

(2012) 04 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition (Lodging) No. 2529 of 2011

Radhika George and Others

APPELLANT

Vs

Maharashtra Housing and Area Development Authority and
Others

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Development Control Regulations for Greater Bombay, 1991 — Regulation 2(73), 33(5)
Maharashtra Housing and Area Development Act, 1976 — Section 18, 18(1), 2(13),
2(3), 2(6)
Maharashtra Housing and Area Development Act, 1996 — Section 18, 2, 95A

Citation : (2012) 3 ALLMR 697

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Rajeev Kumar, assisted with Ms. Sheetal Kumar instructed by M/s. Ashish Gatagat and Amit Karkhanis, for the Appellant; P.G. Lad, AGP for Respondent Nos. 1 and 2, Ms. Kejali H. Mastakar for Respondent No. 3, Mr. R.A. Thorat instructed by y Mr. P.B. Gujjar for Respondent No. 4, Mr. P.K. Samdani instructed by Mr. P. B. Gujjar for Respondent No. 5 and Mr. Soli Cooper a/w Mr. R.D. Soni instructed by y Mr. Bipin Joshi, for the Respondent

Judgement

Anoop V. Mohta, J.—Heard by consent of the parties in view of order of Division Bench dated 11 January 2012 thereby directed to hear and dispose of the Writ Petition with restricted prayer clauses which were further amended by order dated 14 March 2012 in Chamber Summons No. 49 of 2012. The prayer clauses are as under:-

b) Ordering and declaring of the scheme in respect of the redevelopment scheme of 7806.17 sq. mtrs. is illegal, null and void;

(c) A writ of certiorari and/or any other appropriate writ, order or direction of this Hon"ble Court calling for the records of the case in respect of the impugned order dated 11/11/2011 annexed as Exhibit A to the Petition and after perusing the same and considering the legality and propriety hereof to quash and set

aside the same;

(e) A writ of certiorari and/or any other appropriate writ, order or direction of this Hon'ble Court calling for the additional records, papers and proceedings in respect of the redevelopment scheme of the said land property described in Exhibit Z to the Petition to the extent of utilizing of 7806.72 sq. mtrs. of land and on perusal of the same, to quash and set aside the redevelopment scheme;

(f) Pending the hearing of the Petition, the Respondent No. 6 be restrained from utilizing the FSI in respect of the land acquired by the Central Railways for the railway project;

(g) that pending the hearing and final disposal of the present petition, the operation and effect of the said order dated 11/11/2011 be stayed and the respondents be restrained from taking any steps in pursuance thereof;

(h) for ad-interim reliefs in terms of prayer clause (e) & (f) above.

(i) for such further and other reliefs as the nature and circumstances of the case may require.

(j) For costs.

2. The Petitioners have challenged the order passed by the Executive Engineer, Housing, Ghatkopar Division, M.H. & ADB being statutory authority constituted u/s 95A of the Maharashtra Housing and Area Development Act, 1976 (for short, the MHAD Act) and thereby passed the operative order as under:-

ORDER

The Non-Cooperative Members No. 1 to 8 are hereby directed to vacate the tenements in their use, occupation and possession and to shift to the Transit Camp accommodation as described in the Show Cause Notices dated 16.5.2010, within a period of 7 days from the date of receipt of this Order, failing which action for their summary eviction u/s 95A of the MHAD Act, 1976 be taken against them.

Since the tenement of Non Cooperative Member No. 9 is demolished on 25.8.2008, the above proceedings u/s 95A of the MHAD Act, 1976 cannot proceed against him and the same are accordingly dropped.

3. The basic events of facts and the proceedings as per the Petitioners are as under:-

The Petitioner are members and owners of tenements at Chitranjan Nagar Vidya Co-operative Housing Society Limited, (for short, "the said Society") at Rajawadi, Ghatkopar (East), bearing C.T.S. No. 1269, at Village Kirol. The area totally admeasures 3721.53 sq. yards and consists of 8 plots of land with 7 plots admeasuring 467.2 sq. mtrs. and one plot admeasuring 449.53 sq.mtrs.

In the year 1954, the Maharashtra Housing Board had as per policy of the Union

of India (for subsidized Industrial Housing Scheme for Industrial Workers) constructed 8 chawls on the 8 plots with each chawl consisting of 4 residential tenements admeasuring approx. 440 sq. feet. Thus 32 tenements were constructed, which were allotted to the Petitioners and some others at a monthly rent for residential use.

4. In the month of December 1975, the Government of India permitted the State Government to sell the said housing tenements on "as is where is" basis.

5. In the year 1976, upto this year, the tenants paid monthly rent to the Maharashtra Housing Board. Thereafter, the rent was paid to MHADA.

6. On 18 May 1987, a Notification passed by the Government of Maharashtra inter alia, permitting conversion of tenancies into ownership.

7. On 3 November 1998, order passed by the Government of Maharashtra on the basis of Notification dated 18 May 1987 ordering the conversion of tenancies into ownership.

8. On 17 July 1999, as per the request of tenants to convert the tenancies into ownership, the Estate Manager of MHADA issued letters to each tenant in the 8 chawls to deposit the consideration for converting the tenancy rights into ownership rights along with the land appurtenant and occupied by each tenant.

9. On 20 July 1999, the tenants including the Petitioners paid a sum of Rs. 47,350/- each being the total consideration to convert the tenancy rights to ownership rights. MHADA accepted the said sum and issued receipts in favour of the tenants.

10. On 26 August 1999, the MHADA by letters of date confirmed the conversion of tenancy rights into ownership rights of each of the tenant.

11. On 7 February 2000, all 32 occupants/owners of the 8 chawls formed a Society. The said Society is registered.

12. On 30 March 2001, Central Railways paid a sum of Rs. 4,38,20,000/- to the State Government in respect of acquisition of land at Kirol Village.

13. On 19 May 2002, the Chairman/ Secretary of the Society called its Special General Body Meeting, when the following resolution was passed:-

....On obtaining the tit bit land in the name of the Society, the Society shall transfer the tit bit area to the respective individual member, which shall consist of available free spaces in front, behind and on side applicable to individual at the same date at which the Society purchased from MHADA on which the individual members can do additions, alterations or reconstruction at individual row- houses...

14. On 20 March 2003, the Collector of Mumbai, Suburban District issued a letter inter alia, stating that the Central Railways has paid a sum of Rs. 4,35,20,000/- to the State Government for acquisition of the land at Kirol village.

15. On 3 April 2003, a possession receipt whereby the Land Conservator CTS Officer, Ghatkopar Office handed over possession of the said land to Shri M.A. Bharane, Deputy Chief Engineer (Construction), Metropolitan Transport Project, Railways, Mumbai Representative Shri M.S. Rajput, Chief Engineer and Shri C.M. Mayati (Assistant Executive Engineer).

16. On 7 January 2005, an order came to be passed by the Registrar, Co-operative Societies in a proceeding filed by Kanu Patel (on of the heirs of deceased original member of Society Mr. Narsi Patel) in respect of Tenement No. 7/28. By this order, the said Kanu Patel's application for being accepted as a member of the Society was rejected. The said dispute is still pending. As such, the said Kanu Patel and/or other heirs of Narsi Patel are not members of the Society.

17. On 26 May 2005, the sale deed was executed by and between MHADA, as a vendor and the Society. By this deed, Chawl No. 1-8 were conveyed to the society for a total consideration of Rs. 90,016/-. A lease deed was executed between the MHADA and the Society, whereby the land underneath and appurtenant to the Chawl No. 1-8 was leased to the Society for 99 years w.e.f. 19 July 1999 @ Rs. 16,68,000/- towards premium and cost of FSI and Rs. 2,50,326/- being the lease rent for the period 19 July 1999 to 18 July 2005.

18. On 4 November 2005, a circular was issued by the Chairman of Society inter alia, calling for individual opinion of each member for development of the property. Members were called upon to hand over their opinion by 10 November 2005.

19. On 9 November 2005, the Petitioners by their letters objected to the redevelopment proposal and asked to be allowed to put up additional construction on existing tenements in 8 chawls by consuming additional/ excess FSI of the existing tenements as well as of tit bit land subject to MHADA's permission.

20. On 20 November 2005, the Chairman/Secretary of Society called for a special general body meeting. 23 out of 32 members attended, when 21 members were in favour of redevelopment, 9 were against development, but in favour of individual construction, one member was neutral and one member had not decided. At this meeting, the issue of tit bit land was raised and Society was asked to grant NOC. However, it was decided that the power of granting NOC will be with the general body.

21. On 11 December 2005, the Chairman/ Secretary of Society called for a special general body meeting, when the issue of tit bit land was discussed and the proposal to invite builders for development. Some members presented their letters of objection to redevelopment.

22. On 2 January 2006, the Chairman/ Secretary of Society called a special general body meeting, when 24 out of 32 members attended. The agenda was

restricted to discussing the issue of tit bit land. Some members objected to the development by builders.

23. On 10 February 2006, the Petitioners by their letter to the Society objected to redevelopment of the land and expressed their interest in developing their own tenements and asked for allotment of appurtenant tit bit land.

24. On 18 February 2006, the Petitioners by their advocates' letter to the Society inter alia, called upon the society not to initiate or accept any development proposal without the consent and/or knowledge of the Petitioners. This notice was issued u/s 164 of the Maharashtra Co-operative Societies Act.

25. On 19 February 2006, the Chairman/Secretary called the special general body meeting attended by 21 members, when the Petitioners objected to proposed redevelopment. At this meeting, the name of Respondent No. 6 i.e. Tanishq Builders was discussed and a Resolution was passed as follows:-

It has been resolved in the Special General Body Meeting with a majority to appoint M/s. Tanishq Developers to proceed with survey for the development of the Society plot. Confirming majority members for development and 9 members wishing to develop on their own and shall negotiate with the developer. It has been resolved that after the survey and the approval of land from Society final agreements will be signed between the developer and the Society.

26. On 24 February 2006, the Petitioners made individual representations to MHADA to allot tit bit land and offered to pay the consideration for this.

27. On 8 March 2006, the Petitioners by a letter addressed to the Executive Engineer - Building Proposal, MCGM objected to the redevelopment proposal and called upon the Executive Engineer not to approve building plan without the Petitioners' consent.

The Society by its advocates' letter addressed to the Petitioners informed that Tanishq Builders have been granted development rights of the property.

28. On 12 March 2006, the Chairman/Secretary called a Special General Body Meeting of the Society, when 28 members attended. The Petitioners objected to the proposed redevelopment and the following resolution came to be passed:-

Resolved that the Society grant development rights in respect of its property and structures standing thereon to M/s. Tanishq Builders together with the right to avail of and utilize the benefit of development of tit bit land to be allotted to the Society as also to utilize transferable development rights and all other benefits as accruable on the Society's property on the broad terms and conditions as set out by Tanishq Builders in their letter of intent dated 21 January 2006.

?.Further resolved that the Chairman and Secretary along with any other members of the Society are hereby authorized to discuss, finalise and execute all documents to be executed in favour of the said Tanishq Builders for giving effect to the aforesaid redevelopment of the Society's property as proposed...

This resolution was opposed by the Petitioners.

29. On 16 March 2006, the Petitioners by advocates' letter intimated the Society that as per the Resolution dated 19 May 2002, all the members had agreed that on purchase of tit bit land from MHADA, it would be transferred to each member of the Society and hence, the Resolution dated 12 March 2006 is contrary to the Resolution dated 19 May 2002. The letter also stated that some of the members attending the meeting dated 12 March 2006 were not eligible to be members and thus, the resolution was passed with consent of unqualified members.

30. On 19 March 2006, a Memorandum of Understanding (for short, "MOU") was executed by and between the Chairman/ Secretary of the Society and Tanishq Builders for redevelopment of the property of the Society.

31. On 7 April 2006, MHADA by its letter of date informed the Petitioners that a tit bit land cannot be conveyed to individual Society members as the same was conveyed to the Society.

32. On 18 April 2006, a Development Agreement was executed between the Society and Respondent No. 6 i.e. Tanishq Developers. The Agreement was signed by 20 members of the Society, who have signed the Agreement as confirming parties. The said 20 members were then shifted to transit camp accommodation provided to them.

33. In the Month of April/May 2006, the Petitioners filed Bombay City Civil Court Suit No. 2080 of 2006 inter alia, challenging the letter dated 7 April 2006 of MHADA and for reliefs that the Petitioners are entitled to be allotted a tit bit land adjacent to their tenements and that the Petitioners be not dispossessed from their tenements without due process of law. This Suit was withdrawn with liberty granted to the Petitioners to initiate appropriate proceedings against the Respondents.

The Petitioners filed a Dispute No. CC 1115 of 2006 before the Co-operative Court No. II at Mumbai inter alia, seeking reliefs against the Chairman and Secretary of the Society and for a declaration that the Resolution dated 12 March 2006, is void and the Chairman/Secretary of the Society are not entitled to act upon the same. (In these proceedings, the Co-operative Court directed the Chairman/Secretary to furnish copies of documents executed in favour of Tanishq Builders. Pursuant to this direction, the Society submitted the MOU dated 19 March 2006 and the Development Agreement dated 18 April 2006.

The Petitioners filed Bombay City Civil Court Suit No. 5556 of 2006, challenging the validity of the MOU dated 19 March 2006 and the Development Agreement dated 18 April 2006. This Suit is pending.

High Court Suit No. 2193 of 2006 was filed by one Raj Alony (sister of one of the original members of the Society Harminder Singh- tenement 1/1) inter alia, for administration of estate of Harminder Singh.

34. On 2 August 2006, 19 members of the Society gave their consent and signed individual agreement with Respondent No. 6 and they were shifted to transit accommodation camp provided by Respondent No. 6.

35. On 18 September 2006, the Society applied to MHADA for redevelopment of the lease area admeasuring 3,721.53 sq. mtrs. and additionally NTBNIB area of 3,174.75 sq. mtrs. and internal access road admeasuring 910.50 sq.mtrs.

36. On 19 September 2006, the Society submitted its proposal to the Chief Officer, MHADA for redevelopment of the said Chawl and for allotment of NTDNID plot and internal access road.

37. On 20 September 2006, an order was passed in Notice of Motion No. 2565 of 2006 in High Court Suit No. 2193 of 2006 filed by Raj Alony. It was inter alia, held that in the event of the Defendants in the Suit acquiring any right in respect of tenement 1/1 comprising the estate of Harminder Singh, original member of the Society by reason of any development, the same shall be subject to order at the hearing of the Notice of Motion.

38. On 13 April 2007, Central railways addressed a letter to the Petitioners responding to an Application under RTI Act inter alis, informed that an area of 1,033.80 sq. mtrs. Out of CTS No. 1269 at Village Kirol was acquired and taken over by Central Railways for the Railway project of fifth and sixth lines and that possession of this land was handed over by the Collector to the Central Railways on 3 rd April 2003.

39. In the year 2008, High Court Writ Petition No. 160 of 2008 filed by one of the members of the Society Kishore Awate against MHADA, whose premises were acquired by the Central Railways.

40. On 13 March 2008, the High Court Writ Petition No. 160 of 2008 was disposed of by an order of Mr. Justice Nazki and Mr. Justice Bobde inter alia, holding that even if fresh Sale Deed is executed by MHADA in favour of Kishore Nawate in the year 2005, that would be of no consequence as in the year 2003 MHADA had no ownership of the said acquired land and if the Petitioner was aggrieved by acquisition of land, he may take other damages available to him. Hence, it was prime facie held that land has been acquired by Railways and therefore, the land belongs to Railways.

41. On 28 June 2008, Respondent No. 6, Tanishq Developers made a Statement in Bombay City Civil Court Suit No. 2080 of 2006 that they will not dispossess non-consenting members without following due process of law.

42. On 19 July 2008, a letter was addressed by the Chief Officer, MHADA to the Executive Engineer, Building proposal Department, Ghatkopar, regarding the proposal for granting NOC for reconstruction of Building Nos. 1 to 8 known as "Chitranjan Nagar Vidya Co-operative Housing Society Ltd." The letter states that the MHADA has no objection to the Applicant undertaking construction and NOC is granted on the basis of terms and condition enlisted at items 1 to 21 of the

said letter.

The said NOC is granted in respect of land bearing CTS Nos. 1268 (part) and 1269 (part) of village Kirol.

Clause 21 of the NOC states that as regards Suit No. 5556 of 2006, the Society should give an affidavit cum undertaking that the decision of the Court in the said Suit No. 5556 of 2006 will be binding on the Society.

Condition 20 of the said NOC states that the Society should give an undertaking that no construction will be allowed on land acquired by the Railways, which should be handed over to Railways as and when demanded.

43. On 25 August 2008, 9 structures were demolished by the Railways in the course of its expansion programme. The area affected by the project of the Railways admeasures 1,033.50 sq. mtrs. and NTDNIB which was restrained by MHADA admeasuring 887.25 sq. mtrs. is also affected by the said project.

44. On 29 August 2008, the Municipal Corporation of Greater Mumbai granted the IOD in respect of development of Society's property.

45. On 10 October 2008, the Central Railways addressed a letter to one of the members (Tenement No. 5/18) of Kanti Mahendra inter alia, stating that CTS No. 1269 is already acquired and alternate accommodation allotted to House No. 5/17.

46. On 6 December 2008, DCR 33(5) amended inter alia, providing that any redevelopment undertaken by a Co-operative Housing Society/Developer appointed by the Society which has obtained NOC from MHADA sanctioning additional FSI with consent of 70% members.

47. On 13 January 2009, the Government Resolution passed inter alia, stating that 70% consent of Society members is a mandate even prior to amendment of DCR 33(5).

48. On 10 June 2009, the order passed by Hon'ble Justice Dalvi in Notice of Motion No. 2565 of 2006 in High Court Suit No. 2193 of 2006, filed by Raj Alony v. Harcharan Kaur, that the Defendant in the Suit shall not transfer or otherwise deal with properties in the suit i.e. including tenement 1/1 in the Society.

49. On 10 February 2010, the Society made an Application to MHADA for taking action against non-consenting members u/s 95A.

50. On 10 March 2001, the Municipal Corporation of Greater Mumbai addressed a letter to the Society inter alia, stating that the IOD dated 29 August 2008 and the past commencement certificate has been granted by them by retaining the row houses of the non- consenting members of the Society.

51. On 16 May 2011, the MHADA issued Notice u/s 95A for summary eviction of the Petitioners.

52. On 23 May 2011 and 7 July 2011, the Non-consenting members filed their replies to the show cause notice dated 16 May 2011.
53. On 13 June 2011, the Petitioners addressed a letter to the Chief Minister seeking intervention in respect of redevelopment.
54. On 16 June 2011, the Petitioners filed High Court Writ Petition (L) No. 1194 of 2011 against show cause notice dated 16 May 2011, seeking protection from summary eviction.
55. On 16 June 2011, the Petitioners' High Court Writ Petition (L) No. 1194 of 2011 was disposed of by an order passed by Justice Chandrachud and Justice Anoop V. Mohta, inter alia, granting protection of 7 days against eviction.
56. On 12 July 2011, the MHADA passed an order directing the Petitioners to relocate to the transit accommodation within 7 days, failing which MHADA threatened to proceed with summary eviction of the Petitioners.
57. In the Month of July 2011, the Petitioners aggrieved by MHADA's order dated 12 July 2011 filed High Court Writ Petition (L) No. 1419 of 2011.
58. In the month of August 2011, the MHADA, Respondent No. 6 Tanishq Developers and the Secretary of the Society served on the Petitioners individual unaffirmed affidavits in reply.
59. On 21 September 2011, the order passed by Justice Vazifdar in High Court Writ Petition (L) No. 1419 of 2011 inter alia, recording MHADA's statement that the impugned order dated 12 July 2011 is withdrawn and that MHADA will pass fresh order giving reasons for all contentions raised after hearing all the parties.
60. On 7 October 2011, the MHADA issued fresh show cause notice against non-consenting members in respect of redevelopment of the property of the Society.
61. On 12 October 2011, Respondent No. 2, i.e. Executive Engineer, MHADA called for a meeting to rehear the grievances of the Petitioners.
62. On 18 October 2011, the Petitioners through their advocates filed a detailed reply to show cause notice dated 7 October 2011.
63. On 19 October 2011, Respondent No. 6, Tanishq Developers, addressed a letter to Respondent No. 2, Executive Engineer, MHADA that transit accommodation has been arranged for each of the Petitioners and requested that an eviction order be passed against the non-consenting members.
64. On 24 October 2011, the Society filed a detailed reply before the Executive Engineer, MHADA in respect of show cause notice dated 7 October 2011 and inter alia, contended that upon death of one of the original members (Daddaram Sawant), his wife Hemlata Sawant and son Satish Sawant would be enrolled as members of the Society and further stated that Satish Sawant was a member of the Committee and had also signed the lease deed and sale deed with MHADA.

65. On 3 November 2011, MHADA had conducted a hearing in respect of show cause notice dated 7 October 2011.

66. On 11 November 2011, the impugned order passed by Respondent No. 2 inter alia, directing summary eviction of the Petitioners u/s 95A of MHADA.

67. On 22 November 2011, the Petitioners, non-consenting members, filed the aforesaid writ Petition against the impugned order dated 11 November 2011.

68. On 25 November 2011, Respondent No. 6 through Paresh Shah on behalf of Tanishq Developers filed their Affidavit in Reply to Writ Petition (L) No. 2529 of 2011.

69. On 12 December 2011, the Petitioner Radhika George filed Affidavit in Rejoinder in the aforesaid Writ Petition. In the said Affidavit in Rejoinder, the Petitioners inter alia, placed on record the defects and lapses on the part of Respondent Nos. 1 and 2 in granting NOC as well as in the calculation of the 70% consent for grant of NOC.

70. On 9 January 2012, additional affidavit filed by Deputy Engineer, Anant Vishnu Salvi on behalf of Respondent No. 2 in the aforesaid Writ Petition. In paragraph 5 of the said Affidavit, Respondent No. 2 inter alia, admitted that the NOC dated 19 July 2008 was issued in respect of Plot Nos. 1268 (part) and 1269 (part) Village Kirol and sought to clarify that Plot No. 1268 (part) was shown inadvertently on the said NOC and that a corrigendum to that effect would be issued by Respondent No. 4.

In the said Affidavit, it is further admitted by Respondent No. 2 that the fact of payment of compensation by Central Railways to the State Government as per Collector's letter dated 20 March 2003 was not known to the Respondent Nos. 1 and 2 and that after verifying the fact, a Corrigendum in that regard qua the NOC dated 19 July 2008 would be issued by Respondent No. 1.

71. On 11 January 2012, tenement No. 6/24 of David Moses was demolished by Respondent Nos. 1, 2 and 6.

72. On 25 January 2012, the Petitioners moved Chamber Summons No. 49 of 2012 inter alia, to amend the Petition as per Schedule annexed to the Chamber Summons.

Additional affidavit in Rejoinder filed by the Petitioners to affidavit dated 9 January 2012.

Notice of Motion No. 55 of 2012 moved by the Petitioners in the aforesaid Writ Petition inter alia, for restoring tenement No. 6/24 to the Petitioners together with electricity connection.

73. The relevant provisions of the Maharashtra Housing and Area Development Act, 1976 (MHADA Act, 1976) reads as under :

2(6) "board" means a Board established u/s 18;

18. Establishment of Boards.- (1) (a) The five Boards which have been established before the commencement of the Maharashtra Housing and Area Development (Second Amendment) Act, 1992 (Mah. XXII of 1992), and shown in column 1 of the following Table shall have the area of jurisdiction shown against each such Board in column 2 of the table.

TABLE

Name of the Board

Area of jurisdiction districts

1.

The Mumbai Housing and Area Development Board (substituted by Mah. 25 of 1996, s. 2, Sch., Para (3).

(a) The City of Mumbai (substituted for the words "City of Bombay" by Mah. 25 of 1996)

74. Board for purposes of this Chapter. - The Mumbai Repairs and Reconstruction Board established u/s 18 of this Act shall be the Board for the purposes of carrying out the purposes of this Chapter.

95-A Summary eviction of occupiers in certain cases. - (Section 95-A was inserted by Mah. 16 of 1998, s 7 (w.e.f. 15-5-1998) (1) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 70 per cent of the total occupiers of that building and a No Objection Certificate for such reconstruction of the building of that building is issued by the Board to the owner or to the proposed co-operative housing society of the occupier, as the case may be, then it shall be binding on all the occupiers to vacate the premises:

Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.

(2) On refusal by any of the occupant to vacate the premises as provided in subsection (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in chapters VI and VII of this Act, to effect summary eviction of such occupiers.

(3) Any person occupying any premises, land, building or structure of the Board unauthorized or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.

(4) Any person who refuses to vacate such premises or obstructs such eviction shall, on conviction, be punishable with imprisonment for a term which may

extend to one year or with fine which may extend to five thousand rupees, or with both.

74. The relevant Development Control Regulations for Greater Mumbai, 1991 are as under :

33. Additional Floor Space Index which may be allowed in certain categories. -

(5) Low cost housing schemes of the Maharashtra Housing and Area Development Authority. - The floor space index for low cost housing schemes for economically weaker sections and low income groups of the Maharashtra Housing and Area Development Authority, having at least 60 per cent of the tenements under Economically Weaker Sections (EWS) and Low Income Group (LIG) categories, shall be allowed to be increased by 20 per cent over and above the normally permissible FSI. For the purpose of calculating the FSI, the entire area of the layout shall be considered and under- utilized F.S.I. Of the economically weaker section and low income group scheme areas may be permitted to be utilized for Higher Income Group (HIG), Middle Income Group (MIG) and other amenities in the Scheme. Sub-division of plots will be permissible on the basis of compulsory open spaces as in these Regulations. This F.S.I will be subject to the Regulations in Appendix I hereto.

75. The parties have cited various judgments to support their contention opposing the impugned order and/or supporting the order/action of the Respondents.

76. I have in Shivkupa Builders and Developers Vs. State of Maharashtra and Others, observed as under :

36. The guidelines for the implementation of Slum Rehabilitation Scheme in Greater Mumbai provide procedure for submission, processing and approval of SRA Scheme which are as under :

Eviction of eligible but non-participant slum- dwellers:- A special wing has been started in SRA under the Additional Collector to decide and remove the hurdles and obstructions being created sometimes by a few slum- dwellers with vested interests. There is already a legal procedure laid down for taking action against such non- participants in the DCR 33(10). SRA assures the promoters of slum- rehabilitation schemes with prompt action in such eventualities.

37. The Apex Court has also in Pramila Suman Singh Vs. State of Maharashtra and Others, has considered, though on different facts, the purpose and object of the Slum Acts and scheme in the following words :-

8. Although all planning and development works were covered under the aforesaid Act, however, with a view to make better provision for the improvement and clearance of slum areas in the State and their redevelopment and for the protection of occupiers from eviction and distress warrants, the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,

1971 (hereinafter referred to as "the 1971 Act") was enacted by the State of Maharashtra.

9. Chapter I-A, however, was inserted by Maharashtra Act 4 of 1996 providing for slum rehabilitation scheme.

47. The SRA is definitely empowered and has jurisdiction, if case is made out, after giving the hearing and opportunity to the owner to pass such order including to sanction, approve and appoint new developer/agency for the scheme. The power and jurisdiction of the SRA is definitely fall within the ambit of quasi-judicial power/authority. In the present case, admittedly, all the necessary parties appeared before the SRA and filed their respective claim/objections and not only the owner. After hearing both the parties, the impugned order is passed. The word "owner" cannot be restricted for the "owner of the land" only.

THE COMMERCIAL DOCUMENTS-DEVELOPMENT AGREEMENTS-OTHERS.

50. The agreement of development between the parties, the developer and the society and its members, on the measured land is definitely a commercial contract. To say that the contract is for the development/for the improvement of the slum area and it is only for the occupiers of the slum and no other parties, in my view, is unacceptable. Therefore, the submission that such scheme is always for the rehabilitation of the slum dwellers/occupiers and there should be no other interest of anybody else, is contrary to the whole scheme itself. The rights of occupiers/slum dwellers are restricted and also the rights of the developer/promoter/owner. Both are different and have distinct identity and purpose, but cannot be dissected only with a view to look into the interest of the slum dwellers/occupiers exclusively. In my view, both should run together.

THE ANNOUNCED SCHEME IS BASED ON THE MEASURED LAND

51. It is very clear, even from the scheme that 70% members of the society or slum dwellers can come forward and proceed to develop the land by forming the society and by appointing a developer to develop the measured and the declared area, as per the scheme. The objections, even by remaining 30% need to be overlooked for the purposes of development of the area. Those remaining members of the society/occupiers though not ready, but ultimately, as per the scheme, need to vacate the area. They are also entitled to have similar area/flat in the scheme. The provisions are made under the Acts to pass such appropriate order and/or to take action if objecting members/occupies refuse or do not cooperate to vacate the premises. The Competent Authority, as well as, the SRA, as noted above, therefore, play dominant role while sanctioning or granting any approval including 70% consent and all necessary documents. It is always subject to the demarcated land/area.

52. Before any project/scheme is declared, the first and foremost aspect, according to me, is the actual land/area which is under occupation of the slum

dwellers. The State Government's policy is based upon the area/land on which the tenants/occupiers/slum dwellers have been residing and/or doing their business. The slum dwellers or occupiers, therefore, are entitled to retain their respective area of flats preferably on the land in question subject to terms and conditions. The remaining area is available as a component for sale. Therefore, when the society/its members enter into a development agreements with the developer, the measured area of the land with clear demarcation, is always basic part/component of the agreement. The developer/promoter, based upon the same enter into a contract with the society/its members and agreed to develop the property accordingly. The requirement of plans, apart from various other formalities itself means clear demarcation of area for all the purposes, i.e. area/site for the occupiers and the area/site for the free component. The conditions or restrictions as the SRA is entitled to put, definitely based upon this foundation. One cannot overlook, even the requirement of verification of financial capacity of the promoter/developer by the SRA.

53. The concept of encroachment even by the developer is always a matter of objection by the Competent Authority and/or by the occupiers and/or by third person who are affected by such encroachment. This also means the requirement of clear demarcation of the land and the area. The Authorities, in a given case, are entitled to take action against the developer and/or society if they contravene any provisions/approval or sanction conditions and/or if there is any contravention of the plans by putting unauthorized construction by encroachment or otherwise. The slum dwellers/members/tenants and their entitlement, based upon the land in their occupation therefore just cannot be overlooked, while submitting any modified plans, as well as, granting any kind of approval or sanction by the SRA.

THE DELAY IN DEVELOPMENT OF ANY SCHEME IS NOT IN THE INTEREST OF PUBLIC OR OCCUPIERS - UNHEALTHY COMPETITION.

80-A. Such delay is definitely not in the interest of slum dwellers or it is not in the public interest. Though this SRA scheme and the policy is for rehabilitation of such slum dwellers/occupiers/tenants on the Government land or the Corporation land, yet the commercial aspect of such development just cannot be overlooked. The unhealthy competitions and the commercial aspect, even in the mind of slum dwellers/occupiers though project is for the development of slum dwellers just cannot be overlooked. I am not inclined to accept the case/submission of the learned counsel for the Respondent that the Court must consider such project from the point of view of slum dwellers only; there is no commercial interest of anybody and specially of the developer and the developer wants to develop this property as per the scheme. As noted already, all things should run together. The Authority ought to have considered all above circumstances before passing the impugned order. The SRA is, therefore, bound to pass the order within the frame work of law first and not on sympathetic consideration only for the slum dwellers.

89. I am of the view, when the necessities change it also changes the ideologies.

The new practical problems crop up. Therefore, the needs of the changing society must be addressed or reshaped at the earliest. It should not remain unsolved. All are interconnected and interlinked for the developing society. Therefore, any such steps or order cannot be termed as judicial activism or revolutionary approach or liberalism. An evolutive process by way of order or interpretation is necessary by a judicial moderation. It is necessary to struck a balance between the commercial and financial aspects with the fundamental, social and human aspects in any development. It cannot be one sided or biased.

77. Above observations are relevant for deciding the issues raised in the Petition. The provisions of MHADA Act, 1976 and as observed above by me and even otherwise, no way takes away the rights and entitlement of hearing before passing any adverse order against the Petitioner and/or such person. No natural justice no valid order. In the present case, the impugned order was passed after hearing both the parties again.

78. The submission that there is no procedure for eviction laid down u/s 95-A of MHADA Act, 1976 for want of specific rules and regulations and/or procedures, though correct, yet considering the scheme and purpose of the Act, the provisions so stand today and as there is no validity of the same is under challenge, and if the basic principles of natural justice and hearing are followed and in the facts and circumstances, cannot be stated to be unjust and/or unworkable and/or illegal. In the facts and circumstances, the Authority, after considering the material on record has passed a temporary eviction order for the completion of the project, cannot be stated to be unjust or bad in law. The action and the order so passed after considering the basic provisions of laws, cannot be stated to be illegal and/or bad in law. The Court needs to consider the merit and de-merit of the matter, basically on the foundation of principles of natural justice and fair play.

79. The judgment cited by both the parties revolving around the said provisions no way supported and/or guided that the eviction order can be passed by the Authority under the Act, without following the due procedure of law. Once the due procedure of law is followed, some lacuna and/or some irregularity considering the scope and purpose of such orders, that itself cannot be the reason to halt the project and/or set aside the order which will definitely result into the early action to complete the project.

80. A Division Bench of this Court in Kiran Baburao Vanjari and ors v. M/s. Goregaon Unnati CHS Ltd and ors, LPA No. 202/2011 decided on August 8, 2011 observed in paragraph 13 and as relevant is quoted as under:

13. The main question which requires consideration is as to whether the occupants of chawl No. 19 are party to any resolution for redevelopment of the same and whether 70 per cent requisite majority was available at that time. It is one of the requirement of law that if majority of the members decides to go for redevelopment of the existing premises, a resolution to that effect is required to

be passed by the Co-operative Housing Society and if 70 per cent decides in favour of such redevelopment, then the redevelopment work can be given green signal by MHADA. MHADA is also required to consider as to whether the transitory accommodation which are given to the members have adequate facility so that during the intervening period, the members may not suffer for want of roof over their head. In short, the MHADA is required to consider the interest of the members who are likely to be evicted for temporary period. One may have to suffer little bit hardship during the interregnum but in return one may get better accommodation and solve life long problem of accommodation.

81. It is noted in paragraph 20 of above judgment that modified DCR 33 (5) is applicable even to those cases where NOC has been issued prior to 6 December, 2008.

82. Another Division Bench of this Court in *Sushila Digambar Naik and ors v. Maharashtra Housing & Area Development Authority and ors.*, Appeal (Lodging) No. 86/2010 decided on 13 March 2010 against the judgment of Single Judge in *Sushila Digamber Naik v. Maharashtra Housing and Area Development Authority*, Mumbai, 2010(2) Mh. L. J. 547, while dealing with the definition of "Board" read with Section 18 and Section 95A of MHADA Act, 1996 has observed as under:-

18. The Maharashtra Housing and Area Development Act, 1976 defines the term "Board" in Section 2(6). It means the Board established u/s 18 of the Act. Section 18 of the Act states that the five (5) Boards which have been established before the commencement of the MHADA (2nd amendment) Act, 1992 and shown in Column 1 of the table appearing below sub-section 1 (sub-clause (a) of Section 18) shall have the area of jurisdiction shown against each of such Board in Column 2 of the table. Serial No. 1 is the Mumbai Housing and Area Development Board and its area of jurisdiction is District and City of Mumbai and Mumbai Suburbans. Thereafter, Section 18 (1) (c) states that the State Government, by Notification in the Official Gazette, establish two (2) Boards for carrying out the activities of repairs and reconstruction and slum improvement. The Board shall have the jurisdiction over the area in the Districts as shown against each of them on and with effect from such date as may be specified in that Notification. As far as the Mumbai Repairs and Reconstruction Board which is enlisted at Serial No. 1 below sub-clause (c) is concerned, its area of jurisdiction is the City of Mumbai.

19. Therefore, there is no substance in the contentions of Mr. Tembe that Mumbai Repairs and Reconstruction Board established u/s 18 of the Act shall be the Board for the purpose of carrying out Chapter VIII of the MHAD Act, 1976. In other words, his argument that Section 95-A can be invoked only by the Mumbai Repairs and Reconstruction Board established u/s 18 cannot be held to be valid as the said Board has no jurisdiction in so far as the premises in the present Petition and Appeal are concerned. Admittedly, these premises are not located and situated in the City of Mumbai but are in Mumbai Suburban District. Mumbai Suburban District is not specified as the area of jurisdiction of the Mumbai

repairs and Reconstruction Board [see Section 18(1) (c)]. Therefore, Respondent No. 2 to the Petition and Appeal was the Board having jurisdiction in respect of the premises covered by the present Petition. Therefore, the Executive Engineer of the Second Respondent was competent to issue the show cause notice u/s 95-A of the Act.

21. His argument was that in the instant case, the old D.C. Regulation 33(5) would apply and the Notification dated 6th December 2008 modifying the same will be inapplicable. With his assistance, we have perused the old D.C. Regulation 33(5) and the Notification dated 6th December 2008. The preamble to the Notification states that the Government has sanctioned D.C. Regulations for Greater Mumbai and they came into effect from 25th March 1991. D.C. Regulation 33(5) of the Regulations deals with low cost housing schemes of the MHADA. The Government in the Housing Department has declared a Housing Policy and the Policy proposed to allow redevelopment of MHADA colonies by providing higher FSI and to revise the size of old tenements. This will enable the present occupants to have better accommodation as well as create additional housing stock. Therefore, the Government found it necessary to prepare a new set of Regulation No. 33 (5) by replacing the existing Regulation 33(5). Thereafter the Government followed the necessary procedure for modification of the D.C. Regulations and declared that Regulation 33 (5) as existing stands deleted and replaced by the Schedule to the Notification.

22. ? Therefore, from a reading of 33(5)(7) as modified, it cannot be argued that the modified Regulation 33 (5) will apply only to NOC's issued subsequent to the modification and not earlier. On a proper and complete reading of the modified regulation, it is clear that to facilitate redevelopment of the existing housing schemes of MHADA so also to facilitate construction of tenements for low cost housing scheme on vacant land, for economically weaker section that modification has been made. Once we find that the D.C. Regulations have been amended and Regulation 33(5) has been brought into force from 6th December 2008, the present reconstruction permitted by the Board under the subject NOC would also be covered by the modified D.C. Regulation 33(5) provided compliance is made in all respects with the modified Regulations. The benefit will not be made available unless such compliance is made. The terms of the NOC can be amended in that behalf. Until that is done, the benefits including additional FSI could not be derived by the NOC holder. The terms of NOC do not control the interpretation of the modified D.C. Regulation 33(5). That would defeat the very purpose of the modification.

23. This aspect has been clarified by MHADA in its affidavit filed in reply to the writ petition. In paragraphs 3 and 4 of the affidavit, Respondent No. 3 speaking on behalf of Respondent Nos. 1 to 3 has stated that amended Regulation 33(5) is applicable to the present re-development scheme. That is how they have invoked Section 95-A of the MHADA Act. The argument of Mr. Tembe that amended D.C. Regulation 33 (5) would not be applicable because the NOC was issued on 9th

January 2004 is thus answered by MHADA itself.

24. In view of our above observations, it is clear that the amended/modified Regulation 33(5) cannot be held to be prospective as urged by Mr. Tembe. For the reasons aforesaid, the argument on this aspect canvassed by him must be rejected.

83. The submission with regard to the scope of enquiry by quasi-judicial authority and the breach of principles of natural justice and obligation of State Authority while conducting enquiry has been dealt with by me in *Shivkupa Builders & Developers v. State of Maharashtra and ors* (supra) and therefore no further discussion is necessary. Here, in the present case, there is no case made out of Doctrine of Public largess as sought to be contended.

84. Admittedly, the Petitioners' Suit revolving around the challenge to NOC dated 19 July 2008 (Exhibit "Z") and related aspect is pending before the City Civil Court. Till this date, there is no interim order and/or injunction in favour of the Petitioners and/or against the concerned Respondents. The pendency of such Suit, therefore, cannot be the reason not to proceed with the project in view of the majority decision already taken in favour of the implementation of the Scheme. The challenge with regard to the breach of lease deed clauses is also without any foundation, basically at the instances of the Petitioners, minority members, specifically when from time to time various resolutions have been passed, based upon which all the parties proceeded. The Resolution of 12 March 2006 is also subject matter of Dispute No. 151 of 2006. There is no interim order, even in that matter, against the Respondents. All these disputes, therefore, unless decided by the Competent Court and as there is no interim order, the submission revolving around the same, just cannot be re-opened and or adjudicated first time in the present Writ Petition and basically when the challenge is to the impugned order passed u/s 95- A of the MHAD Act.

85. In the impugned order, the objection with regard to the 70% computation of the members, as dealt in the following words, also needs no interference:-

As regards proceedings u/s 95A of the MHAD Act, 1976, this office in has to see that there is a subsisting NOC, 70% of the members have consented to the Redevelopment Scheme and that Transit accommodation has been made available by the NOC holder/developer. In the present case, the NOC dated 19.7.2008 is still valid and subsisting. Transit accommodation as per Show Cause Notices is also made available by the applicant No. 2. As regards 70% consent of members, that aspect is required to be looked into by this office only in cases where NOC is issued prior to the amendment to DC Regulation 33(5) that is, prior to 6.12.2008. In all NOC cases issued by MHADA after 6.12.2008, the issue of 70% consent of members is scrutinised by the concerned office and then MHADA issues the NOC. In the present case, the total number of members of Applicant No. 1 Society was 32. In respect of 1 tenement as mentioned by the Applicant No. 1 Society, the legal representatives of one of its member, one

Haqiq Singh, an Order of restraint has been passed by the Hon''ble High Court in respect of the tenement standing in his name. Thus, the effective voting strength of the society is 31. 19 members have signed the Development Agreement dated 8.4.2006 with the Applicant No. 2. They have also entered into separate agreements with the Applicant No. 2 granting their consent. The heirs and legal representatives of one K.N. Patel, a deceased member of the applicant No. 1 Society as stated above have also granted their consent to the Redevelopment Scheme. Subsequently, 2 other members have granted their consent to the Redevelopment Scheme. Thus, 22 members out of 31 members have granted their consent to the Redevelopment Scheme. The Applicants thus have 70.96 consents to implement the Redevelopment scheme. In such a case where a majority of the members have opted for the Redevelopment Scheme, the minority group cannot be permitted the stall it, as held by the Hon''ble High Court in its Order dated 12.2.2011 passed in Writ Petition (Lodging) No. 851/2011.

86. It is relevant to note that all the members, including the Petitioners, considering the resolutions so passed from time to time, and as the Respondents also granted necessary permission and accordingly the parties proceeded further, there remained no doubt that the interest of all the members needs to be considered in the development scheme of such nature. There is no dispute that all the members of the Society are entitled for their respective tenements. The reduction of land, even if any, in view of the acquisition of the part of the land by the Central Railway, that itself cannot be the reason not to grant the respective rights of the Society members. Therefore, the members, though they are in occupation of the area/building, not acquisition and/or acquired by the Railway that itself cannot be the reason to overlook the claim and/or discard those 9 members from the Scheme. The Society and the concerned Respondents, therefore, are under obligation to consider their case based upon the land and/or area available, after acquisition if any, and needs to distribute the tenements according to the Scheme. The submission that 9 members, whose tenements have been affected by the acquisition, ceased to be the members and the consent of 8 such members cannot be treated and/or calculated for the purpose of computation of 70% of occupants of 32/31 members, is without substance. Their membership still subsists and so also their rights and/or interest though the land was surrendered for the public purpose, if any. They still remained to be the occupants and/or members for the purpose of the tenements.

87. It is also relevant to note that the NOC, which was not under challenge in the present Writ Petition, was based upon a letter dated 19 July 2008. The amendment came into force on 17 July 2008. The provision of regulation 33(5) was applicable after 6 December 2008. The amendment being prospective in nature. The provisions and the action so initiated u/s 95-A was well within the purview of law and the record. There is no challenge to the NOC and therefore, all these aspects revolving around the same and the action so initiated based upon Section 95-A and as raised and challenged, in my view, is of no substance.

88. The NOC, therefore, as issued on 19 July 2008, at that time the concept of 70% was not on statute book. The same came into force subsequently. Therefore, the decision so recorded above and in the facts and circumstances of the case, I am not inclined to disturb the findings given with regard to the estimation of 70% of the occupants, as observed above. The subsequent changes and/or change of circumstances of this nature, basically when some of the members though objected at the relevant time, but in view of the majority decision, the resolutions have been passed and the parties proceeded to develop the scheme, cannot be disturb at the instance of such disgruntle members and/or at the instance of the persons who were in minority, since the inception to look into computation to disturb the whole project. Such minor correction in negative and/or positive side, now cannot be disturb and/or taken note of to cancel the whole project which is in the interest of majority of the members.

89. The status-quo order in a Suit No. 2193 of 2006 at the instance of one occupant and/or issue with regard to Shri Kanubhai Narsibhai Patel and Ms. Jyoti Patel who have given consent being occupants cannot be the reason to disturb the permission/ NOC so granted at the relevant time.

90. It is also relevant to note that the Civil Suit No. 2080 of 2006, filed by one Mr. Kishor Awate, where the similar reliefs were claimed, revolving around the letter dated 7 April 2006 was withdrawn and no such fresh Suit was filed thereafter. The same also the position with regard to the dispute in the Co-operative Court. Suit No. 5556 of 2006 filed by Petitioner No. 1 and one Mr. Bhaskar Prabhu for want of specific relief, just cannot be adjudicated again in the present Writ Petition and in fact, cannot be adjudicated even by the authority u/s 95-A. Therefore, I am not permitting the Petitioners to raise the same issue again in this Petition. That itself cannot be the reason now, to accept those similar contentions raised in the present Petition.

91. It is clear from the record that they are members of the litigation/disputes raised by the Petitioners and all the time the object was to halt the project on similar grounds. Till this date, there is no interim order whereby any Court has halted/injuncted to not to proceed with the project, basically because of the involvement of majority members decision to support the project. In the impugned order all these various aspects have been taken note of including the fact that more than Rs. 21 crores have been invested and/or the concerned Respondents have incurred the expenses for the project. The alternative accommodations have been arranged for the majority members. The details have been provided to all the respective members. But for the objection, the project could not be proceeded further. The submission that the NOC is deemed to have been cancelled and/or no project can be proceeded based upon such NOC, basically when there is no specific challenge raised but not pressed with regard to the same, therefore, the Petition as stands today, the submission revolving around the NOC and related aspects are untenable. I am inclined to accept the contention that the impugned action, as well as, the order so passed u/s 95-A of

the Act is well within the framework of law and the record. In absence of any other provisions and considering the scheme and purpose of the Act and redevelopment scheme, the action so initiated, in no way can be stated to be illegal and/or without jurisdiction and bad in law and so also the demolition so made based upon the situation, cannot be stated to be illegal and/or bad in law. I am not inclined to accept the case of restoration of the possession of Petitioner No. 3 as contended. However, it is observed that the Respondents to provide alternative accommodation immediately if already not provided to such Petitioners and/or to all those members who want to shift, so that the project can be proceeded further. The allegations therefore, of collusion and/or illegality by all the Respondents has no substance.

92. It is relevant to note that various litigations have been filed one way or other, by same or other members, disgruntle members and the same have been pending since long to give opportunity, this court in fact, remanded the matter back. The impugned order was passed after re-hearing all the parties again. Therefore, to say that there was no opportunity was given as required has no substance, specifically considering the scope and purpose of the present Writ Petition in which the basic order, which is not challenged, passed by the authority u/s 95-A of the MHAD Act. Therefore, considering the scope and purpose of Section 95-A, the disputed questions so raised and which are the subject matter of various litigation, and as just cannot be reopened in the present petition, I am not inclined to accept the case that the scheme as framed, is illegal, null and void.

93. I am also of the view that for the proper implementation of said development scheme, some corrections and/or clarification, is permissible mode with a view to complete the project which was started since long and where huge investments has already been made by the concerned Respondent. All the majority members are awaiting their project, therefore, just cannot be further halted, except where necessary for certain clarification and/or re-assessment of the area and/or area of the plot and/or of the tenements, in view of the change circumstances including of the law and/or circulars. The whole project cannot be stated to be illegal, bad in law and the grounds so raised by the Petitioners.

94. Considering the scheme and object of the Act, the Authority/Board needs to work together to undertake the building repairs, reconstruction and occupation, housing and rehabilitation schemes. The DCR, the connected activities and the machineries u/s 66 read with Section 95A and Section 18 need to be read together with Section 74, 2(3), 2(6) and (13) and the other provisions of the MHAD Act and Rules. Therefore, taking overall view of the matter, I am of the view that the order is sustainable on the ground of jurisdiction, power and authority. The action so initiated is well within the framework of law and the record. So also the issues about NOC and 70% majority as contemplated.

95. The importance is 70% majority on the date is relevant. Any project, based on all the parties decision also binds all members. The Respondents and/or the

concerned parties are under obligation to perform their part so also the occupiers/ occupants and the members of the Society. The aspect of saleable component and/or distributable, fixed area tenements are also depends upon compliances of various such obligations. The consent once given binds all the parties. Vasant Kheraj Bhanushali and Others Vs. Goregaon Siddharth Nagar Sahakari Grih Nirman Sanstha Ltd. and Others, .

96. In the present case, one of the important facet is the following averments made in the affidavit dated 9 January 2012 filed by Deputy Engineer of Respondents 1 and 2 being an Officer of Regional unit of MHADA, which are as under :

3. I say that the Petitioners have fallaciously contended in paragraph 20 of the Affidavit in Rejoinder that the redevelopment scheme is being carried out to include even the area which is affected by the Railway Expansion Programme. The said contention is totally incorrect inasmuch as, out of the total area of 7806.72 m² allotted to the said Society by the Respondent No. 1., an area admeasuring 1618.56 m² only is the area affected by the Railway Expansion Programme. Thus, the balance plot area available for redevelopment is 6186.16 m².

4. I say that under the amended Development Control Regulation 33(5), a MHADA Layout is entitled to 2.5 FSI. Thus, the said Society would be entitled to an area admeasuring 15,470.40 m², that is, (6188.16 x 2.5), the material particulars whereof are as under:-

Total FSI available to the said Society under amended DCR 33(5), that is,

6188.16 x 2.5 =

15470 m²

FSI granted as per NOC dated 19.7.2008 =

5532.49 m²

Balance available FSI to the said

Society upon payment of additional premium=9937.91 m²

In addition thereto, pro rata of the balance FSI in the said Layout, upon its approval by the MCGM would also be available to the said Society.

5. I say that inadvertantly and through oversight, in the NOC dated 19th July, 2008 the plot Nos. 1268 (Part) and 1269 (Part), Village Kirol are mentioned. I say that the redevelopment scheme is being implemented on the plot bearing CTS No. 1269 Part and not 1268 Part. I say that a Corrigendum to that effect would be issued by the Respondent No. 4. The fact that the Central Railway has paid the compensation in respect of the affected area to the Government as per the letter dated 20th March, 2003 issued by the Collector, M.S.D in respect of the affected portion of land was not known to the Respondent Nos. 1 and 2. A copy

of the said letter is annexed as Exhibit-A to the Affidavit in Rejoinder. Had the said fact been known to the Respondent No. 1, then the question of the Respondent No. 1 addressing a letter to the Central Railway as late as 3rd December, 2007, calling upon it to pay the premium in respect of the affected land as per the existing policy of the Respondent No. 1 could not and would not arise at all. I crave leave to refer to and rely upon a copy of the said letter as and when produced. I say that upon verifying the said facts from the concerned departments, necessary Corrigendum in that regard qua the said NOC dated 19th July, 2008 would be issued by the Respondent No. 1. This exercise would not in any manner affect redevelopment scheme under DC Regulation 33(5) inasmuch as though the net plot area available with the said Society admeasures 6188.16 m², yet, the present redevelopment scheme in the 1st phase contemplates redevelopment of the Built Up area of 5532.45 m² only as reflected in the IOD dated 29th August, 2008.

7. I say that the Petitioners have in paragraph 2 of the Affidavit in rejoinder, given up their plea for challenging the said NOC dated 19th July, 2008 issued by the Respondent No. 1 to the said Society for redevelopment of the said land under DCR 33(5). I say that the impugned order dated 11th November, 2011 passed by the Respondent No. 2 is a consequential order passed in pursuance to the said NOC inasmuch as the Petitioners being Non-Cooperative members and having not vacated their tenements for the purpose of redevelopment, the Respondent Nos. 1 and 2 are empowered under the statutory provisions of law to summarily evict them from the tenements in their use, occupation and possession.

97. This affidavit so filed admittedly is a subsequent development and/or material placed by the contesting Respondent for the first time in High Court. The impugned order is dated 11.11.2011. The same was challenged by a Petition dated 22.11.2011. The affidavit, as recored above is dated 9.1.2012 after the rejoinder filed by the Petitioner.

98. In the impugned order, based upon the material available on record at the relevant time and definitely not the affidavit and the material so placed for the first time of Respondent No. 1 with regard to the Central Railway property in question, the observations are as under:-

The Non Cooperative Members have then sought to make a grievance that as per the letter of the Deputy General Manager, Central Railway dated 13.4.2007, possession of a part of the society property has been handed over by the Collector, M.S.D to Central Railway on 3.4.2003. Thus, the Lease Deed could not have been executed by MHADA with the Applicant No. 1 society on 26.5.2005 in respect of the acquired portion. From the records of this office, the office of the Architect and Planner, Mumbai Board, the Estate Manager - I as well as the Assistant Land Manager, Taluka Kurla, it is seen that possession of the portion of the said land which is affected by the Railway Expansion Programme, has not been handed over by MHADA to the Collector, M.S.D to be in turn handed over to

the Central Railway. In fact, as late as on 3.12.2007, the Chief Officer, Mumbai Board had addressed a letter to the Deputy Chief Engineer, Central Railway's that for the land that was to be required for the Railway Expansion Project, as per the pricing policy of MHADA, I should pay to it Rs. 18,76,22,375/-. Thus, if what is contended in the said letter dated 13.4.2007 is correct, then as late as on 31.12.2007 even the premium that was sought for by MHADA from Central Railways was not paid to it. Thus, the question of possession of the said affected portion being handed over by the Collector, M.S.D to the Railways as early as 3.4.2003 was only a paper possession without physical possession being handed over by the Collector to the Railways as no such possession was handed over by MHADA to the Collector, M.S.D. MHADA however, would be entitled to the premium from the Central Railways or MMRDA as regards its area under Expansion Scheme of the plot bearing CTS No. 1269 and the adjoining plot. Similarly, the Applicant No. 1 society, too, would be entitled to compensation or TDR in respect of its affected portion from the concerned Authorities. The Non Cooperative Members cannot have a grievance in this regard.

99. Now, what remains is to consider the aspect of a corrigendum referring to NOC dated 19 July 2008 and the effect of acquisition of part of the portion of the area by the Railway on the area of the scheme. The Development Control Regulation 1991, as amended define a "plot" as follows:-

Regulation 2(73), defines - "Plot" means a parcel or piece of land enclosed by defining boundaries.

100. Therefore, the clear description of area and boundaries is a must for any project or any redevelopment scheme as already observed by me in Shivkupa Builders & Developers Vs. State of Maharashtra & Ors. (Supra). The announced scheme is always based on the major land and/or plot and for any calculation for redevelopment, respective tenants' share/ area of the occupants, commercial area/saleable area of the builder, and for FSI purpose and/or such other similar purposes. The exact area/measurement is a must. Some minor corrections here or there, should not affect the project and so also the timely and/or phase-wise development on the available area and/or permissible area. The correction, even if any, in my view, can always be corrected and/or subject to correction and/or amendment of the plans. All the parties, therefore, are entitled to proceed accordingly but in my view also the area and/or plot must be clearly demarcated with clear boundaries. It is necessary to avoid further complications and/or problems in the construction, as well as, the completion of the project.

101. It is, therefore, necessary that the concerned authorities and the Respondents are considered and decided clearly the area/plot or the development and all related aspects. The affidavit so filed for the first time in the High Court by one Mr. Salvi is quite relevant to adjudicate this issue of available plots/boundaries about the project. Therefore, it is necessary for the concerned authorities to deal with those subject and issues in detail, referring to plot Nos. 1269 and 1268. Therefore, the clear description of the plot and relevant entries

in the relevant record which clearly defined the boundaries, as goes to the root, need to be considered first before going further with the project. This in no way read to mean that the area available and/or plot available, considering the disputed areas and boundaries if any, the project cannot be proceeded phase-wise and/or part-wise, but subject to finding on this issue.

CONCLUSIONS:

- a) The proceeding u/s 95-A of MHADA Act as initiated is valid and maintainable.
- b) The action and authority to decide the issues/controversy is well within the scope and jurisdiction of Section 95-A read with the Regulations.
- c) The sanctioned scheme based upon then existing 70% strength is correct and valid. All the parties and members are bound by the approved scheme and to be implemented in accordance with law.
- d) The NOC is valid and binding and also all the subsequent actions based upon the same.
- (e) The scheme is valid and binding. Certain corrections will not affect the scheme based upon the sanctioned/approved NOC. However, it is subject to following order :

ORDER

- i) The order dated 11 November 2011 is quashed and set aside only for deciding the effect of acquisition of part of the property of the Central Railway; and also the actual area available for the project and the scheme and its effect on the area of the occupants and/or to the Society members and the saleable area for the developer. The rest of the order is maintained.
- ii) The concerned Respondents are at liberty to proceed with the project phase-wise or part-wise in accordance with law, subject to certain and/or necessary corrections of area/plot/ map and plan of the scheme, if any.
- iii) Respondent No. 2 i.e. the Executive Engineer, Ghatkopar Division, Mumbai Housing and Area Development Board, to decide the above issues within a period of 6 weeks after giving an opportunity of being heard to all the parties.
- iv) The Petition is partly allowed.
- v) There shall be no order as to costs.