
(2019) 09 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 14102 Of 2018, Civil Application No. 1753 Of 2019,
Original Side Writ Petition (L) No. 3314 Of 2017, 874 Of 2018

State Of Maharashtra Through Urban Development Dept And Ors **APPELLANT**

Vs

Charudutta Pandurang Koli And Ors **RESPONDENT**

Date of Decision : 23-09-2019

Acts Referred:

Urban Land Ceiling Act, 1976 — Section 20
Air (Prevention And Control Of Pollution) Act, 1981 — Section 17
Constitution Of India, 1950 — Article 21

Citation : (2019) 09 BOM CK 0080

Hon'ble Judges : Pradeep Nandrajog, CJ; Bharati Dangre, J

Bench : Division Bench

Advocate : T.N. Subramanian, P.P. Kakade, M.M. Pabale, Rubin Vakil, Ronita Bhattacharya, Kranti L. C., Sangram Chinnappa, Prashant Malik, Irfan Ansari, Vaibhav Shah, Heramb S. Kadam, Himanshu Kode, Ronita Bhattacharya, Girish Godbole, L.T. Satelkar, A.L. Patki, Sangramsingh R. Bhonsle, Saket Mone, Vishesh Kalra, Subit Chakrabarti, Samridhi S. Jain, Vishal Dushing, Abhishet Salian, Gaurav Joshi, Kazan Shroff, Vivek Shetty, Aniket Nimbalkar, Sharmila Deshmukh, Abhijit P. Kulkarni, A.Y. Sakhare, Vinod Mahadik, Aruna Savla, Kejal Mastakar, Aruna Savla

Final Decision : Disposed Of

Judgement

Pradeep Nandrajog, CJ

1. The villages of Mahul and Ambapada, in distinction to the densely populated regions of the main city, were hitherto sparsely populated regions, home to only a few local fishing communities and thick mangrove forests. In the 1950s, the State-owned refineries now present in the region were first established in Mahul, with a view to gainfully make use of these lands with negligible population. Over the past few decades, the region has become home to 9 major industrial units, including refineries of the Hindustan Petroleum Corporation Limited ("HPCL"),

Bharat Petroleum Corporation Limited ("BPCL"), Rashtriya Chemicals and Fertilizers Ltd., the Bhabha Atomic Research Centre ("BARC") as well as private industrial units such as the Tata Power Thermal Power Plant, Sealord Containers and Aegis Logistics.

2. In Writ Petitions (L) No. 874/2018 and (L) No. 3314/2017, the Petitioners have challenged the allotment of tenements reserved for Project Affected Persons ("PAP") to them in a PAP colony by the name of Eversmile Layout, developed by a private builder named Dynamix reality in Mahul, Chembur. The Petitioners in Writ Petition (L) No. 874/2018 have already been relocated to the PAP colony known as the Eversmile Complex in Mahul, Chembur. The Petitioners in Writ Petition (L) No. 3314/2017, have received notices allotting them tenements in Mahul, Chembur, but have not yet been evicted from their existing structures. The present Petitioners were declared to be PAPs due to the Tansa Pipeline Project, which resulted in the dwelling unit/slum located within 10 meters of the Tansa Pipeline in Mumbai city being demolished in pursuance of the order dated 14.10.2009 of this Court in PIL No. 140/2006.

3. The Eversmile PAP colony is located upon land originally demarcated to be a No-Development Zone in the Draft Development Plan of 1984. These lands had been acquired by the State Government on account of being surplus under the Urban Land Ceiling Act, 1976, and in 1990, was exempt under Section 20 of the Act by the State Government for the construction of residential quarters for the staff of BPCL. Accordingly, the zoning of the land was altered in the Development Plan of the city to allow residential constructions. However, BPCL ultimately chose not to construct its staff quarters on the site where the PAP colony presently lies, eventually resulting in the State Government modifying its order of exemption under Section 20 of the Urban Land Ceiling Act to be for the rehabilitation of Slum dwellers and PAPs, at the request of the Slum Rehabilitation Department and the Developer of the PAP colony.

4. The PAP colony comprises of 72 buildings and 17,205 tenements. It is separated from the BPCL refinery by a 15 metre road. Within a 300 meters radius of the Eversmile PAP colony, is Sealord Containers - a logistics company serving oil, gas and chemical industries by providing containers and a total of 10 storage terminals for high volumes (5,000-10,000 KL each) of chemicals, including hazardous chemicals, which are generally brought in by sea and unloaded at the Pir Pau jetty. Bordering the colony in its southern end is the Tata Power Thermal Energy Plant. BARC, which is India's premier nuclear research centre, is located beyond the BPCL refinery and is the largest nuclear research reactor in the country and is India's primary generator of weapons-grade plutonium-bearing spent fuel for India's nuclear weapons program. Towards the north of the colony is the HPCL refinery. With the exception of the PAP colonies the Respondent State Authorities have been constructing in the region over the past two decades, there is limited presence of residential buildings and premises within this area of Mahul. In fact, the Supreme Court and this Court have passed

orders, at the behest of the refineries of the region, estopping the development of private residential buildings in this industrial belt.

5. The location of the Eversmile Colony posits three issues that render the Colony uninhabitable, as per the Petitioners in Writ Petitions (L) No. 874/2018 and (L) No. 3314/2017. The first is that the proximity of the refineries to the PAP colony has resulted in those Petitioners who have been rehabilitated to the colony to suffer from severe health issues due to their exposure to high levels of carcinogenic air pollution. The second, is that the presence of residential premises such in close proximity of industrial belts poses a threat to the security of the industries and refineries, as well as to the safety of the residents themselves. Thirdly, the Petitioners in Writ Petition (L) No. 874/2018 and (L) No. 3314/207 have also contended that the PAP colony is bereft of hygienic conditions and basic amenities, including schools and medical centres.

6. A judgment of the Western Zone Bench of the National Green Tribunal dated 18th December 2015 in the matter of Charudatt Pandurang Koli v M/s Sea Lord and Ors (OA No. 40/2014) forms the foundation of the Petitioners' arguments about the toxic air pollution in the region. The aforesaid proceedings before the National Green Tribunal had been initiated by the local residents of Ambapada and Mahul villages who were aggrieved by the consequences of the air pollution on their health. The litigants before the National Green Tribunal are not PAPs rehabilitated in Mahul, but instead had been residing in Mahul, close to the site of the PAP colony, for several decades. The Tribunal examined reports prepared by KEM Hospital, Parel, which suggested that the respiratory morbidity of people residing in Ambapada, Mahul Gaon and 4 other areas within Chembur have significantly enhanced due to their proximity to heavily polluting industries. At paragraph 25 of its judgment, the National Green Tribunal held that there is a perceptible threat to the health of the residents of villages Mahul and Ambapada due to prevailing air quality in the area. It is noteworthy that at paragraph 30 of the said judgment, Sealord Containers along with BPCL and HPCL refineries were identified by the National Green Tribunal to be the primary pollutants in Mahul, Chembur.

7. Despite having accepted the judgment of the National Green Tribunal and allegedly initiating measures to comply with the directions of the Tribunal, the State of Maharashtra belatedly filed Writ Petition No. 14102/2018, to challenge the portions of the judgment of the National Green Tribunal in 2018, 3 years after it was passed.

8. A perusal of the pleadings of the State of Maharashtra in Writ Petition No. 14102/2018 reveals that the State Government was inclined to challenge the findings of the Tribunal at paragraph 25 of the judgment, as the said paragraph, quoted below, proved to be an "impediment" in the implementation of orders of this Court in PIL No. 140/2006.

9. Paragraph 25 of the NGET judgment reads as follows:

"a. We are conscious of the fact that such co-relations are scientifically and statistically very subjective and there may be variable attributes like sample size, sample distribution, sampling period besides individual variables like occupation, nutrition and life style of individual subjects. Notwithstanding such delicate but significant dependencies, it is always statistically prudent to consider basis when large cases of similar kind, namely, respiratory disorder have been noticed by KEM, in relation to people from above two (2) villages and considering the human health on priority and therefore, we do not find any reason for not accepting the KEM report. Considering such observations and also, the demonstrated link between the prevalent ambient air quality at Mahul and Ambapada villages with the health impacts in those areas, it can be observed that there is a perceptible threat to health of the residents of village Mahul and Ambapada due to prevailing air quality in the area."

10. It appears to be the case of the State Government that the observations in aforementioned paragraphs amounted to being directions in perpetuity about the air pollution in Mahul, when the judgment itself was only based on data presented between 2014-2015. The State Government has pleaded in its Writ Petition that these observations of the National Green Tribunal should have been restricted to the prevalent air pollution in the area at the time of passing the judgment.

11. Prior to evaluating the merits of the arguments of the State Government against the judgment of the National Green Tribunal, it would be useful to note the important paragraphs of the judgment of the Tribunal.

12. At paragraph 22 of its judgment, the National Green Tribunal observed that the respiratory morbidity and study of the health of the residents of the Mahul region done by KEM hospital shows that a majority of the residents showed acute symptoms of breathing difficulties, severe lung-related issues, dry coughs, eye and skin irritation, chronic fatigue and weakness.

13. Paragraph 15-21 of the judgment of the National Green Tribunal records the Tribunal's explanation of the type of air pollution peculiar to Mahul. The Tribunal records at Para 15:-

"Volatile Organic Compounds (VOC) which are the main group of hydrocarbons in the atmosphere, play an important role in the formation of Ozone, and other photochemical oxidants like PAHs in the troposphere. Benzene, Toluene, Ethylbenzene and Xylene are the most typical components of VOC present in the air.

14. At Paragraph 21 of its judgment, the Tribunal held:-

"The MPCB visit indicates strong foul smell due to presence of chemicals, particularly the VOCs and the report dated 12th March 2015 clearly mentions the presence of strong smell from the chemicals. It is also noted that there is a report of KEM which is placed on record by the Applicants along with Application which indicate that the respiratory morbidity is significant in the Mahul and

Ambapada villages. Now, therefore, considering the above information conjointly with the definition of air pollution as provided in the Air (Prevention and Control of Pollution) Act, we are of the considered opinion that there is 'air pollution' in the Ambapada and Mahul areas and the issue No.1 is answered in Affirmative."

15. It is evident from the judgment of the National Green Tribunal that the presence of VOCs in Mahul is what makes the air pollution in the region particularly harmful for human health. The National Green Tribunal issued the following directions in its judgment:-

"a. MPCB shall prepare a comprehensive action plan for control of air pollution in Mahul, Ambapada and Chembur areas, with a focus on control of VOCs within 2 months, and submit it to CPCB for its concurrence/approval which shall be confirmed in next 2 months. Such action plan shall be implemented by CPCB and MPCB within next 12 months through the MPCB.

b. MPCB shall immediately issue necessary directions for implementation of the recommendations of its expert committee as per report of August 2014, and ensure that these directions are complied within 12 months.

c. The health impact assessment studies as proposed by KEM shall be conducted for the minimum period of 3 years. KEM shall give necessary proposal including the associated air quality monitoring which can be conducted through reputed institute like NEERI, Mumbai to MPCB within 2 months and such studies shall be co-ordinated by MPCB. The cost of such studies shall be equally borne by Respondent-1, 9, 10, 11 and 14.

d. MPCB shall carry out the VOC assessment studies in line with CEPI studies as per CPCB protocol for the areas of Mahul, Ambapada and Chembur on yearly basis for next 3 years to assess the trends of such problem.

e. Respondent-6, Commissioner, MCGM shall provide necessary medical facilities and treat for the residents of Mahul, Ambapada and Chembur, in view of the adverse health effects observed. Respondent-1, 9, 10, 11 and 14 shall provide all necessary assistance and financial support for such measure to Respondent-6.

f. SEIAA and MPCB shall assess the environmental compliance of activities of Respondent-1 as far performance of air pollution control measures, by monitoring of VOCs and also, change in capacity of chemical handling which is changed from 75000 KL/ month to 75000 KL, within a period of 3 (three) months. In case of non-compliance of this direction, the Respondent-1 shall operate the plant maximum at the present chemical handling rate (maximum of last six months on monthly basis), till such assessment by SEIAA and MPCB is done, on the basis of precautionary principle. MPCB to serve the copy of this order to Member Secretary SEIAA for further necessary action.

g. The observed air quality in Chembur area and associated health impacts necessitates considerations of VOC in ambient air quality and also, source emissions standards for chemical storage terminals. MPCB shall evolve such

standards under the powers available under section 17 of Air Act, in consultations with CPCB, within next 4 months.

h. Respondent-3 is hereby directed to form a committee of experts to suggest the location criteria for industries and activities involved in hazardous chemicals handling and more specifically the environmentally safe distance from residential areas, which shall be formulated in next 4 months, as per provisions of the Air Act and Environmental (Protection) Act, 1986.

i. Respondent Nos. 1, 9 and 10 shall pay amount of Rs.5,00,000/- (Rs. five lakhs) to each Applicant as litigation costs".

16. In Writ Petition No. 14102/2018, the State Government relies on a report of the National Environmental Engineering Research Institute ("NEERI") dated February 2018 and a letter of NEERI dated 17th May 2018 to assert that the air pollution in Mahul has reduced, and that the PAPs residing in the Eversmile Colony will not be adversely affected by the air pollution in the region.

17. While an order of the Supreme Court dated 05th March 2019 in Civil Appeal No. 1985 of 2019 holds that the judgment of the National Green Tribunal dated 18th December 2015 in the matter of Charudatt Pandurang Koli v M/s Sea Lord and Ors has attained finality, and therefore is beyond the purview of being challenged in judicial proceedings, a perusal of contemporaneous reports prepared by three government agencies, namely the Maharashtra Pollution Control Board, ("MPCB"), the Central Pollution Control Board ("CPCB") and NEERI shows that air pollution in Mahul continues to be disturbingly high and to this day, still poses a threat to human life.

18. A joint report prepared by the MPCB, CPCB and NEERI dated 1st January 2019 forming part of the proceedings before the National Green Tribunal, records an alarming level of air pollution, particularly in the form of VOCs. The conclusions and recommendations of the said report dated 1st January 2019, notes from page 42 to 45 that:-

"Presence of VOCs is found in the area with concentration values more than odour threshold concentrations. Therefore, focus on control measures on dominant sources of emissions of VOCs is required in this case. Benzene, Styrene Toluene, Xylens, Diethylbenzene, Trimethylbenzene and Dichlorobenzenes emerged as dominant VOCs present in significant concentrations at one or the other place in the area among total 21 VOCs detected in the area. The odour threshold values given in "Odour Threshold for chemicals with Established Health Standard, 2nd Edition [American Industrial Hygiene Association] are referred.

Concentration of Benzene has been found below the odour threshold value of 0.47 ppm in work zone as well as in ambient air but concentration values are found to be higher than the annual standard prescribed for ambient air i.e. 5 µg/m³. Maximum value of Benzene in ambient air found to be 88.67 µg/m³ [0.0277 ppm] and maximum value in work zone found to be 540 µg/m³ [0.16 ppm]. It is

worth to mention that Benzene is predominantly handled by BPCL refinery in the area.

Concentration of Styrene has been found above the odour threshold value of 0.0028 ppm in work zone as well as in ambient air. Maximum value of Styrene in ambient air found to be 775 µg/m [0.182 ppm] and maximum value in workzone found to be 225 µg/m [0....0528 ppm]. The Styrene monomer is only handled by Logistics companies namely M/s Sealord Ltd and M/s Aegis Logistics Pvt. Ltd. Concentration of Toluene has been found much above the odour threshold value of 0.021 ppm in workzone as well as in ambient air. Maximum value of Toluene in ambient air found to be 6.39.50 µg/m [0.169 ppm] and maximum value in workzone found to be 5000 µg/m [1.32 ppm]. The Toluene handled by both the refineries namely HPCL, BPCL and logistics company M/s Aegis Logistics Pvt. Ltd. as well.

Concentration of Xylenes has been found above the odour threshold value of 0.012 ppm in workzone as well as in ambient air. Maximum value of Xylenes in ambient air found to be 365.4 µg/m [0.0842 ppm] and maximum value in workzone found to be 1000 µg/m [0.23 ppm]. The Xylene is handled by both the refineries namely HPCL, BPCL and logistics company M/s Aegis Logistics Pvt. Ltd. as well. Besides above dominant compounds, presence of other VOCs like Dichlorobenzene, Diethylbenzene and Trimethyl benzene has also been found above their respective threshold. Concentration of Dichlorobenzene has been found at par with the odour threshold value of 0.02 ppm in ambient air. Maximum value of Dichlorobenzene in ambient air found to be 134.97 µg/m [0.022 ppm]. Concentration of Diethylbenzene has been found above the odour threshold value of 0.00038 ppm in workzone as well as in ambient air. Maximum value of Diethylbenzene in ambient air found to be 329.33 µg/m [0.06 ppm] and maximum value in workzone found to be 250 µg/m [0.045 ppm]. Concentration of Trimethylbenzene has been found above the odour threshold value of 0.0006 ppm in workzone as well as in ambient air. Maximum value of Trimethylbenzene in ambient air found to be 101.65 µg/ m [0.02 ppm] and maximum value in workzone found to be 100 µg/m [0.02 ppm]. Considering, mathematical correlation matrix discussed in the report, the control measures for these compounds shall be primarily depend upon the control measures taken for dominant VOCs. Hence, the presences of predominant VOCs with potential sources are established to a great extent in this study. Control on predominantly present VOCs may result in control of secondary compounds as well.....

However, due to comparatively high emission rate with large numbers of fugitive and point sources, industrial handling & storage activities sometimes results in contribution of significant concentration of VOCs & odorous compounds in ambient air and requiring attention on control measures by various stakeholders. Presence of VOCs/odorous compounds has been established in this study at locations covering work zones of industrial installations as well as in nearby habitation with mixed land use. It is gathered that refineries in the area came in

early 1950's and one of the major chemical logistics installation company came in 1977. Another chemical logistics company came in 2007. Lot of land use development in surrounding has taken place after 1980's. Though the distance or proximity with habitat does not give liberty to industrial installations to be lenient on control measures at source, the landuse development could have been regulated to minimize the exposure to habitants by authorities in the past. Therefore, recommendations are required to deal with two issues:-

};> Incompatible

land-use

development; and

};> Inadequacy

on part of control at source.

It is strongly recommended that there is an immense need on land-use development regulation/control in the area with due consideration of safety, exposure to pollutants and provision of suitable buffer zones. Buffer zone with green belt around the industrial areas should be ensured to minimize the impact on the surroundings. Urban development and town planning departments/agencies are required to take the said aspect in consideration."

19. Another report which forms part of the proceedings before the National Green Tribunal, is a part of NEERI dated 01st February 2019 analysing data for the evaluation of the air pollution in Mahul. This report also records alarming levels of air pollution in Mahul.

20. The conclusion of the NEERI report of February 2019 at pages 88 and 89 records:-

"Emissions in the region appears to come from various sources, however, major VOCs emissions mainly come from industrial sources and therefore, their associated health impacts are likely. This region experiences periodic and sudden emissions during a certain period, which is not fixed. In many campaigns of sampling conducted by CSIR-NEERI personnel did not reveal high peak values, many times."

"Absence of severe complaints prior to the year 2012-2013 indicates that health impacts were not of the kind which could be linked with regular emissions but episodic ones (due to poor handling, sudden failures of valves, systems, unregulated loading-unloading etc.) are more likely to give acute health symptoms. These observations are also inference from KEM study."

"Study carried out by McKenzie et al., (2018) states that air pollutant concentrations do increase with proximity to O&G (Sic: Oil and Gas refineries) facility leading to higher health risks. The study also highlights that the potential for short-term respiratory; neurological, hematological, and developmental

effects which are elevated estimated lifetime cancer risk for populations living within approximately 800 meters of O & G well pads. The potential for chronic non-cancer health effects and lifetime excess cancer risk are lower for populations living further from O&G sites. Thus health impact is a probability function and it need not always give its firm correlation with exposure....."

21. In particular, the NEERI Report records the known impacts of VOCs on the health of individuals, and notes that VOCs are known carcinogens, and also records the symptoms and diseases afflicting people exposed to VOCs. NEERI records:-

"Similarly, other health effects of VOCs include a variety of chemicals that have potential to cause short term as well as long term 'health effects; tin fortunately, there is very little awareness. Exposures to high level of VOCs are known to have carcinogenic, mutagenic, and teratogenic effects (O/zura eta/., 2006). Other symptoms include eye, nose and throat irritation, headaches, loss of coordination, nausea, dry cough, dizziness, tiredness, and damage to liver, kidney, blood vessel, central nervous and respiratory systems (Fine II and Seppala, 2.108). However, sometimes symptoms of diseases and their causes may not be clear. VOCs also have bad effects on respiration systems, blood vessel systems, and nerve systems (Sarigitmnis et aL, 2011; Zhou et al., 2011). According to a study by (Yoo et. al., 2015) where he tried to find out associations between personal exposures to VOCs and in cardiovascular physiology observed that VOCs may have rapid impacts upon the human cardiovascular system. Petroleum related VOCs were associated with increases in Bronchial Artery Flow Mediated Dilatation (FMD) and Nitroglycerine Mediated Areterial (NMD). Zhou et al., 2011 measured personal, home, indoor, work, vehicle and outdoor levels of VOCs and estimated cancer risks. In a study by Loh et al., 2007 cancer risks of a broad range of organic hazardous pollutants many of which were VOCs in U.S population were estimated to be approximately 1 in 1000 based on cancer potency estimates from the U.S.EPA. Formaldehyde had the highest carcinogenic risk levels, followed by Naphthalene, Benzene and Toluene due to other' effects. Formaldehyde exposure may pose acute and chronic non-carcinogenic health risks to the occupants, whereas benzene exposure may pose chronic non-carcinogenic risks to the occupants. Exposure to both compounds is associated with significant carcinogenic risks (Huang et al., 2013). VOCs presences have also resulted in increase of breast cancer (Lavra et al. 2015)."

22. In light of these conclusions, the recommendations of the NEERI report of February 2019 record:-

"3. The whole of Chembur and Mahul region should be declared as "Air Control Region" so that control and monitoring becomes a part of all operations in the region. Development of residential premises should not be encouraged in the "Air Control Region" especially very close to high risk industries, as mentioned in the study by Mckenzie et. al., 2018 where, they found enhanced health impact within a distance of 800m): This region should be defined and regulated in terms of

long term exposure and also short term episodic conditions...

4. It is recommended to use remote based technologies for estimation of VOCs like Solar Occultation Flux (SOF), "differential absorption LIDAR (DIAL), Radial Plume Mapping (RPM) and or differential optical absorption spectroscopy (DOAS). Many of these techniques are being used in some countries. The major advantage of these techniques are that these are automated and" very little manual interventions are possible. The other biggest advantage is that it will be able to capture all emissions and at all times. Such techniques should be used in Mahul-Chembur "Air Control Region" as residential population is at high risk due to proximity of the installations to the local residents.

5. Health studies should continue for a longer period which will provide the necessary safeguard towards health impacts remedies."

23. As per the data collected and analysed by expert environmental agencies within the government, it is an admitted position that the air pollution in Mahul, specifically in terms of the presence of the VOCs, is far higher than the permissible standards allowed as per the odour monitoring threshold, the ambient air quality standards (wherever applicable) and other international standards regulating the presence of VOCs in the air.

24. In light of the reports dated 01st January 2019 and 2nd February 2019, both of which were prepared with the involvement of NEERI, the reports of NEERI from 2018 that have been relied upon by the State Government are outdated, and cannot form the basis of a finding contrary to that of the National Green Tribunal in Paragraph 25 of its judgment.

25. In fact these agencies, namely the MPCB, CPCB and NEERI have recommended that the Urban Development/Town Planning department of the State Government should ensure the land use regulation in the region be strictly monitored to mitigate risks on the health of people who stand to be exposed to the pollutants from the refineries, and that bufferzones in the form of greenbelts should be established in the region.

26. Another report that is crucial to demonstrating the state of affairs in Mahul, particularly in the adverse health impacts on the people residing in Eversmile PAP colony, is a report prepared by a team of independent experts from IIT Bombay appointed by this Court in its order dated 08th August 2018 in Writ Petitions (L) No. 874/2018 and Writ Petitions (L) No.3314/2017 to survey the colony and prepare a report on whether the PAPs residing in have been properly rehabilitated, the PAPs residing in the Eversmile Colony are suffering from similar health issues. The report was prepared in March 2019, and shows that these health issues are still present amongst the residents of Mahul.

27. Across pages 20-21 of the said IIT Report, diseases and illnesses reported by the PAPs of Mahul have been recorded as follows:-

"Table 6 : Illness symptoms experienced after moving to Mahul

List of Symptoms

No of People

Cough

2

1

2

Sneezing

1

8

2

Coughing up blood mixed Sputum

3

3

Breathlessness

2

while resting

0

0

Breathlessness during physical exertion

1

8

5

Nausea / vomiting

1

1

9

Itching, red patches on skin or dryness and flaking of skin

2

1

4

Chest pain

1

6

3

Dizziness

1

8

1

Stomach upsets

1

7

7

Loose motions/Diarrhea

1

3

1

Blood in stools

3

8

Frequent fevers (high or low) with Shivering

2

0

0

Hairfall*

*Hairfall was not present in the survey from ? however people have reported severe problem of hair/ass and thus it has been included in the list

1

5

5

It is clear that health impacts not only lead to enhanced costs of treatment for

low income categories of population, but they also cause other adverse impacts by affecting their ability to work, earn wages, and sustain their livelihoods. Over 140 individuals claimed that they lost their jobs due to health related issues and over 200-two thirds of the sample mentioned loss of wages due to health issues, as they could not go to work on many days in a year due to poor health (Table 7). Over 140 also mentioned frequently having to change jobs as they frequently fell ill, and lost their earlier jobs.

Table 7 : Impacts of health problems on livelihood - identify each impact and number of people affected for each

Impact of health problems on Livelihood

Number of People

Losing a job

146

Loss of wages

200

Discontinuity of jobs

143

No impact

12

Any other

4

NA

8

Total

513

An important advantage often cited in favour of SRA resettlement is that it provides access to good and stable access to drinking water. Our survey showed that the vast majority of the sample indeed got access to municipal water supply (Table 8 and 9). However the quality of drinking water supplied leaves much to be desired. Over 90% of the sample averred that the quality of drinking water was bad, and not fit for human consumption. This was also observed during our visits, where the drinking water in the pipes and sumps were contaminated, had thin oil films, had foreign particles, and had got mixed with sewage and toilet water in several of the buildings."

28. At page 36-38 of its report, IIT recorded the prevalence of serious diseases

such as, inter alia, tuberculosis and cancer amongst the PAPs residing in Mahul. It notes:-

"A key reason for the current petition is the location of the township close to polluting industries, refineries, petrochemical storage etc. The impact on health has been a growing concern, and has been strongly articulated by the people, and emerges strongly through the survey results as well. Table 42 mentions the chief sources of pollution. A range of health problems especially respiratory problems have been frequently reported (Table 43). This is also mentioned in the KEM report, and the Doctors for You survey in M Ward, of which Mahul is a part. In Chapter 5 this is further elaborated. While not all health impacts identified by the sample can be attributed to the pollution, a majority of them have casual effects. Our team consulted with doctors to confirm that these symptoms can be an outcome of air pollution.

Table 43. Impacts of air pollution

Effects of Air Pollution

HH response

Respiratory Problems (asthma breathlessness, suffocation)

167

Irritation and itching in eyes, nose, throat and ears

28

Weakness, dizziness, restlessness

18

Heart Issues (fever, body pain, etc)

4

Skin Irritation

52

Stomach Problems (upset stomach, loose motions, vomiting)

5

Cancer

8

TB

17

Paralysis

2

Headache

8

Death

7

Hairfall

6

Blindness

1

Chest Pain

9

High bp

2

Blurring Eyes

3

Blood Infection

1

Body Pain

1

Increase expense

7

Frequent Sickness

15

Child Health decline

1

Life decreasing

2

Typhoid

2

Appendicitis

29. At page 63 to 71 of its report, the IIT records as follows:-

"Illnesses and Symptoms

3.3.1 Illness onset time

Respondents were asked questions regarding new illnesses they or their family member had experienced since moving to Mahul. Before shifting to Mahul, respondents reported an average of 0.41 serious pre-existing illnesses per household. After moving to Mahul, the average number of serious illnesses was found to rise up to 2.05 per household. There were 526 serious illnesses reported. Of these, 207 started within the first 3 months of residency, and 331 started within the first 6 months of residency

3.3.2 Reported symptoms

Respondents were asked about specific symptoms that they or their family member had experienced since moving to Mahul 99.2% (n=258) of respondents reported at least one new symptom, with the most common new symptom being increased coughing and itching, dryness, patches, or flaking of skin. Additionally, /survey respondents were asked whether they had experienced any symptoms that were not listed. 60.0% (n=156) of respondents stated that they or a family member had experienced increased hair fall since moving to Mahul.

.....These survey results commensurate with the findings from the respiratory morbidity survey conducted by the KEM hospital, which concluded that "in Mahul area, 67.1 percent population had complains of breathlessness more than three times in a month, 76.3 percent reported the complaints in all season, 86.6 percent complained of eye-irritation and 84.5 percent have history of persisting choking sensation in chest." The KEM Report also shows significant occurrence of incidents of air pollution related health effects in the local population. There lies a strong evidence that air pollution is intrinsically linked and can be scientifically correlated to the adverse health effects on the surrounding population as observed through KEM (Govt. Hospital) studies. However, although, the air pollution-health nexus is well-founded, the Report of KEM hospital turned unique in view of the fact that the report had identified a particular air pollutant (3/0,ps related to the adverse health impacts observed in the local population..

Respondents were asked whether living in Mahul had contributed to their mental stress or state of depression. 243 (93.5%) respondents answered that it had; of respondents that answered in the affirmative, 125 answered that worsening physical health was a contributing factor to this increased stress or depression. It was found that deterioration of ambient air quality below prescribed standards was the major threat to health of residents. The major sources behind the degraded air quality was the close proximity of M/s Sea Lord Containers Limited, Aegis Logistics Ltd., Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited as well as other unidentified sources to the

residential zones. Results were explained by XXX committee where business of logistics services and oil companies storing oil, gas and chemical items posed detrimental to occupant health in nearby residential communities of Mahul area....

3.4 Expenditures

The survey also asked Mahul residents about their expenditures on illness. More than one third (33.8%, n=88) of respondents stated that their total household expenditure on illnesses per month was greater than one-half of their monthly household income. 60.4% (n=157) of respondents spend more than Rs.2000 per month on illnesses. Respondents who stated that they used private hospitals more than government hospitals had average household illness expenditures of less than Rs.5000, while respondents that used private hospitals had average household expenditures of nearly Rs.7000.

3.5 Interpretations

Nearly every survey respondent reported that they or someone in their family had experienced a new illness symptom or increase! in intensity of an existing symptom. Furthermore, 80% (n=208) of respondents stated that, when consulting their doctor regarding their illness, their doctor told respondents that the reason for their health problem was related to environmental conditions or pollution in Mahul. Dissatisfaction with public hospitals and BMC clinics was generally high, and respondents 'overall tended to go to private hospitals instead. Two-thirds of those that went to private hospitals more stated their reason for doing so as the increased quality of these facilities. More than a quarter of respondents stated that they had experienced issues with the prescribed medicine from public hospitals or BMC clinics, and approximately one-fifth of respondents cited other negative experiences relating to the quality of care at public facilities."

30. It is noteworthy that the IIT report dated 4th March 2019 serves as a contemporary record of the health issues presently faced by PAPs residing in Mahul.

31. It is evident that the report dated 04th March 2019 of the IIT is self explanatory, and portrays an irrefutable picture of the fate of those persons being compelled to live in Mahul against their will, not merely in terms of their health, but also the domino effect of their poor health on their ability to live a dignified life as self sufficient, productive members of society.

32. As for their submissions on the security risk of permitting residential premises such as the PAP colony exist in close proximity to refineries and other industries, the Petitioners in Writ Petition (L) No. 874/2018 and Writ Petition (L) No. 3314/2017 rely on two judgments. In the matter of Oswal Agro Mills Ltd. Vs. Hindustan Petroleum Corporation Ltd. & Ors . the Supreme Court upheld the decision of this Court to overturn the permission granted by the Appellant MCGM for the conversion of land located within a Special Industrial Zone (I-3) to a Local

Commercial Zone (C-1) in Mahul where residential buildings were to be constructed, while noting:-

"14. What is most relevant to note is that when the refinery of the Respondent 1 came up in the year 1952, and the other earlier referred vital installations of national importance also came up in the nearby area, the population over there was sparse, and that is why these installations were permitted to be set up at locations in the Mahul area of Chembur far away from the island city of Mumbai. Now the city has grown up, as also the suburbs, and people are trying to occupy the vacant spaces wherever available. The Municipal Corporation and the State of Maharashtra ought to have checked and stopped residential constructions, particularly the high-rise ones in the vicinity of refineries in Mahul, but they have failed in doing the same, and the MCGM cannot, however, justify further dereliction of their responsibilities. Merely because some constructions have been permitted at some distance from the refinery of the HPCL does not mean that further high-rise constructions should be permitted to come up nearby. Two wrongs do not make one right."

33. A part of the reason cited by the Supreme Court overturned the permission granted by the Appellant MCGM for the conversion of land located within a Special Industrial Zone (I-3) to a Local Commercial Zone (C-1), was the submissions made by HPCL pertaining to the security risk posed by permitting residential building in close proximity to the refineries. The Supreme Court held in para 13.3:-

"In Para 28 of the writ petition, the Respondent 1 specifically relied upon the inspection carried out by the Intelligence Bureau of the Government of India in the refinery on 10-1-2011. The report stated in Para 3 thereof as follows:

"3. Threat assessment.- The Mumbai terrorist attack of 26-11-2008 has exposed our vast coastline to danger through the sea due to which oil installations have become more vulnerable to threat from inimical forces. This was revealed during interrogation of various arrested militants in the country over the last few years. David Coleman Headley disclosed during his interrogation that during his nine visits to India (2006-2009), he has identified a large number of sensitive establishments including economic targets like Mumbai Stock Exchange, World Trade Tower, oil installations, BARC Mumbai etc.

Several multi-storeyed buildings (57) constructed under SRA scheme near the HPCL Refinery, presently not allotted to anybody due to security concerns, if allotted to persons other than security agencies, may be misutilised to cause damage to the refinery.

Any plan to construct high-rise residential buildings at the site of demolished factory of M/s. Oswal Agro Mills Ltd., Anik, Chembur (near HPCL Refinery) would be detrimental to the security/safety of the vital installation."

It is relevant to note that on the security aspect, the Respondent 1 referred to

their letter dated 13-4-2011 to the then Chief Secretary, Government of Maharashtra, wherein they drew his attention to the recent incident of fire at Indian Oil Depot at Jaipur resulting into loss of life and damage to property. They relied upon the Letter dated 1-3-2012 by the Deputy Secretary, Ministry of Home Affairs, Government of India which specifically stated in Para (2)(ii) as follows:-

"(ii) With specific reference to the construction of within building at the site of demolished factory of M/s Oswal Agro Mills Ltd., Anik Village, Chembur near HPCL Refinery, they pose a security hazard to the above vital installation in HPCL Refinery. Accordingly, MHA has already issued an advisory in this regard to the State Government of Maharashtra vide Letter No. VI 23014/448/2011-VS dated 16-1-2012 (copy enclosed). As regard the possibility of such construction being used by security agencies, the matter needs to be examined in depth in consultation with all concerned.

Lastly, they relied upon the affidavit of the Assistant Commissioner of Police of Trombay filed in the writ petition. In Para 3, he has specifically stated that any upper floors in the complex on Oswal land, if permitted, may provide an ideal launching pad for any external object to be directed or targeted at the said refinery storage tanks which may contain highly inflammable substances like LPG, naphtha and crude oil."

34. A similar judgment was passed by a Division Bench of this Court. BPCL, which is the refinery neighbouring the Eversmile Complex and is only at a distance of 15 meters from the PAP complex, had approached this Court by filing Writ Petition No. 1515 of 2017 to oppose the issuance of a commencement certificate to the redevelopment of a high rise residential building located 50 meters away from its warehouse. Vide its judgment dated 25th April 2019, this Court quashed and set aside an order of the Municipal Corporation of Greater Mumbai which authorized the construction for the redevelopment of the residential building in question. This Court relied on the aforementioned judgment of the Supreme court dated 10-12-2013 in the matter of Oswal Agro Mills Ltd. Vs. Hindustan Petroleum Corporation Ltd. & ors . to hold that:-

"When human habitation is permitted in proximity hazardous plants, there is an immediate, as well as long-term, danger of exposure to health hazards. The Planning Authority cannot ignore this aspect. The public interest cannot be sacrificed at the altar of commercial interests. The submissions of the Municipal Corporation and the appellant are clearly contrary to the regulations. These observations in paras 25 to 28 of the judgment of the Supreme Court ought to serve as a reminder to the Municipal Authorities. However, we find that the Municipal Corporation of Greater Mumbai has not learnt any lesson despite the authoritative pronouncement of the Supreme Court. The Supreme Court held further that if there is a security threat and possible danger to the health of the occupants of the buildings already constructed and to that of the prospective occupants of the buildings which would be coming up, then, that is a very crucial aspect and requires serious consideration. The Supreme Court emphasised that

the security threat is clearly placed on record so also a possible danger to the health placed on record so also a possible danger to the health of the occupants of the buildings already constructed and to be constructed as well."

35. It is therefore evident that residential premises in the vicinity of such refineries can pose multi-faceted security risks, which are not only restricted to the health of the residents nearby and the absolute liability imposed on the refineries, but a terrorist attack using these refineries as targets could lead to colossal destruction within the city, that could debilitate a large number of people living around the Chembur region.

36. It is noteworthy that in order to quell the concerns about security within the PAP Complex, the State Government and Municipal Corporation had planned to allot 2000 police officers and constables homes in the Eversmile Complex. These officers were intended to be deputed within the Complex to oversee the safety of the neighbouring industries and refineries. However, to this day not a single police officer has been ready to accept the homes allotted to them in Eversmile Complex due to the fact that they share the same concerns about safety and the exposure to the air pollution in the region.

37. The IIT report of 4th March 2019 records in some detail the infrastructural deficiencies in the Eversmile PAP colony of Mahul. A perusal of the findings of the IIT report cited below indicate that:-

"a. The PAP colony has been built in contravention to the guidelines for low-income housing prescribed by the National Building Code of India.

b. Against the permissible density of 500 tenements per hectare, the Eversmile colony has 1327 tenements per hectare.

c. The design of the colony is such that proper ventilation and natural lighting are severely restricted, thereby rendering the colony conducive to the rampant spread of illness and diseases.

d. The colony has been designed to recreate a vertical, cemented ghetto, with the focus being to stack up as many tenements in as small an area as possible."

38. At Page 49, the IIT report notes:

"The current SRA units of Mahul are characterised by close proximity to Bharat Petroleum Corporation Limited (BPCL) Refinery, inaccessibility to railway stations and poor neighbourhood planning. Furthermore, the Mahul SRA buildings have been designed completely based on the occupancy maximisation principle, thus ignoring major liveability parameters such as environmental quality, especially air quality. The buildings are observed to suffer from poor and inefficient airflow, deficit of adequate daylight level, high temperature trapped zones and extreme pollutant concentration levels due to the close proximity of petroleum refinery and industrial sectors.

Comparison with Building codes and guidelines

Density

The maximum permissible density for a low-income housing scheme, as dictated by the National Building Code of India (NBC), is 500 tenements per hectare. The density in Mahul Township is 1327 tenements per hectare. Furthermore, much of the basic infrastructure in Mahul is non-existent or failing: drainage pipes in many buildings are broken, sewers overflow onto the roads, and tiles are crumbling in almost every building.

Social Infrastructure

There is little social infrastructure; Mahul lacks adequate provision of health, education, socio-cultural, and recreational facilities. There are limited schools, shops or socio-cultural facilities, and there are inadequate health care facilities. Urban and Regional Development Plans Formulation and Implementation (URDPFI) and NBC guidelines dictate that there should be a dispensary for every 15,000 people, and an intermediate hospital for every 1 lakh population. These requirements are not met in the current situation.

Open space

Similarly, there is very little open space in Mahul. The total land area of Mahul is 161,520 m². Of this, 16,458 m² is open space, which is 0.19 m² open space per capita. As per NBCI norms, there should be 3.0 m² of open space per capita (Indorewala & Wagh, 2017; Ministry of Urban Development, 2015). To meet the NBC requirements for various social infrastructures and open space, 53.8 hectares of land area would be necessary. This is more than three times greater than the current 16.15 Ha of land on which Mahul Township is constructed (Indorewala & Wagh, 2017).

It is evidenced from Fig 4 representing the building layout that the courtyards and corridors perform poorly in terms of proper daylight and ventilation levels. This situation may have an effect on liveability and environmental conditions, particularly air quality. Hence, detailed analysis of natural ventilation and daylight performance is necessary to understand the current environmental conditions of the township area."

39. At page 46-47 of the IIT Report, it is noted that:-

"2.2.3 Interpretations

Visual interpretations of Fig. 9 indicate that the major reason behind low site-based air flow was the arrangements of building blocks and their spatial configuration. Hyper-dense compactly arranged building towers placed in close proximity to one another with limited inter-block distance act as a barrier to the air path, thus causing lower air velocity zones within building blocks. This lower natural ventilation performance does not meet the ventilation effectiveness threshold, hence often failing in efficient extraction and disposal of air pollutants.

Hence, there remains huge probability of higher pollutant concentration levels

within the site which might have an adverse effect on occupants' health and well-being. Therefore, natural ventilation sensitive housing design in terms of building arrangements with efficient site-based wind flow is necessary in this area."

40. At page 85 to 86 of the IIT report, the deficient arrangements for hygiene is noted:-

"Hygiene and Public Health Condition

During field visit, it was observed that the area lacked severely in terms of overall hygiene and cleanliness. The current scenario can be seen from the photographs presented in Plat I. The alleyways between buildings and often the entrances to the buildings themselves were flooded with sewage-water....

The unhygienic conditions such as these renders the locality very prone to contagious and epidemic diseases."

41. With regards to Social Infrastructure, the IIT Bombay report recommends as follows:-

"4.2 Social infrastructures

The social infrastructure in Mahul Township is severely lacking. The highly dense layout leaves almost no room for open space. Furthermore, health infrastructure is inadequate. Given the high incidence of illness in Mahul residents, proper health care is a necessity. By adding a government hospital and additional BMC clinics to the Mahul PAP area, residents will have easier access to low-cost or free health care. However, access to these resources is not, in itself, sufficient. The quality of service and availability of illness-specific resources is highly important. As noted in Section 4.3, more than a quarter of survey respondents cited concerns with the quality of medicine received from public health care facilities. Moreover, some respondents stated that the BMC clinics only treated certain conditions. The high incidence of respiratory and skin-related symptoms is cause for concern. Public health care facilities must have specific infrastructure and resources to deal with these conditions. Screening services for respiratory illnesses and skin infections must be available. Health care providers at public facilities must be well-trained in diagnosing and responding to respiratory conditions like tuberculosis. In order to alleviate the illness burden of Mahul residents, accessible and quality health care must be provided."

42. It is apparent from a perusal of the joint report prepared by the MPCB, CPCB and NEERI dated 01 January 2019, the Report of NEERI dated 01 February 2019 and the IIT report dated 4th March 2019 that Mahul continues to be a dangerously polluted region.

43. It is further evident that residing in the Eversmile Colony has resulted in the PAPs suffering a variety of serious health issues, including acute respiratory diseases. The report concludes with the below quoted text as its final recommendations:-

"7. The recommendations of the National Green Tribunal, The Maharashtra Pollution Control Board, and reports by various agencies such as NEERI, as well as previous court judgments must be seriously implemented. Most of the reports point to adverse environmental conditions seriously affecting living conditions, health, and livelihoods in this area. Where needed, apart from reducing and eliminating sources of pollution, shifting of populations needs to be done in keeping with the recommendations of various reports and judgments.

8. The majority of the residents think that the conditions are unlivable in Mahul PAP Township. While the recommendations 9-& above may improve the situation somewhat, these are unlikely to address the serious problems of air and water pollution from nearby factories, refineries and petro-chemical storage facilities. Hospitals and health-care facilities can treat people after they fall ill, but not prevent illnesses and diseases. It is clear that health has been seriously affected leading to higher health care expenditure, and loss of lives and livelihoods. Hence since the large scale industries and refineries in the area that cause environmental damage and pollution cannot be shifted from this place, to prevent further harm to lives and livelihoods, there seems no option other than to shift the entire population or sections of the population to safer places."

44. Relevant would it be to highlight that report prepared by NEERI and submitted to MPCB in February 2018 records that between 9th December 2017 to 11th January 2018, as against the stipulated norms of Air Ambient Quality requiring 5 µg/m as the maximum level of Benzene, the levels noted were 58 µg/m , 77.6 µg/m , 26.5 µg/m , , 95.2 µg/m , , 27.1 µg/m , , 54.6 µg/m , , 84.7 µg/m , , 175.1 µg/m , , 11.4 µg/m , , 1039.7 µg/m , , 684.8 µg/m , , 247.9 µg/m , , 101 µg/m , , 1182 µg/m , , 62 µg/m , , 132 µg/m , , 102 µg/m , , 134 µg/m , , 58 µg/m , , 43 µg/m , , 115 µg/m , , 210 µg/m , , 43 µg/m , , 123 µg/m , , 204 µg/m , , 50 µg/m , , 158 µg/m , , 248 µg/m , , 54 µg/m , , & 138 µg/m , . These are at the sites of M/s. Aegis Logistics, M/s. Sea Lord Containers, BPCL Trombay, BPCL Sports Club, & BPCL Administrative Building. This is proof of the fact that with reference to the data collated and relied upon by the National Green Tribunal in its judgment dated 18th December 2015 which referred to the report dated 12th March 2015 recording Ambient Air Quality as of the period pre-March 2015, far from there being any improvement, the situation deteriorated if we look at the data for the months of December 2017 and January 2018.

45. When taken to its logical conclusion, these recommendations of the IIT report, along with the orders of this Court in Writ Petition (L) Nos. 874/2018 and 3314/2017 indicate that PAPs residing in Mahul will have to be shifted out of the colony, and further allotments of tenements in the Eversmile Colony should not be made to PAPs and slum dwellers. The argument of the State of Maharashtra that paragraph 25 of the order of the Tribunal cannot freeze the situation is theoretical. Indeed no situation can ever be frozen. But, as rightly held by the Tribunal the air quality needs to be monitored and if no solution is found i.e. the air quality is not improved and health of the rehabilitated persons continues to

be on the down slide, steps have to be taken as required by law.

46. What is the law on the subject?

47. In the decision reported as (1997) 11 SCC 121 Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan, the Supreme Court in paragraph 51 has held as under:-

"It would be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. It would be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the Constitutional objectives."

48. In the decision reported as (1990) 1 SCC 520 Shantistar Builders Vs. Narayan Khimalal Totame, the Supreme Court in paragraph 9 has held as follows:-

"9. Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be assured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fireproof accommodation."

The Supreme Court further observed that:-

"since a reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in Article 21."

49. In the decision reported as 2019 SCC Online Del 7618:(2019) 260 DLT 581 (DB) Ajay Maken & Ors. Vs. Union of India & Ors. the Delhi High Court carved out the right to the city across paragraphs 96 to 102 of its judgment which read as under:

"96. In the context of the right to shelter and its sub-species, the right to adequate housing, it is necessary to acknowledge that there is an increasing recognition in the international sphere of what is termed as the 'right to the

city' (RTTC), which in the context of the case on hand, is an important element in the policy for rehabilitation of slum dwellers. According to Professor Upendra Baxi:

"The idea that the RTTC is a right to "change ourselves by changing the city" needs close consideration. It is a right not in the sense of liberty but in the sense of power; it is an individual as well as collective or common right; it is a right to call for, or achieve, change in our living spaces and ourselves. However, the 'we-ness' for transformation is not a given but has to be constructed, forged, or fabricated if only because those who wield economic, social, and political domination aspire always towards fragmentation of the emergent 'we-ness'. In this sense, then the RTTC is a 'right' to struggle for maintaining critical social solidarities.

And, accordingly, such a right presupposes the respect for freedom of speech and expression, advocacy and dissent, movement and assembly, or the popular capacity to struggle to attain these. In sum, the moral RTTC assumes legal duties of respect for the conventionally called civil and political human rights."

97. The Court at this juncture seeks to trace the background to the recognition of RTTC in international law, as an integral part of the right to adequate housing. The Istanbul Declaration on Human Settlements was adopted by heads of States of Governments and the official delegations of countries assembled at the United Nation's Conference on Human Settlements (Habitat II) in Istanbul, Turkey from 3rd to 14th June 1996. It endorsed "the universal goals of ensuring adequate shelter for all and making human settlements safer, healthier and more reliable, equitable, sustainable and productive." There were two major themes at that conference: adequate shelter for all and 'sustainable human settlement development' in an urbanizing unit. The conference recognized with a sense of urgency the continuing deterioration of conditions and shelter of human settlements. It reaffirmed its commitment to better the standards of living "in larger freedom of all human right." The conference also reaffirmed the commitment to "the full and progressive realization of the right to adequate housing as provided for in international instruments" and to that end sought the active participation of public, private and non-governmental partners at all levels "to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families."

98. Two decades later, a 'New Urban Agenda' was unanimously adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador on 20th October 2016. In December 2016, during the 68th plenary session of the 71st General Assembly, all United Nations Member States endorsed the New Urban Agenda and committed to work together towards a paradigm shift in the way cities are planned, built, and managed.

99. Preceding the adoption of the New Urban Agenda, a Habitat III Policy Unit

'Right to the City, and Cities for All', consisting of experts from Member States, was formed to provide inputs into formulation of the Agenda. The aforesaid policy paper defined the RTTC as under:

"10. The right to the city is... defined as the right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life. The right to the city further implies responsibilities on government and people to claim, defend, and promote this right."

100. The policy paper also sets out a non-exhaustive list of components that ensure the 'city as a common good':

(a) a city of free of discrimination; (b) a city of inclusive citizenship; (c) a city with enhanced political participation in all aspects of urban planning; (d) a city ensuring equitable access for all to shelter, goods and services; (e) a city with quality public spaces for enhancing social interaction; (f) a city of gender equality;

(g) a city with cultural diversity; (h) a city with inclusive economics; and, (i) a city respecting urban-rural linkages, biodiversity and natural habitats.

101. The aforementioned components of the 'city as a common good' have been ultimately incorporated in the New Urban Agenda as a 'shared vision' for "the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all". Formulated thus, what the New Urban Agenda has acknowledged is a RTTC.

102. The RTTC acknowledges that those living in JJ clusters in jhuggis/slums continue to contribute to the social and economic life of a city. These could include those catering to the basic amenities of an urban population, and in the context of Delhi, it would include sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life. Many of them travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life. Prioritizing the housing needs of such population should be imperative for a state committed to social welfare and to its obligations flowing from the ICESCR and the Indian Constitution. The RTTC is an extension and an elaboration of the core elements of the right to shelter and helps understand the broad contours of that right."

50. In its concluding observations, the Delhi High Court held and defined the Right to Housing as follows:-

"194. The right to housing is a bundle of rights not limited to a bare shelter over

one's head. It includes the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage and transport facilities.

195. The law explained by the Supreme Court in several of its decisions discussed herein before and the decision in *Sudama Singh* discourage a narrow view of the dweller in a JJ basti or jhuggi as an illegal occupant without rights. They acknowledge that the right to adequate housing is a right to access several facets that preserve the capability of a person to enjoy the freedom to live in the city. They recognize such persons as rights bearers whose full panoply of constitutional guarantees require recognition, protection and enforcement. That is the running theme of the DUSIB Act and the 2015 Policy.

196. Once a JJ basti/cluster is eligible for rehabilitation, the agencies should cease viewing the JJ dwellers therein as 'illegal encroachers'. The decisions of the Supreme Court of India on the right to shelter and the decision of this Court in *Sudama Singh* require a Court approached by persons complaining against forced eviction not to view them as 'encroachers' and illegal occupants of land, whether public or private, but to require the agencies to first determine if the dwellers are eligible for rehabilitation in terms of the extant law and policy."

51. In the decision reported as AIR 1996 (2) SCC 549 *Chameli Singh & Ors. Vs. State of Uttar Pradesh*, the Supreme Court held in paragraph 8 as follows:

"8. In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restriction which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens of course subject to its economic budgeting. In a democratic society as a member of the organized civil community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve

his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself."

52. In the decision reported as (2012) 6 SCC 502 Brij Mohan Lal Vs. Union of India the Supreme Court held in paragraph 137 as under:

"The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens."

53. In the decision reported as [2000] ZACC 19 Government of the South Africa Vs. Irene Grootboom the Constitutional Court of South Africa held as under:-

"everyone has a right to have access to adequate housing... The state must take reasonable legislative and other measures, within its available resources, to a progressive realization of this right.... The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing."

54. The Court propounded the legal principle of a requirement of 'reasonableness' while providing public housing by the State:

"... a court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognize that a wide range of possible measures could be adopted by the State to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met."

55. Article 11(1) of the International Covenant on Economy, Social and Cultural Rights (ICESCR) states:-

"the State parties must recognize the right for adequate standard of living, including adequate food, clothing and housing for continuous improvement of living conditions. The State parties will take appropriate steps to ensure the realization of this, recognizing to this effect the essential importance of international cooperation based on free consent."

56. In December 1991, the Committee on Economy, Social and Cultural Rights adopted General Comment No.4 on a right to adequate housing. This Comment requires the State to confer legal security of tenure upon households which lack such protection against forced eviction, harassment and other threats by State

Agencies and private parties.

57. In May 1997, the Committee adopted General Comment No. 7 on forced eviction which is defined as the permanent or temporary removal against their will of individuals, families or communities from their homes or land which they occupy. This Comment prohibits forced eviction stressing that the State itself must refrain from forced evictions and ensure that the law is enforced against its agents third parties who carry out such evictions. Clause 17 of General Comment No. 7 states:-

"Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State-Party must take all appropriate measures, to the maximum of its available resources to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

58. It is settled law that The International Covenant on Economy, Social and Cultural Rights is binding upon the Government of India, as it is a multi-party treaty, ratified by India in 1976. With the enactment of the Protection of Human Rights Act, 1993 (PHRA), and in particular Section 2(f) thereof, the ICESCR is one of the human rights covenants recognized by the Indian Parliament to be enforceable. Consequently, the obligations under the said covenant are enforceable in India.

59. Therefore, as regards WP No. 14102/2018, we dispose of the same by declaring that paragraph 25 of the decision dated 18th December 2015 of the National Green Tribunal does not freeze the issue at the point of time when the judgment was passed and this would mean that air quality needed to be monitored constantly and if no improvement was found, suitable directions need to be issued keeping in view the prevalent air condition monitored over a period of four years.

60. As regards the other two W.Ps. i.e. WP (L) No. 874/2018 and WP (L) No. 3314/2017, we direct that no family required to be rehabilitated as a consequence of slum clearance would be shifted to the PAP colonies in Mahul or Ambapada and those who have been rehabilitated at the said two colonies under the slum rehabilitation schemes would be offered accommodation elsewhere and till alternative accommodation is made available they would be paid Rs. 15,000/- per month as transit rent with security deposit of Rs. 45,000/- upon the family rehabilitated through its head filing an application seeking to move out and upon the condition that upon receipt of the security deposit and commitment to be paid transit rent, if no other alternative accommodation is provided, the family moves out.

61. The mandamus be complied within a period of twelve weeks from today.

62. In view of the disposal of the Writ Petitions, Civil Application No. 1753 of 2019 is disposed of.