held, the owner has a preferential right over other stakeholders to develop an SR Area. If the owner then chooses to exercise this right by submitting and implementing a valid SR Scheme, issues involving rights over the property would not arise. It is, thus, not fathomable that when the landowner is implementing an SR Scheme on its own, a necessity to acquire the land could arise.

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.

85. This Court in *Murlidhar Teckchand Gandhi* (supra) held that Sections 13 and 14, as they were couched in the original framework, are independent provisions, which can be invoked separately. Mr. Divan, on this premise, urged that a similar independent power to acquire the land was traceable under Chapter I-A also. However, such a contention would merit acceptance only if the object and scope of acquisition under Section 14, as contained in Chapter V of the original framework, are similar, if not identical, to the scope and power of acquisition conferred under the same provision when proceeding under the Chapter I-A framework. In this context, it becomes crucial to analyse the differences herein.

86. Firstly, the original framework and the cited judgement do not confer or provide any preferential right in favour of the owner to develop the land, whereas there exists a definite primacy of the owner's right to develop the SR Area under Chapter I-A. Secondly and more importantly, the scope of acquisition under Section 14 (within Chapter V) in the original framework<sup>48</sup> is much broader than that in Chapter I-A.<sup>49</sup> In the former, the power of acquisition is wide enough to include improvement works and specific structures, whereas in the latter, it is restricted only to the implementation of an SR Scheme. Thirdly, in *Murlidhar Tekchand Gandhi* (supra), this Court had no occasion to evaluate the scope of Chapter I-A, to which we are concerned in the present matter. The perceived power to proceed under Section 14 without responding to the rights and powers created under Section 13,<sup>50</sup> cannot, thus, be applied *mutatis mutandis* in a case of an SR Scheme to be given effect under Chapter I-A. Given these stark differences, comparing the interpretation of the original framework and the Chapter I-A framework is akin to matching apples with oranges. The High Court has thus rightly distinguished this decision in the Impugned Judgement.

87. When an SR Area has been notified under Section 3C(1) of Chapter I-A<sup>51</sup> and its development through an SR Scheme is conceptualised, whereunder there is an inbuilt preferential right of an owner to carry out redevelopment, the power of acquisition under Section 14<sup>52</sup> would not operate in an independent silo; rather, it must derive meaning and effect from the principles prevailing throughout the legislative scheme of Chapter I-A."

(Emphasis supplied)

73. Insofar as the issue of Occupation Certificate is concerned, the respondent Nos. 1 and 2 respectively have made their stance very clear that the appellant is entitled to the Occupation Certificate for the final Sale Building in the slum scheme. Of course, such issuance of Occupation Certificate for the final sale building in the slum scheme is subject to the appellant handing over the Dark Green Portion admeasuring 2700 sq. mts. reserved for Recreational Ground (RG).

74. In the aforesaid context, we direct that the respondent Nos. 1 and 2 respectively to issue the Occupation Certificate for the final Sale Building in the slum scheme within a period of four weeks from today subject to the appellant handing over the Dark Green Portion admeasuring 2700 sq. mts. reserved for Recreational Ground (RG). For the sake of clarity and for easy identification, we set out herein below a coloured map which carries the "dark green portion CTS No. 620/A/1A/1A/3", which the appellant shall handover to the MCGM:-

75. As regards the third issue, it appears from the materials on record that the respondent No. 1 vide its order dated 26.02.2015 had directed the developer to include 34 slum dwellers who were residing on the subject property as Project Affected Persons (PAPs). In lieu of the developer handing over the PAP's to SRA in accordance with the policy, the developer was compensated with equivalent FSI for sale component. The materials on record indicate that the FSI generated in the sale component is equivalent to the Rehab Component which include the Project Affected Persons (PAPs). The appellant has already utilised such FSI generated against the PAP and has completed the construction on the final sale building. Even otherwise, the LOI dated 28.09.2017 makes it clear that the subject land is not a part of the scheme.

76. We make it abundantly clear that no construction shall be made on the subject property of any nature and the same shall be utilized only as a Recreational Ground (RG). In this regard, a clear statement was made by the learned counsel appearing for the respondent Nos. 1 and 2 respectively that no construction of any nature would be permitted on the subject property. We direct the Respondent No. 4 (Alchemi Developers) their successors and assigns that they shall not put up any type of construction on the subject property and the same shall be utilized only as a recreational Ground (RG).

77. Our final conclusion is as under:-

(1) The power of the State Government under Section 14 read with Section 3D(c) (i) of the Slum Act is subject to preferential right, if any, of the owner. This being the position of law, no case is made out by the appellant for a writ of mandamus to be issued to the State Government to acquire the subject property under Section 14 of the Slum Act.

(2) The appellant is entitled to the Occupation Certificate for the Final Sale Building in the slum scheme on the appellant handing over the Dark Green Portion admeasuring 2700 sq. mts. reserved for Recreational Ground (RG).

(3) The appellant has been fully compensated by granting adequate area/FSI for sale.

(4) We direct the Respondent No. 4 (Alchemi Developers) their successors and assigns that they shall not put up any type of construction on the subject property and the same shall be utilized only as a recreational Ground (RG).

78. In view of the aforesaid discussion, nothing further is required to be looked into in the matter.

79. The appeal is disposed of accordingly.

80. The parties are left to bear their own costs.

81. Pending application, if any, also stands disposed of.