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

WRIT PETITION (L) NO.16257 OF 2026

M.I.G. Adarsh Nagar Co-operative
Housing Society Limited
A co-operative housing society
registered under the provisions of
Maharashtra Co-operative Societies,
1960 through its Secretary
Having its address at Pump House,
M.I.G. Adarsh Nagar, Worli,
Mumbai – 400030 … Petitioner

Versus

1. The State of Maharashtra
   Through the Department of Housing
   Represented by the Office of the
   Government Pleader, Original Side
   Bombay High Court

2. The Maharashtra Housing and
   Area Development Authority
   Having address at Gruhnirman
   Bhavan, Kala Nagar, Bandra [E],
   Mumbai – 400 051

3. The Mumbai Housing and Area
   Development Board, through its
   Vice Chairman and Chief Officer
   Having address at Gruhnirman
   Bhavan, Kala Nagar, Bandra [E],
   Mumbai – 400 051.

4. The Resident Executive Engineer,
   Mumbai Circle, Maharashtra Area
   Development Board
   Having address at Gruhnirman Bhavan,

Kala Nagar, Bandra [E]
Mumbai – 400 051

5. The Government of Maharashtra
through the Department of Urban Development,
Having its address at 4th Floor, Main Building,
Mantralaya, Mumbai – 400 032

6. The Municipal Corporation of Greater Mumbai
through its Commissioner
Having its head office at
Mahanagarpalika Marg,
Mumbai – 400 001 …. Respondents

WITH
WRIT PETITION (L) NO.15197 OF 2026

1. Bandra (H.I.G.) Suman Co-operative
Housing Society Limited,
a Co-operative Housing Society registered
under the provisions of the Maharashtra
Co-operative Housing Societies Act, 1960,
bearing registration no.
BOM/W-H-WEST/HCG[OH]/4573
dated 27th October, 1989, having its address
at: Building No.25, Krishna Chandra Marg,
Bandra Reclamation, Bandra (West),
Mumbai – 400 050

2. Bandra (H.I.G.) Saptarshi Co-operative
Housing Society Limited,
a Co-operative Housing Society
registered under the provisions of the
Maharashtra Co-operative Housing
Societies Act, 1960, bearing registration
no.BOM/[W-H-WEST]/HCG[OH]/4615/89-90
dated 8th February, 1990, having its address at:

Building No.26, Krishna Chandra Marg,
Bandra Reclamation, Bandra (West),
Mumbai – 400 050

3. Bandra (H.I.G.) Sagar Kiran Co-operative Housing Society Limited, a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Housing Societies Act, 1960, bearing registration no.BOM/[W-H/W]/HCG[OH]/4342/88-89 dated 26th May, 1989, having its address at:
Building No.29, Krishna Chandra Marg,
Bandra Reclamation, Bandra (West),
Mumbai – 400 050 … Petitioners

Versus

1. The State of Maharashtra,
Through the Additional Chief Secretary/
Principal Secretary,
Government of Maharashtra,
Department of Housing, having office
at: Mantralaya, Mumbai – 400032
Email : acs.housing@maharashtra.gov.in

2. The Maharashtra Housing and Area Development Authority, through its
Vice President and Chief Executive Officer,
having office at: MHADA, Griha nirman Bhavan
Kalanagar, Bandra (East),
Mumbai – 400 051
Email : vpceo@mhada.gov.in

3. The Mumbai Housing and Area Development Board,
Through its Vice Chairman & Chief Officer,
having office at : Griha Nirman Bhavan,
Bandra (East), Mumbai – 400051
Email : comb@mhada.gov.in
combmhada123@gmail.com

4. The Government of Maharashtra,
   Department of Urban Development through
   its Principal Secretary having office
   at: 4th Floor, Main Building, Mantralaya,
   Mumbai – 400032
   Email : psec.ud1@maharashtra.gov.in
5. The Municipal Corporation of Greater Mumbai,
   through its Commissioner, having office
   at: Brihanmumbai Municipal Corporation,
   Head Quarter, Mahanagarpalika Marg,
   Mumbai – 400 001
   Email : mc@mcgm.gov.in

6. Bandra (H.I.G.) Anand Sagar Co-operative
   Housing Society Limited,
   a Co-operative Housing Society
   registered under the provisions of the
   Maharashtra Co-operative Housing
   Societies Act, 1960, bearing registration
   no.BOM/[W-H-W]/HCG[OH]/4343/88-89
   dated 26th May, 1989, having its address at :
   Building No.24, Krishna Chandra Marg,
   Bandra Reclamation
   Bandra (West), Mumbai – 400 050

7. Bandra (H.I.G.) Sagar Sangam Co-operative
   Housing Society Limited,
   a Co-operative Housing Society
   registered under the provisions of the
   Maharashtra Co-operative Housing Societies
   Act, 1960, bearing registration
   no.BOM/[W-H-W]/HCG[OH]/4341/88-89
   dated 26th May, 1989, having its address at:
   Building Nos.27 and 28, Krishna Chandra Marg,
   Bandra Reclamation, Bandra (West),
   Mumbai – 400 050.

8. Bandra (H.I.G.) Agasti Co-operative
Housing Society Limited,
a Co-operative Housing Society registered
under the provisions of the Maharashtra
Co-operative Housing Societies Act, 1960, bearing
registration no.BOM/[W-H-W]/HCG[OH]/
3988/88-89 dated 31st January, 1989, having
its address at : Building No.30,
Krishna Chandra Marg, Bandra Reclamation,
Bandra (West), Mumbai – 400 050.

9. Mr. Satish Chaudhari,
Chairman of Bandra (H.I.G.) Anand Sagar
Co-operative Housing Society Limited,
A Co-operative Housing Society
registered under the provisions of the
Maharashtra Co-operative Housing Societies Act,
1960, bearing registration no.BOM/[W-H-W]/
HCG[OH]/4343/88-89 dated 26th May, 1989,
having its address at: Building No.24,
Krishna Chandra Marg, Bandra Reclamation,
Bandra (West), Mumbai – 400 050

10. Mr. Ramesh Jain,
Chairman of Bandra (H.I.G.) Sagar Sangam
Co-operative Housing Society Limited,
A Co-operative Housing Society registered
under the provisions of the Maharashtra
Co-operative Housing Societies Act, 1960,
bearing registration no.BOM/[W-H-W]/
HCG[OH]/4341/88-89 dated 26th May, 1989,
having its address at: Building Nos.27 and 28,
Krishna Chandra Marg, Bandra Reclamation,
Bandra (West), Mumbai – 400 050

11. Mr. Shrikrishna Dwaram,
Chairman of Bandra (H.I.G.) Agasti Co-operative

Housing Society Limited, A co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Housing Societies Act, 1960, bearing registration no. BOM/[W-H-W]/ HCG[OH]/3988/88-89 dated 31st January, 1989, having its address at: Building No.30, Krishna Chandra Marg, Bandra Reclamation, Bandra (West), Mumbai – 400 050. .... Respondents

WITH
WRIT PETITION (L) NO.15631 OF 2026

1. Kamalpushpa Co-operative Housing Society Ltd., a co-operative housing society registered under the Maharashtra co-operative Societies' Act, 1960 through its Hon. Secretary Mr. Satish Prannath Ganju, having office at Kamalpushpa B Building, Ground Floor, Plot No.6, Reclamation, Bandra (W), Mumbai 400 050.

2. Satish Prannath Ganju, Age - 70 a Member and the Honorary Secretary of Kamalpushpa Co-operative Housing Society Ltd., residing at Flat No.B-64, Kamalpushpa, Plot No.6, Reclamation, Bandra (W), Mumbai 400 050. ... Petitioners

Versus

1. The Maharashtra Housing and Area Development Authority, an authority established and constituted under the Maharashtra Housing and Area Development Act, 1976, through its Vice President and Chief Executive Officer, having Office at Grihanirman Bhavan, 4th Floor, Bandra (East), Mumbai – 400 051.

2. The Mumbai Housing and Area Development Board, a Regional Board constituted under the MHAD Act, 1976, through its Chief Officer having his office at Grihanirman Bhavan, 3rd Floor, Bandra (East), Mumbai – 400 051.

3. The Executive Engineer, Bandra Division, Mumbai Housing and Area Development Board, having his office at Room No.321, Grihanirman Bhavan, 3rd Floor, Bandra (East), Mumbai – 400 051.

4. The Executive Engineer, (Special Project Desk), Mumbai Housing and Area Development Board, having office at Grihanirman Bhavan, 5th Floor, Bandra (East), Mumbai – 400 051.

5. The Deputy Registrar, Coopeative Societies, Mumbai Western Suburbs, Mumbai Housing and Area Development Board, having office at Room No.211, Grihanirman Bhavan, 1st Floor, Bandra (East), Mumbai – 400 051.

6. State of Maharashtra through the Principal Secretary, Housing Department, having office at Mantralaya, Mumbai 400 032. .... Respondents

WITH
WRIT PETITION (L) NO.15680 OF 2026

1. Bandra (H.I.G.) Anand Sagar Co-operative Housing Society Limited, being a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office address at : 'Anand Sagar' : 24, Krishna Chandra Marg, Bandra Reclamation, Bandra (West), Mumbai – 400 050 through its Chairman, Mrs. Nandajanani Swaminathan and Hon. Secretary Mrs. Anju Tekchandaney … Petitioner

Versus

1. The State of Maharashtra through the Principal Secretary, Ministry of Housing, Government of Maharashtra and having its office address at Mantralaya, Dr. Madam Cama Road, Nariman Point, Mumbai – 400032.

2. Maharashtra Housing and Area Development Authority, through its Chief Executive Officer/ Vice President having its office address at 4th Floor, Griha Nirman Bhavan, Bandra East, Mumbai – 400 051.

3. High Power Committee (HPC) constituted under the GR dated 25th April, 2025 consisting of

   i. Upper Chief Secretary/

Principal Secretary
Housing Department
(Chairman)

ii. Vice Chairman, Executive Office,
MHADA (Member)

iii. Additional Commissioner
BMC (Member)

iv. Joint Secretary/Deputy Secretary
in Housing Department (Member)

v. Chief Officer MHADB
(Member Secretary)
Griha Nirman Bhavan, Bandra (East),
Mumbai – 400 052

4. Mumbai Housing and Area Development Board, through its Chief Officer having its office address at 3rd Floor, Griha Nirman Bhavan, Bandra (East),
Mumbai – 400 051.

5. Bandra (H.I.G.) Phase III
Co-operative Housing Societies
Union Limited
being a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office address at : 27-28, Sagar Sangam
Co-operative Housing Society Limited,
Krishna Chandra Marg,
Bandra Reclamation, Bandra (West),
Mumbai – 400 050

6. Bandra (H.I.G.) Sagar Sangam Co-operative Housing Society Limited, being a Society

registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office address at : 'Sagar Sangam' : 27-28, Krishna Chandra Marg, Bandra Reclamation, Bandra (West), Mumbai – 400 050

7. Bandra (H.I.G.) Suman Co-operative Housing Society Limited, being a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office address at : 'Suman' : 25, Krishna Chandra Marg, Bandra Reclamation, Bandra (West), Mumbai – 400 050

8. Bandra (H.I.G.) Saptarshi Co-operative Housing Society Limited, being a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office address at : 'Suman' : 26, Krishna Chandra Marg, Bandra Reclamation, Bandra (West), Mumbai – 400 050

9. Bandra (H.I.G.) Sagar Kiran Co-operative Housing Society Limited, being a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its registered office address at : 'Sagar Kiran' : 29, Krishna Chandra Marg, Bandra Reclamation, Bandra (West), Mumbai – 400 050

10. Bandra (H.I.G.) Agasti Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Agasti' : 30, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050 .... Respondents

WITH
WRIT PETITION NO.2642 OF 2026

Bandra (H.I.G.) Sagar Sangam Co-operative
Housing Society Limited, being a Society
registered under the provisions of the
Maharashtra Co-operative Societies Act, 1960
and having its registered office address
at : 'Sagar Sangam' : 27-28, Krishna
Chandra Marg, Bandra Reclamation,
Bandra (West), Mumbai – 400 050
through its Chairman, Mr. Ramesh Jain
and Hon. Secretary, Mr. Bhavin Muni ... Petitioner

Versus

1. The State of Maharashtra
through the Principal Secretary,
Ministry of Housing,
Government of Maharashtra
and having its office address at
Mantralaya, Dr. Madam Cama Road,
Nariman Point, Mumbai – 400 032.

2. Maharashtra Housing and Area
Development Authority,
through its Chief Executive Officer/
Vice President having its office

address at 4th Floor, Griha Nirman Bhavan, Bandra East, Mumbai – 400 051

3. High Power Committee (HPC) constituted under the GR dated 25th April, 2025 consisting of

   i. Upper Chief Secretary/ Principal Secretary Housing Department (Chairman)

   ii. Vice Chairman, Executive Office, MHADA (Member)

   iii. Additional Commissioner BMC (Member)

   iv. Joint Secretary/Deputy Secretary in Housing Department (Member)

   v. Chief Officer MHADB (Member Secretary) Griha Nirman Bhavan, Bandra (East), Mumbai – 400 052

4. Mumbai Housing and Area Development Board, through its Chief Officer having its office address at 3rd Floor, Griha Nirman Bhavan, Bandra (East), Mumbai – 400 051.

5. Bandra (H.I.G.) Phase III Co-operative Housing Societies Union Limited being a Society registered under the provisions of the Maharashtra

Co-operative Societies Act, 1960 and
having its registered office address
at : 27-28, Sagar Sangam
Co-operative Housing Society Limited,
Krishna Chandra Marg,
Bandra Reclamation, Bandra (West),
Mumbai – 400 050

6. Bandra (H.I.G.) Anand Sagar Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra Co-operative
Societies Act, 1960 and having its
registered office address
at : 'Anand Sagar' : 24, Krishna Chandra Marg,
Bandra Reclamation
Bandra (West), Mumbai – 400 050

7. Bandra (H.I.G.) Suman Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Suman' : 25, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050

8. Bandra (H.I.G.) Saptarshi Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Suman' : 26, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050

9. Bandra (H.I.G.) Sagar Kiran Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Sagar Kiran' : 29, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050

10. Bandra (H.I.G.) Agasti Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Agasti' : 30, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050 .... Respondents

WITH
WRIT PETITION (L) NO.15773 OF 2026

1. Bandra (H.I.G.) Agasti Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Agasti' : 30, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050
through its Chairman,
Mr. Srikrishna Dwaram and
Hon. Secretary
Mr. Arindham Chakrabarti … Petitioner

Versus

1. The State of Maharashtra
   through the Principal Secretary,
   Ministry of Housing, Government of
   Maharashtra and having its office
   address at Mantralaya, Dr. Madam
   Cama Road, Nariman Point,
   Mumbai – 400 032.

2. Maharashtra Housing and Area
   Development Authority,
   through its Chief Executive Officer/
   Vice President having its office
   address at 4th Floor, Griha Nirman
   Bhavan, Bandra (East),
   Mumbai- 400 051.

3. Mumbai Housing and Area
   Development Board,
   through its Chief Officer having its
   office address at 3rd Floor, Griha Nirman
   Bhavan, Bandra (East),
   Mumbai- 400 051.

4. High Power Committee (HPC)
   constituted under the GR dated
   25th April, 2025 consisting of

   i. Upper Chief Secretary/
      Principal Secretary
      Housing Department
      (Chairman)

   ii. Vice Chairman, Executive Office,
      MHADA (Member)

   iii. Additional Commissioner
      BMC (Member)

iv. Joint Secretary/Deputy Secretary
in Housing Department (Member)

v. Chief Officer MHADB
(Member Secretary)
Griha Nirman Bhavan, Bandra (East),
Mumbai – 400 052

5. Bandra (H.I.G.) Phase III
Co-operative Housing Societies
Union Limited
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 27-28, Sagar Sangam
Co-operative Housing Society
Limited, Krishna Chandra Marg,
Bandra Reclamation, Bandra (West),
Mumbai – 400 050

6. Bandra (H.I.G.) Anand Sagar
Co-operative Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Anand Sagar' : 24, Krishna
Chandra Marg, Bandra Reclamation,
Bandra (West), Mumbai – 400 050

7. Bandra (H.I.G.) Suman Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address

at : 'Suman' : 25, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050

8. Bandra (H.I.G.) Saptarshi Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Suman' : 26, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050

9. Bandra (H.I.G.) Sagar Sangam Co-operative
Housing Society Limited, being a Society
registered under the provisions of the
Maharashtra Co-operative Societies Act, 1960
and having its registered office address
at : 'Sagar Sangam' : 27-28, Krishna
Chandra Marg, Bandra Reclamation,
Bandra (West), Mumbai – 400 050

10. Bandra (H.I.G.) Sagar Kiran Co-operative
Housing Society Limited,
being a Society registered under the
provisions of the Maharashtra
Co-operative Societies Act, 1960 and
having its registered office address
at : 'Sagar Kiran' : 29, Krishna Chandra Marg,
Bandra Reclamation,
Bandra (West), Mumbai – 400 050 .... Respondents

WITH
WRIT PETITION (L) NO.40180 OF 2025

1. Worli Smruti Co-operative
   Housing Society Ltd.
   Having office at Building No.21,
   Adarsh Nagar, Prabhadevi,
   Worli, Mumbai 400 030

2. Kashiram Vasant Savant : Age-57
   Being the Secretary of
   Worli Smruti Co-operative
   Housing Society Ltd.,
   Residing at Building No.21,
   Adarsh Nagar, Prabhadevi,
   Worli, Mumbai – 400 030 … Petitioners

Versus

1. The State of Maharashtra
   through Principal Secretary to the
   Housing Department, having office at
   Madam Cama Road, Mantralaya,
   Mumbai – 400 032

2. Maharashtra Housing & Area
   Development Authority (MHADA),
   through its CEO Having office at
   Gruh Nirman Bhavan, Bandra (East),
   Mumbai – 400 051

3. Mumbai Housing & Area
   Development Board, Having office
   at Gruh Nirman Bhavan, Bandra East,
   Mumbai – 400 051.

4. The Resident Executive Engineer,
   M.H. & A.D. Board, having office at
   Gruh Nirman Bhavan, Bandra East,
   Mumbai – 400 051 …. Respondents

WITH
WRIT PETITION (L) NO. 17013 OF 2026

Tierra LandPro LLP
formerly known as Yaksh Trading
Company Pvt. Ltd., a limited
liability partnership through its
designated partner, Rasik Behari Gupta,
having its registered office at
A/49-1390, MIG Adarsh Nagar
Co-operative Housing Society Ltd.,
Adarsh Nagar, Worli, Mumbai – 400 030 … Petitioner

Versus

1. State of Maharashtra
   Through its Principal Secretary,
   Housing Department,
   having Office at 5th floor, Mantralaya,
   Madam Cama Road, Mumbai – 400 032

2. Mumbai Housing and Area Development
   Board, a regional unit of MHADA having
   its office at Griha Nirman Bhavan,
   Kalanagar, Bandra (East),
   Mumbai – 400 051.

3. Executive Engineer, (Special
   Project Cell) Mumbai Housing & Area
   Development Board,
   Mumbai having its office at
   Griha Nirman Bhavan, Kalanagar,
   Bandra (East), Mumbai 400 051

4. Maharashtra Housing and Area
   Development Authority
   A statutory corporation duly
   constituted under the Maharashtra

Housing and Area Development
Act, 1976 having its office at Griha
Nirman Bhavan, Kalanagar,
Bandra (East), Mumbai 400 051

5. Municipal Corporation of
Greater Bombay, a statutory
body established under the
Mumbai Municipal Corporation Act, 1888
having its head office
at Annex Building, Municipal
Head Office, 6th floor, Mahapalika Marg,
Fort, Mumbai 400 001

6. MIG Adarsh Nagar Co-operative
Housing Society Ltd.,
a society registered under
The Maharashtra Co-operative
Societies Act, 1960 having its
registered office at M.I.G. Adarsh
Nagar, Worli, Mumbai 400 030

7. Suyoga Co-operative Housing
Society Ltd., a society registered
under the Maharashtra Co-operative
Societies Act, 1960
having its registered office at
M.I.G. Adarsh Nagar, Worli,
Mumbai 400 025 .... Respondents

WITH
WRIT PETITION (L) NO. 17209 OF 2026

B-Adarsh Nagar Co. Operative Housing Society Ltd.
A society registered under the Maharashtra
Co-operative Societies Act, 1960,

bearing Registration No.BOM/
W-GS/HSG (TC) 9735 of 1997-98,
having its registered office at :
10/153, Adarsh Nagar, Prabhadevi,
Mumbai – 400 030. Through its
authorized signatories,
Mr. Vasudev Lalwani (Chairman)
& Mr. Venugopal Nair (Hon. Secretary) … Petitioner

Versus

1. The State of Maharashtra
   Through the Additional Chief Secretary,
   Housing Department,
   Mantralaya, Madam Cama Marg,
   Mumbai – 400 032.
2. Mumbai Housing and Area Development
   Authority (MHADA),
   a statutory corporation
   constituted under the Maharashtra
   Housing and Area Development Act, 1976,
   Through its Vice President & Chief Executive Officer,
   Grihanirman Bhavan, Kalanagar,
   Bandra (East), Mumbai – 400 051.

3. Brihanmumbai Municipal Corporation,
   Through its Municipal Commissioner,
   Mahapalika Marg, Fort, Mumbai – 400 001 …. Respondents

WITH
WRIT PETITION (L) NO. 19699 OF 2026

Parijat Co-operative Housing Society Ltd.,
a co-operative housing society
registered under the Maharashtra Co-operative
Societies' Act, 1960 Having
address: Plot No.5, Reclamation,
Bandra (W), Mumbai 400 050.

Through its Hon. Secretary
Mr. Ajay Deshpande … Petitioner

Versus

1. State of Maharashtra
   through the Principal Secretary,
   Urban Development Department,
   having office at Mantralaya,
   Mumbai – 400 032.

2. The Maharashtra Housing and Area
   Development Authority, an authority
   established and constituted under the
   Maharashtra Housing and Area
   Development Act, 1976, through its
   Vice President and Chief Executive
   Officer, having Office at Grihanirman
   Bhavan, 4th Floor, Bandra (East),
   Mumbai – 400051.

3. The Mumbai Housing and Area
   Development Board, a Regional
   Board constituted under the MHAD
   Act, 1976, through its Chief Officer
   having his office at Grihanirman
   Bhavan, 3rd Floor, Bandra (East),
   Mumbai – 400 051.

4. The Executive Engineer, Bandra
   Division, Mumbai Housing and Area
   Development Board, having his office
   at Room No.321, Grihanirman Bhavan,
   3rd Floor, Bandra (East),
   Mumbai - 400 051.

5. The Executive Engineer,
   (Special Project Desk), Mumbai

Housing and Area Development
Board, having office at Grihanirman
Bhavan, 5th Floor, Bandra (East),
Mumbai – 400 051. .... Respondents

****

Mr. Y. S. Jahagirdar, Senior Advocate a/w. Mr. Shailendra Kanetkar a/w. Ms. Deeksha Jani, Mr. Niket Jani and Mr. Karan G. Fafat i/b Jani & Parikh for the Petitioner in WPL/15631/2026.

Mr. Girish Godbole, Senior Advocate a/w. Mr. Bhushan Deshmukh, Mr. Abhay Jadeja, Ms. Vanshika Shroff and Ms. Komal Patel i/b Jadeja's & Partners for the Petitioner in WPL/17013/2026.

Mr. Zal Andhyarujina, Senior Advocate a/w. Mr. Nilesh Modi, Ms. Drishti Modi, Mr. Karan Bhide and Mr. Ashish Rebello i/b M/s. Rustamji & Ginwala for the Petitioner in WP/2642/2026.

Mr. Vishwajeet Sawant, Senior Advocate a/w. Mr. Nilesh Modi, Ms. Drishti Modi, Mr. Ashish Rebello and Mr. Raoul Sawant i/b M/s. Rustamji & Ginwala for the Petitioner in WPL/15773/2026.

Mr. Surel Shah, Senior Advocate a/w. Mrs. Jai Kanade, Mr. Maulik P. Vora i/b Pramodkumar & Co. for the Petitioners in WPL/40180/2025.

Mr. Praveen Samdani, Senior Advocate a/w Mr. Anshuman Jagtap a/w. Ms. Vyoma Mehta, Mr. Rushit Chhadwa and Ms. Chandrama Raje i/b Economic Laws Practice for the Petitioner in WPL/16257/2026.

Mr. Shailendra Kanetkar a/w. Mr. Rohit M. Gogte, Mr. Pranay Kothari for the Petitioner in WPL/19699/2026.

Mr. Karl Tamboly a/w. Mr. Nilesh Modi, Ms. Drishti Modi, Mr. Ashish Rebello and Mr. Bhavin Shah i/b M/s. Rustamji & Ginwala for the Petitioner in WPL/15680/2026.

Mr. Mayur Khandeparkar a/w. Ms. Nidhi Singh, Mr. Ishan Gambhir, Mr. Bikramjit Hundal and Mr. Raghav Dharmadhikari i/b India Law LLP for the Petitioner in WPL/15197/2026.

Mr. Huzefa Nasikwala a/w. Mr. Raman Misra, Ms. Meghana Lakhyani i/b Narayani Associates for the Petitioner in WPL/17209/2026.

Mr. Ravi Kadam, Senior Advocate a/w Mr. P. G. Lad, Ms. Ariana Somandy, Ms. Sayli Apte, Ms. Aparna Kalathil and Mr. Muralidharan Kalathil for the Respondent-MHADA in WP/2566/2026, WPL/15197/2026, WPL/15631/2026, WPL/15681/2026, WPL/15680/2026 and WPL/15773/2026.

Mr. Darius Khambata, Senior Advocate a/w. Ms. Manisha Jagtap, Adv. Ammar Faizullabhoy and Ms. Yashashree Raut for the Respondent-MHADA in WPL/17013/2026 and WPL/17209/2026.

Dr. Milind Sathe, Advocate General a/w Jyoti Chavan, Addl GP and Mr. Manish Upadhye, AGP for the Respondent-State in WPL/17209/2026.

Dr. Milind Sathe, Advocate General a/w. Mr. Milind More, Addl GP and Smt. Yugandhara Khanvilkar, AGP for the Respondent-State in WPL/19699/2026.

Dr. Milind Sathe, Advocate General a/w. Smt. Anjali Helekar, GP and Smt. Jyoti Chavan, Addl. GP for the Respondent-State in WPL/17013/2026.

Dr. Milind Sathe, Advocate General a/w. Smt. Anjali Helekar, GP and Mr. Vikrant Parshurami, AGP for the Respondent-State in WPL/15197/2026.

Dr. Milind Sathe, Advocate General a/w Mr. Mohit P. Jadhav, Addl. GP and Smt. Anupamaa Pawar, AGP for the Respondent-State in WPL/15631/2026.

Dr. Milind Sathe, Advocate General a/w. Mr. Dipesh Siroya, AGP for the Respondent-State in WPL/15680/2026.

Dr. Milind Sathe, Advocate General a/w. Mr. Rakesh Pathak, AGP for the Respondent-State in WPL/2642/2026 & WPL/40180/2025.

Dr. Milind Sathe, Advocate General a/w. Ms. Lavina Kriplani, AGP for the Respondent-State in WPL/15773/2026.

Dr. Milind Sathe, Advocate General a/w Smt. Jyoti Chavan, Addl GP, Mr. Manish Upadhye, AGP for the Respondent-State in WPL/16257/2026.

Dr. Milind Sathe, Advocate General a/w. Ms. Manisha Jagtap, Mr. Aditya Mhase, Ms. Rasika Satone and Ms. Yashashree Raut for the Respondent-MHADA in WPL/16257/2026 and WPL/40180/2025.

Ms. Anjali Ghuge for the Respondent-BMC in WPL/17013/2026, WPL/17209/2026, WPL/16257/2026 and WPL/15197/2026.

Mr. P. G. Lad a/w. Ms. Aparna Kalathil, Ms. Sayli Apte and Mr. Muralidharan Kalathil for the Respondent-MHADA in WPL/19699/2026.

****

CORAM : M. S. KARNIK &
S. M. MODAK, JJ.

RESERVED ON : 25th JUNE, 2026
PRONOUNCED ON : 2nd JULY, 2026

JUDGMENT (PER M. S. KARNIK, J.) :

1. Rule. Rule heard forthwith by the consent of the parties.

2. Since the questions of law involved in all these cases are common, these writ petitions are disposed of by a common judgment. We refer to the facts in Writ Petition (L) No.16257 of 2026 (M.I.G. Adarsh Nagar Co-operative Housing Society Limited vs. State of Maharashtra and others) for convenience. The fact situation in M.I.G. Adarsh Nagar, in our opinion, represents a best-case scenario which would cover the issues involved in the rest of the writ petitions as well. Factually, there are some additional contentions raised by learned counsel viz. discriminatory treatment in excluding similarly situated societies from the cluster redevelopment; the contention that High Income Group ("HIG", for short) societies not finding a mention in the GRs tantamount to its exclusion from the cluster redevelopment and the consequent action of its inclusion in the tender published for cluster redevelopment being arbitrary etc.

A brief introduction to the controversy

3. The statement of objects and the reasons of the Maharashtra Housing and Area Development Act, 1976 ("MHADA

Act", for short) provide that on account of rapid growth of industries in the urban areas and fast growth of population and commercial activities in such areas, the need for housing accommodation could not be met by the limited house construction activities in the private sector. An important object of the MHADA Act is to deal with the problem of housing accommodation.

4. The Maharashtra Housing and Area Development Authority ("MHADA", for short) leased plots of land in favour of the petitioner societies for various tenures extending to 99 years. The petitioner societies claim to be the owner of the structure i.e. the building, and sub-lessee of the land. The petitioner society claims that by virtue of the lease/sub-lease executed in its favour, it has a beneficial right to enjoyment of the property in terms of the provisions of the Transfer of Property Act during the subsistence of the lease.

5. The lands were allotted to MHADA by the State Government as well as the Municipal Corporation of Greater Mumbai on a perpetual lease of 999 years. The State Government

and MHADA decided to undertake urban renewal by resorting to cluster redevelopment under DCPR 33(9) as well as a redevelopment under DCPR 33(5).

6. This group of writ petitions involve two layouts. The project envisages a massive redevelopment exercise of Adarsh Nagar layout involving approximately 34.33 acres of land in Worli. Some of the writ petitions involve a project envisaged by MHADA, again a massive redevelopment exercise of integrated redevelopment of Bandra Reclamation layout involving approximately 98.27 acres of land in Bandra. The petitioner societies are affected by this redevelopment exercise undertaken by MHADA.

7. The stand of the petitioner societies is that during the subsistence of the lease, without any breach being alleged, unless the lease is determined by following the due process of law, such an exercise of redevelopment affects the valuable statutory rights of the lessees to carry out the redevelopment on its own, which is in the teeth of the provisions of the Transfer of Property Act. The

decision of MHADA to redevelop the property as a cluster directly puts fetters on the statutory rights of the petitioner societies to enjoy the property during the subsistence of the lease and hence, such an exercise carried out is completely in breach of the terms of the lease which violates not only the provisions of the Transfer of Property Act but even the provisions of the DCPR 2034, as the redevelopment is undertaken by MHADA through an Agency without obtaining the consent of the petitioner societies which is a mandatory requirement. It is also the petitioners' case that they are being deprived of their property without following the due process of law, which is in complete defiance of Article 300A of the Constitution of India. The petitioner says that the societies are sought to be amalgamated/merged contrary to the provisions of the Maharashtra Co-operative Societies Act ("MCS Act", for short) which affects their rights guaranteed by the Constitution under Article 19(1)(c) of the Constitution of India.

8. On the other hand, the stand of the State Government and MHADA is that the petitioners are not at all being deprived of their property. Even under the DCPR, which the petitioners themselves

claim to be applicable, the petitioners are at the highest entitled to rehabilitation in terms of the statutory entitlement. As MHADA is undertaking the redevelopment on its own in terms of DCPR 33(5) by developing the lands owned by MHADA as a cluster redevelopment under DCPR 33(9), the petitioners are entitled to substantial additional incentive. It is thus the case that the petitioners are not being deprived of their property and, as a result of redevelopment, they are assured not only of the very same area which is in their possession but substantial additional area, which additional incentive is much more than the statutory entitlement under the DCPR which the petitioner societies would get if the redevelopment is carried on by themselves.

9. MHADA says that cluster redevelopment is permissible under DCPR 2034 and therefore for the purpose of an urban renewal which necessarily entails a planned development of the cluster by making provisions for roads, infrastructure, other amenities, the redevelopment is in public interest. The members of the petitioner societies would be allotted tenements within the cluster completely in conformity with the statutory provisions

governing such allotments. It is MHADA's case that the overarching provisions of a special statute i.e. MHADA Act and the object for which MHADA Act has been enacted, one such object being to coordinate the housing programmes with an orderly development of urban areas in the State, for a more comprehensive and coordinated approach to the entire problem of housing development, and planning and development of certain areas in a balanced manner, with sufficient attention to ecology, pollution, overcrowding and amenities required for leading a wholesome civic life, that the single corporate authority for the whole State and boards for certain areas are established to carry out the plans and programmes of such authority, while addressing the problem of housing accommodation in urban areas. It is thus MHADA's case that the rights of the petitioner societies are not being affected in any manner but on the contrary by protecting their existing rights, MHADA being the owner of the land, proposes to further the object of the Act which is in the public interest of providing more housing stock, that MHADA is undertaking redevelopment of the Adarsh Nagar and Bandra Reclamation layout on its own. It is thus the

submission that the private interest claimed by the petitioners is completely eclipsed by the redevelopment which is in the larger public interest to address the acute shortage of accommodation in urban areas, which causes no prejudice to the petitioner society members, as their interests are adequately safeguarded. Whatever inconvenience is caused to the petitioners as a result of such a cluster redevelopment is minuscule compared to the larger public interest of creating housing stock which is sought to be addressed by the cluster redevelopment, which is completely in conformity with the statutory provisions, by resorting to integrated and planned development with all civic amenities instead of individual standalone haphazard development. It is submitted by the State Government and MHADA that the provisions of the Transfer of Property Act are subservient to the provisions of the MHADA Act under which the sub-lease has been executed.

The challenge in these writ petitions

10. The petitioner societies are HIG, Middle Income Group ("MIG", for short) and Low Income Group ("LIG", for short)

societies concerned with the integrated redevelopment of Adarsh Nagar and Bandra Reclamation layout.

11. Now we refer to the facts in Writ Petition (L) No.16257 of 2026 for convenience. The petitioner is the M.I.G. Adarsh Nagar Co-operative Housing Society Limited. The challenge is to the impugned Government Resolution dated 25/04/2025 and 15/12/2025; the impugned tender published on 08/04/2026 thereby including the petitioner society as part of the purported 'integrated redevelopment of the Adarsh Nagar Layout'. The petitioners are aggrieved by the action on the part of the MHADA and respondent No.3-The Mumbai Housing and Area Development Board ("MHADB", for short) promulgating a proposal for redevelopment in terms of Regulation 33(5) of the Development Control and Promotion Regulations for Greater Mumbai, 2034 ("DCPR 2034", for short) of plots including the said property through a Construction and Development Agency ("C & DA", for short) which arbitrarily includes the property within its scope, and forms the subject matter of the petition. The petitioner society further aggrieved by the conditions imposed upon it in view of the

unconstitutionality of the provisions of Regulation 33(9)(4)(a) of the DCPR 2034 in respect of MHADA being empowered to propose cluster redevelopment without seeking consent of the tenement holders/residents, such as the petitioner's and its members, when proposing a scheme of redevelopment or cluster redevelopment under the aforementioned provisions of DCPR 2034.

12. Additionally, the petitioner is aggrieved by the provisions of Regulation 21(5) of the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981, as the same unilaterally favours MHADA to impinge upon the rights and interest of the petitioner in the said property. According to the petitioner, the society is effectively left at the mercy of MHADA and MHDBA, which is contrary to and is ultra vires the provisions of Article 14, Article 20, Article 21 and Article 300A of the Constitution of India, as the fundamental right to life which includes the right to shelter of the petitioner's members is being impacted and hindered by MHADA and MHDBA via the subject redevelopment.

13. The details of subject property in so far as MIG Adarsh Nagar are:-

The lands/parcels of land bearing C.S. Nos.205 (part), 209 (part), 224 (part), 226 (part), 227 (part), 228 (part), 229 (part), 230 (part) and 231 (part) admeasuring 19,873.73 square meters situate, lying and being at Adarsh Nagar, Worli, Mumbai ("said lands", for short). The petitioner society comprises of 24 buildings ("said buildings", for short) spread over approximately over 6 acres. The said lands of the petitioner along with the said buildings are together referred to as the "said property".

14. The petitioner is a co-operative housing society duly registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act", for short). The said buildings are numbered as 43 to 66 situated on the said lands. The society comprises 224 members and approximately 700 residents reside/ occupy the said buildings.

Detailed facts of the case

15. In the year 1949, the MCGM granted on a perpetual lease

inter alia the aforesaid lands in terms of a letter dated 21/07/1949 addressed to the Executive Engineer, Housing, Bombay West Division for the purpose of undertaking housing schemes. The aforesaid perpetual lease was entrusted by the Government of Maharashtra to the Bombay Provincial Housing Board, which eventually culminated in the hands of the erstwhile Maharashtra Housing Board ("MHB", for short). The MHB constructed a housing scheme in or about the year 1964-1965 by constructing buildings on the said lands. The erstwhile MHB allotted tenements in the buildings constructed by it either on a rental basis or on the basis of deferred payment ordinarily referred to as 'hire-purchase' basis. The allottees of the said buildings came together and formed the petitioner society which was registered in the year 1973.

16. As a result of the dissolution of MHB in the year 1977, the entire property, rights, liabilities and obligations of the erstwhile Board stood vested in MHADA. In or around the year 1982, by and under Deeds of Sub-Lease executed between MHADA and the petitioner society, MHADA granted the said lands on lease to the petitioner society on the terms and conditions set out therein for a

period/term of 99 years. Resultantly, the petitioner society became entitled to the said lands/parcels of the said lands being Adarsh Nagar, Worli, Mumbai. It is the contention of the society that the entitlement of the petitioner is larger/greater than the area of the lands stated in the Sub-Lease Deeds.

17. MHADA executed various Sale Deeds transferring the entire right, title and interest in respect of the said buildings standing on the said lands in favour of the petitioner society. It is the petitioner's case that they thus became absolutely seized, possessed and entitled to the said buildings as the owner thereof. By a letter dated 24/08/1995, MHADA confirmed and stated that the petitioner society would be entitled to the FSI with respect to the additional area that was being rectified resulting in increase in area as leased to the society under the Deed of Rectifications. The petitioner says that FSI benefits are absolutely vested in the society and MHADA has no right to deal with the same. The petitioner society has paid the entire land costs as premium pursuant to Section 27 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules 1971. The petitioner society has also

paid the development charges, arrears of lease rent and interest on the blocked capital under the Hire Purchase Scheme. The petitioner says that the area under their possession is about 24,867.39 square meters inclusive of the area under the occupation of one Suyog Co-operative Housing Society Limited as demonstrated in the Physical Survey Report dated 18/06/2022 issued by a Licensed Surveyor. The sanctioned scheme plan of the M.I.G. prepared in the year 1990 indicates that the net area under the possession of the petitioner society is about 23,545.12 square meters. It is therefore the petitioner's case that their entitlement is larger/greater than the area of the lands stated in the Sub-Lease Deeds.

18. The petitioner society by the application dated 27/10/2023, through their consultants M/s. Ellora Project Consultants Private Limited, applied to MHADA seeking its No Objection for the redevelopment of the said property. The petitioner received no response. The attempts on the part of the petitioner society to redevelop the said property were conveniently and intentionally disregarded and derailed by MHADA. The GR incorrectly purports that the society never took any steps to

redevelop the said property and therefore, the intervention of the Authority was required. The petitioner society has actively initiated the process of redevelopment in the society by following the process as stipulated in the Guidelines under Section 79A of the MCS Act, 1960 and accordingly, appointed M/s. Vivek Bhole Architects Pvt. Ltd. as its Project Management Consultant for redevelopment on 09/04/2025.

19. The Government of Maharashtra through the Department of Housing issued a GR dated 25/04/2025 in respect of the Integrated Redevelopment of the buildings in the Bandra Reclamation and Adarsh Nagar (Worli) MHADA layouts through a C & DA. The GR dated 25/04/2025 inter alia contemplates that the buildings in the two MHADA layouts of Bandra Reclamation and Adarsh Nagar (Worli) are to be redeveloped in an integrated/ group manner by appointing a C & DA through MHADA and under the provisions of Regulation 33(5) of the DCPR 2034. The GR dated 25/04/2025 inter alia stipulates that proposals for self-redevelopment/standalone redevelopment of individual buildings in such layouts shall not be considered. Further, it provides that the

statutory protections afforded to the co-operative housing Societies in terms of Section 79(A) of the MCS Act and the allied guidelines shall not be available.

20. The petitioner addressed a detailed representation dated 21/07/2025 to the concerned officer of MHADA raising objections to the inclusion of the petitioner society in the purported integrated redevelopment of the Adarsh Nagar Layout under the GR dated 25/04/2025. In the representation, it is stated that the GR dated 25/04/2025 is in complete derogation of the rights and entitlements of the petitioner society including in respect of the Floor Space Index ("FSI", for short) in respect of the said property as contemplated under the Sub-Lease Deeds executed in its favour. According to the petitioner, the application of the GR dated 25/04/2025 to the said property is arbitrary, without application of mind and without considering the facts and circumstances in the correct perspective. In the representation, it is stated that the petitioner society is entitled to the FSI arising out of the said property and the unilateral appointment of a private developer styled as a C & DA to redevelop the said property is a breach of the

sub-lease deeds and a gross violation of the rights of the petitioner society. The petitioner relied on the relevant documents in support of its case and also requested an opportunity of hearing within a period of thirty days. The petitioner received no response.

21. The Government of Maharashtra through the Department of Housing issued a GR dated 15/12/2025 in respect of 'formulation of a policy for cluster/joint redevelopment of MHADA layouts in Mumbai and suburbs having an area of 20 acres or more'. It is inter alia provided that in respect of layouts at Adarsh Nagar (Worli) owned or held as lessee by MHADA, a process has been initiated for group/cluster redevelopment through appointment of a C & DA. The GR dated 15/12/2025 inter alia stipulates that the proposed C & DA may undertake redevelopment not only under Regulation 33(5) of DCPR 2034 but also under any other regulation after finalization of the tender process. It also stipulates that there is no necessity to obtain individual consent letters from all residents as required under the DCPR 2034.

22. In the month of April 2026, MHADA through the MHADB

floated a tender inviting bids for appointment of a C & DA for integrated/cluster redevelopment of the Adarsh Nagar layout including the said property under the terms, conditions, and guidelines set out therein. The said tender contains four volumes i.e. Volume I being the Tender Document; Volume II being the Draft Development Agreement; Volume III being the specifications of the rehabilitation premises and Volume IV being the Maps and Drawings. It is the petitioner's case that there has been no discussion/deliberation whatsoever with the petitioner society before its inclusion as part of the said tender and/or the finalization of the terms and conditions of the tender/the development agreement and the specifications/location of the rehabilitation premises. The tender was floated by MHADA despite the petitioner's specific objections and legal submissions without following the principle of natural justice. Though the GR dated 15/12/2025 provides for the constitution of a Grievance Redressal Committee, according to the petitioner the same has not been constituted till date. There are several inherent deficiencies/glaring problems stated by the petitioner with the impugned tender. The

petitioner says that the layout provided for the subject redevelopment includes several plots including the said property despite no cogent reasoning evident for including the same into the layout plan. The subject redevelopment is to be conducted under the aegis and supervision of MHADA and MHADB in accordance with the impugned GRs dated 25/04/2025 and 15/12/2025, however the reason for including the said property within its scope is unknown and no explanation has been offered by MHADA for its inclusion despite the petitioner issuing specific representations/notice.

23. The impugned tender provides for consent to be submitted in the form of resolutions of at least 51 % of the societies which is in contrast to the language of the impugned GR dated 25/04/2025 and other provisions of law. There is an inherent ambiguity in 'the execution of construction cum development contract subject to obtaining required number of consents after selection of successful bidder' which does not garner any confidence. The timely implementation is restricted to a 'best effort' basis which is not explained/defined and/or elaborated relegating the petitioner and

its members to a life of uncertainty. The proposed transit rent (Rs. 75,000/- per month) as well as the proposed Corpus Fund for tenements having existing carpet area between 60 square meters to 70 square meters are ex-facie arbitrary figures dehors any reasoning/basis of its computation.

24. The petitioner addressed another representation dated 30/04/2026 to MHADA requesting not to take any precipitative steps in furtherance of the tender without affording proper opportunity of hearing to the Petitioner. The petitioner society has placed on record its serious fundamental objection to being compulsorily included in the GRs driven cluster redevelopment and tender floated in the month of April 2026 by comprehensively setting out reasons for the same. The petitioner raised serious commercial and other concerns regarding the said tender's structure and terms, including but not limited to the (i) erosion of independent redevelopment rights; (ii) mechanism for consent of 51% of the members of the entire layout; (iii) Inferior/uncertain configuration of the rehabilitation units; (iv) Inadequate clarity on commercial benefits; (v) loss of autonomy and planning control.

Submissions of Mr. Pravin Samdani, learned Senior Advocate for the petitioner society

25. The petitioner is the owner of the buildings and a sub-lessee of the land. As a sub-lessee, it possesses valuable rights and interest in the land. The natural benefit/enjoyment and legal right in respect of the land and building includes the right to use, occupy and enjoy the land and building as owner of the building and as a sub-lessee of the land for the unexpired term of the lease, together with a right to renewal as available in law. Such right is a constitutional and human right and is recognised and protected by the Constitution of India, including under Articles 21 and 300A. Subject to the conditions in the sub-lease, the petitioner has the right to redevelop and/or reconstruct its buildings in accordance with the provisions of MRTP Act and DCPR 2034 for the time being in force. The impugned GRs put fetters on the petitioner's right to redevelop the property under DCR 33(5). Any interference, intermeddling or tampering with any of the aforesaid rights, benefits and enjoyment at the hands of the State, without the authority of law, would be violative of Article 300A of the

Constitution of India.

26. The impugned GRs are in the nature of executive instructions under Article 162 of the Constitution of India or under Section 154 of the MRTP Act. The effect of the impugned GRsis : to compel the petitioner to be a part of redevelopment through the agency of MHADA (Clause 13 and 17); to compel the petitioner to be part of other societies in the cluster/to merge the petitioner society with the other societies (Clause 14); to amalgamate and merge the petitioner's sub-leased lands with the lands held by others societies and lose their identity of land (Clause 12, 14 and 15); to compel the petitioner to accept the development agency of MHADA (Clause 2, 3, 11 and 17), as a consequence, learned Senior Advocate submits that the members of the petitioner society can be evicted under Section 95 of MHADA Act, 1976; to compel the petitioner to agree to the commercial terms in terms of tender or as imposed by the agency appointed by MHADA (Clause 12, 13 and 15); to override the provisions of the DCR and/or exclude or exempt the applicability thereof in cluster Development (Clause 1, 3, 5, 8, 11, 12 and 17); to directly interfere with the petitioner's

natural rights to independently develop its property in accordance with Sections 44 to 49 of the MRTP and the DCR [33(5) read with 33(9)] for the time being in force.

27. By reason of the impugned GRs, the petitioner's immovable property is, in pith and substance, sought to be acquired (indirectly), with compensation in the form of alternate accommodation which is without the authority of law.

28. The impugned GRsare ultra vires the Constitution/patently illegal and arbitrary as under Article 300A of the Constitution of India, no person can be deprived of his property save in accordance with law. The expression “property” (under Article 300A) includes all kinds of property, including immovable property. The petitioner is the owner of the buildings and sub-lessee of the land which creates an interest in its favour and thus, lawfully entitled to the property. The impugned GRs are executive instructions under Article 162 of the Constitution of India and are contrary to the provisions of the MRTP Act/DCR, MHADA Act, and violate Article 14, 21 and 300A of the Constitution of India. The

expression “authority of law” under Article 300A of the Constitution of India means validly enacted law and not GR and for that matter any policy decision of the Government. The executive power under Article 162 of the Constitution of India cannot be extended to interfere with the rights in the property as these are in the nature of administrative/executive instructions and not enacted law.

29. The power under Section 154 of MRTP Act cannot be exercised so as to deprive citizens of their property or to do violence with the DCR in force or make provision inconsistent with the DCR. The DCR being a statutory/delegated piece of legislation, the power under Section 154 of the MRTP Act cannot be exercised to repeal, amend, render nugatory, supplement or to add to any of the provisions of the DCR.

30. There is no provision under the MHADA Act, the MRTP Act or the DCR (which are the only enacted law or delegated piece of legislation i.e. DCR) empowering to do things which are sought to be done under the two GRs.

31. GR dated 25/04/2025 provided for individual consent letters of 51% of the total members in the layout (Clause 11), whereas in the GR dated 15/12/2025 this condition is diluted and the requirement of individual consent is given a go-by, providing instead for a resolution by the society (Clause 1). As against the aforesaid, DCR 33(5) contemplates either consent of minimum 51% of the members [DCR 33(5)(7)(a)] or a valid resolution of the society [DCR 33(5)(7)(b)], whilst for cluster redevelopment under 33(9), consent of 51% of the members of each building and an overall consent of 60% of the project is required. The GR tinkers with the statutory regulations and does away with the stringent requirement of obtaining the requisite consent as a precondition for consideration of the scheme.

32. The provisions of the impugned GRs are directly inconsistent with the provisions of the DCR, as they grant exemptions from the applicability of the stringent conditional provisions prescribed therein. DCRs are statutory in nature and have the force of law having been framed under Section 22(m) of the MRTP Act. There cannot be additional conditions or any

executive instructions or circulars inconsistent with the DCR.

33. By the Impugned GRs, unequals are sought to be treated as equals by terming them all as a rehab component, virtually categorising them as slum dwellers, by segregating the free-sale component from the rehab component and making provisions for separation by area and demarcation. Even the land area to be allocated for the rehab component remains unidentified, and it is quite apparent that such land component will be drastically reduced to accommodate the free-sale component with a higher proportion of land allocation. This clearly amounts to deprivation of a citizen's land without authority of law and without his express consent. The GRs are therefore clearly arbitrary.

34. The effect of the impugned GRs is to alter the terms of the lease (which is a matter of contract) by way of an executive exercise through a GR, in the absence of legislation permitting the same. The impugned GRs make provisions for the merger and amalgamation of different cooperative societies in respect of different sub-lessees, with the object of creating a consolidated

land component for cluster redevelopment and all occupiers of such societies are to be accommodated in some unidentified locations, segregated from the free-sale component on an area imposed upon them. The provisions for merger and amalgamation by way of a GR are clearly contrary to the mandate of Sections 17 and 18 of the MCS Act, read with the Rules framed thereunder, and are therefore patently illegal.

35. The impugned GRs direct non-acceptance of individual development proposals submitted by societies. Such a direction and/or mandate is contrary to the scheme of Sections 42 to 46 of the MRTP Act and the DCR. In the absence of any statutory bar under the MRTP Act or the DCR, development permission cannot be denied. A GR, not being a part of the Development Plan or the DCR, constitutes extraneous material which cannot be taken into consideration under 46 of the MRTP Act.

36. The impugned GRs are equally bad in law as they contain inconsistent and/or vague provisions and thus void for vagueness. In any event, such void or inconsistent provisions can clothe the

authority with powers to use discretion in an arbitrary manner, thus rendering the GRs to be arbitrary and unconstitutional.

37. By amalgamation and/or a compulsory merger of the societies in the layout the identity of an individual legal entity (the society) is destroyed and resultant merged entity is created. By making provision under the GRs requisite consents in MCS Act are obliterated and merger/amalgamation is achieved without the consent of the concerned societies and/or individual members. The aggregate of all the lands in the layout is then indirectly controlled by MHADA/C & DA. These actions are inconsistent and directly in conflict with the provisions of (i) Transfer of Property Act (ii) Maharashtra Cooperative Societies Act (iii) MRTP Act and DCR. If the GRs are allowed to be implemented the net result is compulsory acquisition of the lands in the layout in the hands of MHADA/C & DA without the authority of law and thus, in clear violation of Articles 21 and 300A of the Constitution of India.

38. On a holistic/plain reading and on a strict construction of the DCR (as the GRs say, will be strictly complied with) no cluster

redevelopment scheme project could even be propounded or proposed without first obtaining written consent strictly in terms of DCR 33(5) and 33(9). MHADA in fact has no locus in the absence of a consent to take out even a tender for a proposed cluster redevelopment.

39. DCR 33(5)(7)(a) contemplates consent of 51% of members. Regulation 7(b) is about the existing scheme as per the Societies Act i.e, Section 79A. Under DCR 33(9)(4)(a) 51 % of each building and 60% overall (the entire scheme). Under GR dated 25/04/2025 Clause 11 provides 51% of total members in the layout. Under the GR dated 15/12/2025 Clause 1 does not provide for individual consent but for society resolution under MCS Act. Tender Clause 1.5.1.9 provides for consent of 51% of societies.

40. Both the GRs say that the provisions of DCR will be strictly complied with. DCR cannot produce cluster redevelopment scheme in the absence of the consent or orders of amalgamation in terms of Section 17 and 18 of MCS Act and thereafter consent of the merged entity or surrender of leasehold rights by the existing lessee(s) in

favour of MHADA or a consensual agreement for exchange with the lessee(s). If DCR is to be strictly complied with there is no necessity of the GRs. By GRs there cannot be any addition/deletion/amendments to the DCR.

41. The consent provision under 33(9) - 4(a) is in two parts - (i) the first part is where a developer is involved and (ii) the second part is where there is no developer and "MHADA/MCGM is undertaking redevelopment, on its own land directly without any developer", the second part applies only where MHADA is undertaking redevelopment "on its own land" which would mean there is no owner of any structures on the land or the land or the structures are unencumbered and there is no subsisting lease of the land and MHADA has full control over it as a full owner. Any other interpretation to this regulation would render the second part ultra vires the MRTP Act and Constitution of India, inasmuch as it would amount to allowing MHADA to take over the property and/or acquire the same without the authority of law by destroying the existing rights in the property. In any event there is no such provision in DCR 33(5) which is the primary DCR for

redevelopment of MHADA colonies by the lessee(s) or by MHADA.

Submissions of Mr. Y. S. Jahagirdar, learned Senior Advocate for the petitioner Kamalpushpa society

42. The GRs dated 25/04/2025 and 15/12/2025 provide for cluster redevelopment of 56 MHADA colonies built by MHADA between 1950s and 1960s. The same were therefore not applicable to the 12 societies including the petitioner - Kamalpushpa Cooperative Housing Society Ltd. as they had constructed their buildings at their own costs after the year 1972 (the particulars of 12 societies are stated in the writ petition).

43. A reading of first paragraph of the GRs stating the intention about cluster redevelopment of "56 MHADA colonies built by MHADA between 1950s and 1960s", the phrase MHADA layout was required to be read as those MHADA layouts which entirely comprise of MHADA colony and hence do not cover the said 12 societies. The cluster development concept while interpreting the GRs would be restricted to the phrase MHADA colony since the word "scheme" is not used in the GRs. The 30 buildings in Phase Nos. I, II and III admittedly constructed by

MHADA cannot be equated and treated on par with the 12 self-constructed societies including Kamalpushpa Cooperative Housing Society Ltd., particularly when 14 other similarly situated societies were given lease deeds and also development permissions with full FSI. In view of this Court's order dated 29/04/2014 in Writ Petition (L) No.3310 of 2013, 26 societies including Kamalpushpa Cooperative Housing Society Ltd.'s contractual rights for grant of lease for 99 years which has been accepted by MHADA and acted upon, the respondents are under a bounden ministerial duty to execute lease.

44. Owing to the grant of lease-deeds and development permissions to 14 similarly situated societies, the said 12 societies including the petitioner- Kamalpushpa Cooperative Housing Society Ltd. had legitimate expectation that they were entitled to be treated equally. MHADA and State are liable to issue notice and give hearing to the said 12 societies if they wanted to defeat such legitimate expectation arising from the selective application of the order dated 29/04/20214 in respect of 14 similarly situated societies by grant of lease-deeds and development permissions

resulting in a consistent past practice. The petitioner and its members are entitled to hold and possess plot No.6 and buildings thereon and to enjoy the same at least for 99 years i.e. till 29/11/2071 since MHADA was bound by the terms of letter of allotment and the this Court's order dated 29/04/2014 and since MHADA has not alleged violation of any terms and conditions of allotment by the petitioner and had not terminated the said allotment.

45. MHADA favoured 14 societies inter alia, by (i) grant of registered lease deeds in compliance of the order dated 29/04/2014; (ii) allowing them to hold SGM under Section 79A of the MCS Act and select the developer of their choice; and (iii) issuing NOCs for redevelopment and grant development permissions, while petitioners by failing to execute lease and denying appointment of authorised representative for selection of developer under Section 79A of the MCS Act vide letter dated 13/03/2026 on the misconceived and erroneous premise that the GR dated 25/04/2025 covered the petitioner. MHADA was not justified in excluding 14 similarly situated societies from cluster

redevelopment, when the only difference between the petitioner and those societies was grant of lease-deed which MHADA was bound to execute owing to this Court's order dated 29/04/2014.

46. Only because plot No.6 was more than 4,000 sq. mtrs. ought not to have been made a part of the impugned cluster redevelopment scheme under Regulation 33(5) and/or 33(9) of DCPR 2034 since the petitioner - Kamalpushpa Cooperative Housing Society Ltd. was entitled to implement a scheme under Regulation 33(5) on its own without being a part of any cluster. By virtually allowing the redevelopment of 14 societies on their own having excluded them from redevelopment undertaken by MHADA, the so-called cluster was already broken. Therefore the inclusion of the petitioners in the GRs and the tender is unjust, arbitrary, discriminatory, unreasonable, unworkable and contrary to the provisions of DCPR 2034. The decision in *Motilal Nagar* (supra) is clearly distinguishable on facts and not applicable to the petitioner's case. There has been expropriation and confiscation of the petitioner No.1's property rights and forced inclusion of the petitioner's property in cluster development without following any

process of acquisition since there was no statutory provisions in MHADA Act, the rules and regulations thereunder and the MRTP Act thereby making the inclusion of the petitioner's property in the cluster development illegal, invalid and unjustified in law. Merely because a larger area in the cluster redevelopment is granted to the members of the petitioner society under the GRs and tender cannot be equated with compensation payable on acquisition under the land acquisition laws. The said rehabilitation in the form of compensation is illusory, unjust, unfair, unreasonable and confiscatory. The comparative chart of the offer of the preferred developer selected by the petitioner's members and the terms offered in the tender by the C & DA is demonstrative of the fact that the rehabilitation entitlement is completely unreasonable, unjust and illusory. The petitioner societies are left with no choice but to accept the forced grant of larger area in the proposed construction against their wishes. There is no report on record certifying that buildings of the said 12 societies including the petitioner are dilapidated. The impugned GRs and tender purport to extinguish, confiscate and expropriate the petitioner -

Kamalpushpa Cooperative Housing Society Ltd.'s right to a lease deed and to redevelop its property and making the said property a part of forced cluster redevelopment is in blatant violation of :

(i) Contractual rights arising under and/or in view of the letter of allotment, possession receipt, payment of revised lease premium and revised lease rent with simple interest;

(ii) This Court's order dated 29/04/2014 which judicially recognised the rights of the said 26 societies including the petitioner to get a registered lease deed;

(iii) Petitioner No.1's members' fundamental rights guaranteed under Article 14, 19(1)(g) and 21 of the Constitution and their constitutional rights under Article 300A.;

(iv) The provisions of DCPR 2034 regarding consent of societies and their members;

(v) The provisions of the MCS Act regarding compulsory amalgamation with other societies in the cluster.

47. Though MHADA claims to be developing the property on its own, the terms of the tender document clearly demonstrate

conclusively that the C & DA is a developer, and not merely an executing arm of MHADA. Reliance is placed on the decision of **B. K. Ravichandra and others vs. Union of India and others**[1] to support the contention that right to property is a valuable constitutional right. Paragraphs 27 and 29 which read thus :

> "27. Although the right to property is not a fundamental right protected under Part III of the Constitution of India, it remains a valuable constitutional right. The importance of this right has been emphasised and iterated several times by this Court. In Delhi Airtech Services (P) Ltd. v. State of U.P. for instance, this Court underlined the issue as follows: (SCC p. 379, para 30)
>
> > "30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. 'Property must be secured, else liberty cannot subsist' was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."
>
> 29. The decision in K.T. Plantation (P) Ltd. v. State of Karnataka interpreted Article 300-A and held that : (SCC p. 51, para 168)
>
> > "168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or

1 (2021) 14 SCC 703

> without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.
>
> 169. This Court in State of W.B. v. Vishnunarayan & Associates (P) Ltd. while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights."

48. **Madras Refineries Ltd. vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras**[2] is relied upon to indicate how the meaning of the word "Disposition" has been dealt with, the relevant portion is thus :

> "The term "disposition" has been defined in Stroud's Judicial Dictionary as a devise "intended to comprehend a mode by which property can pass, whether by act of parties or by an act of the law" and "includes transfer and charge of property". As the Guarantee Agreement did not have any such effect, it did not constitute a "settlement" also. That document was not therefore an instrument of sale, mortgage or settlement, and did not fall within the purview of sub-section (1) of Section 4 of the Act."

49. Reliance is placed on the location map to indicate that the cluster is broken so far as the petitioner societies are concerned and

2 (1977) 2 SCC 308

that even otherwise the manner in which the development is proposed can never said to be a cluster redevelopment as the same does not comply with the requirements of DCPR 33(9). The main argument is that failure to execute the lease-deed is of no consequence in view of the decision of this Court, letter of allotment by MHADA, possession receipt, payment of lease premium etc. with interest. Therefore, during the subsistence of the lease the petitioner society is virtually the owner of the land leased and is entitled to redevelop the property on its own terms which right to redevelop the property is taken away by this cluster redevelopment and therefore this falls foul of Article 300A of the Constitution of India.

50. We have also heard Mr. Godbole, Mr. Andhyarujina, Mr. Vishwajeet Sawant, Mr. Surel Shah, learned Senior Advocates and Mr. Mayur Khandeparkar, Mr. Karl Tamboly, Mr. Nasikwala. Learned counsel have by and large argued in support of the propositions which we have already referred to hereinbefore. Some additional submissions canvassed by learned counsel peculiar to individual facts are dealt with in the later part of this judgment.

Summary of petitioners' broad challenge

51. Though we have already referred to the submissions of learned counsel for the petitioners hereinabove in detail, broadly the challenge can be summarised thus to facilitate analysis :-

(i) That the petitioners have proprietary rights, either by way of lease, allotment or occupancy right and such a right is being taken away or violated or abridged without following mandate of Article 300A of the Constitution of India.

(ii) The petitioner has vested right to redevelop the said lands and 24 buildings thereupon. The petitioner has also right to use available FSI without interference from MHADA and these rights are protected by Articles 21 and 300A of the Constitution of India.

(iii) The inclusion of the property of the petitioner in MHADA Scheme is alleged to be violative of Article 300A as the petitioners are compelled to be part of the cluster, amalgamate its sub-leased lands and lose their identity or merge with other societies.

(iv) The curtailment of property right guaranteed under Article 300A can only be done by way of 'law' and not by an 'executive instruction' i.e. the Impugned GRs.

(v) That the State has no authority to issue the Impugned GRs.

(vi) That the Impugned GRs are issued in exercise of powers conferred upon the Government under Section 154 of MRTP Act or Article 162 of Constitution of India and the Impugned GRs are contrary to the extent of powers conferred upon the Government under the aforesaid provisions.

(vii) That the Impugned GRs are contrary to the provisions of Regulation 33(5), and 33(9) of Development Control and Promotion Regulation 2034 ("DCPR").

(viii) The impugned GRs are ultra vires Regulation 33(5) and 33(9) of DCPR 2034.

(ix) GR dated 25.04.2025 does away with the mandatory requirement of consent of the societies as contemplated under Regulation 33(5) which cannot be done except otherwise by way of an amendment to DC Regulations.

(x) The provisions of Regulation 33(9)(4)(a), if read to mean that in certain contingencies consent of the society or its members is not required, would be ultra vires the MRTP Act.

(xi) The Impugned GRs amount to amending the DC Regulations and such an amendment cannot be done by

way of a Government Resolutions and can be done only by following procedure prescribed under the MRTP Act.

(xii) Inclusion of High-Income Group (HIG) tenements/societies and clubbing them with other categories i.e. Economically Weaker Sections (EWS), Low Income Group (LIG), Middle Income Group (MIG) is arbitrary.

(xiii) That the tenders floated for appointment of C & DA contain provisions which are violative of proprietary rights of the allottees/lessees.

(xiv) That the Impugned GRs violate the rights of Petitioners guaranteed under Article 19(1)(c) of the Constitution of India (to form a co-operative society).

(xv) That the Impugned GRs make provisions which are contrary to the scheme of Maharashtra Co-operative Societies Act, 1960 ("MCS Act") particularly relating to management of the society (Section 72) and holding of meetings for the purposes of redevelopment (Section 79A).

(xvi) That the tender contains provisions which are violative of provisions of DC Regulations, particularly Regulation 33(5) and 33(9) in relation to the consent of the stakeholders, affairs of the Co-operative Society, etc.

<u>Response of learned Senior Advocates for the respondents</u>

52. In response, we have heard Dr. Milind Sathe, learned Advocate General for the State of Maharashtra, Mr. Darius Khambata, Mr. Ravi Kadam, Senior Advocates for MHADA at length. Our attention was invited to the affidavit in reply and the pleadings filed on behalf of the State of Maharashtra as well as MHADA while advancing their submissions. Our attention was also drawn to the various statutory provisions referred to by learned senior advocates for the petitioners thereby expounding the interplay of the provisions in the context of sub leases executed in favour of the societies. It is submitted that the present is not a case where the petitioners are deprived of their property without following the due process of law for Article 300A of the Constitution of India to be attracted. It is submitted that the petitioners are adequately compensated which is strictly in terms of the statutory framework prescribed and therefore there is no deprivation of the property much less without following the due process of law. It is submitted that the redevelopment undertaken and the appointment of C & DA is completely in consonance with the statutory framework provided for development of MHADA

properties by resorting to cluster redevelopment.

Decisions relied upon by learned counsel in support of their submissions

53. Before proceeding to analyse the submissions made by learned counsel, it is important for us to bear in mind the law laid down by the Hon'ble Supreme Court and this Court for a proper appreciation of the controversy in the factual context of the present case.

54. In **Mahendra Saree Emporium (II) vs. G. V. Srinivasa Murthy**[3] the term "sub-let" is explained. This decision is relied upon in the context of the petitioner's submission that as there is a sub-lease of the land on which the building stands, the petitioners have a right to enjoy the property to the exclusion of all others during the term of the lease which is a sine qua non of a lease. Since this decision has been heavily relied upon, it would be useful to refer to the relevant portion of paragraph 16 which reads thus :

> "16. The term "sub-let" is not defined in the Act — new or old. However, the definition of "lease" can be adopted mutatis mutandis for defining "sub-lease". What is "lease" between the owner of the property and his tenant becomes a sub-lease when entered into between the tenant and tenant of the tenant, the latter

3 (2005) 1 SCC 481

> being sub-tenant qua the owner-landlord. A lease of immovable property as defined in Section 105 of the Transfer of Property Act, 1882 is a transfer of a right to enjoy such property made for a certain time for consideration of a price paid or promised. A transfer of a right to enjoy such property to the exclusion of all others during the term of the lease is sine qua non of a lease. A sub-lease would imply parting with by the tenant of the right to enjoy such property in favour of his sub-tenant. Different types of phraseology are employed by different State Legislatures making provision for eviction on the ground of sub-letting. Under Section 21(1)(f) of the old Act, the phraseology employed is quite wide. It embraces within its scope sub-letting of the whole or part of the premises as also assignment or transfer in any other manner of the lessee's interest in the tenancy premises. The exact nature of transaction entered into or arrangement or understanding arrived at between the tenant and alleged sub-tenant may not be in the knowledge of the landlord and such a transaction being unlawful would obviously be entered into in secrecy depriving the owner-landlord of the means of ascertaining the facts about the same. However still, the rent control legislation being protective for the tenant and eviction being not permissible except on the availability of ground therefor having been made out to the satisfaction of the court or the Controller, the burden of proving the availability of the ground is cast on the landlord i.e. the one who seeks eviction."

55. In the present case it is the submission that the petitioner is the owner of the buildings and sub-lessee of the land. As a sub-lessee, the submission is the petitioner possesses valuable rights and interest in the land.

56. The next decision relied upon in **Vidya Devi vs. State of Himachal Pradesh and others**[4]. This decision is relied upon to support the submission that in terms of Article 300A of the Constitution of India, the petitioners cannot be deprived of its

4 (2020) 2 SCC 569

property save by the authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The relevant portion from the said decision is extracted thus :

> "12.1 The appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.
>
> 12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article.
>
> 12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, wherein this Court held that : (SCC p. 634, para 6)
>
> > "6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

12.4. In N. Padmamma v. S. Ramakrishna Reddy, this Court held that : (SCC p. 526, para 21)

> "21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed."

12.5 In Delhi Airtech Services (P) Ltd. v. State of U.P., this Court recognised the right to property as a basic human right in the following words : (SCC p. 379, para 30)

> "30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat, this Court held as follows : (SCC p. 627, para 48)

> "48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

12.9 In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. MIDC

> wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.
>
> 12.10. This Court in State of Haryana v. Mukesh Kumar held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.
>
> 12.13 In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it."

57. The decision in **Hindustan Times and others vs. State of U.P. and another**[5] was relied upon by the petitioners in support of the submission that the State cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. It is the contention that the impugned circulars are mere executive fiats and do not have the force of law. Paragraphs 22 to 24 are relevant which read thus :

> "22. By reason of the impugned directives of the State, the petitioners have been deprived of their right to property.
>
> 23. The expression "law", within the meaning of Article 300-A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law.

5 (2003) 1 SCC 591

form part of the statute. In other words, DCRs have statutory force. Their Lordships further held that it is a settled position of law that there could be no "promissory estoppel" against the statute. In this context paragraphs 5 and 6 being relevant are reproduced reading thus :

> "5. Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India v. Cynamide India Ltd., SCC paras 5 and 27. See generally H.S.S.K. Niyami v. Union of India and Canara Bank v. Debasis Das.) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat.) Therefore, the view adopted by the High Court does not appear to be correct.
>
> 6. DCR are framed under Section 158 of the Act. Rules framed under the provisions of a statute form part of the

> statute. (See General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav, SCC para 14.) In other words, DCR have statutory force. It is also a settled position of law that there could be no "promissory estoppel" against a statute. (A.P. Pollution Control Board II v. Prof. M. V. Nayudu, SCC para 69, STO v. Shree Durga Oil Mills, SCC paras 21 and 22 and Sharma Transport v. Govt. of A.P., SCC paras 13 to 24.) Therefore, the High Court again went wrong by invoking the principle of "promissory estoppel" to allow the petition filed by the respondents herein."

60. The decision in **Pharmacy Council of India vs. Rajeev College of Pharmacy and others**[8] is relied upon by learned Senior Advocates for the petitioners in support of the proposition that the right to manage the society is also a right to property and hence it has been held to be a part of fundamental right being a right of occupation as envisaged under Article 19(1)(g) of the Constitution of India. The submission is that the requirement of law for the purpose of Clause (6) of Article 19 of the Constitution of India can by no stretch of imagination be achieved by issuing the impugned circulars or a policy decision in terms of Article 162 of the Constitution of India or otherwise. If at all the Government of Maharashtra wants to proceed in the manner that is sought to be done by the impugned circulars, the same can be done only in

8 (2023) 3 SCC 502

accordance with a law enacted by the legislature. Paragraphs 42, 43, 46 and 47 being relevant are reproduced reading thus :

> "42. The question is directly answered by this Court in State of Bihar v. Project Uchcha Vidya, Sikshak Sangh in para 69, which reads thus : (SCC P.574)
>
> > "69. The right to manage an institution is also a right to property. In view of a decision of an eleven-Judge Bench of this Court in T.M.A. Pai Foundation v. State of Karnataka establishment and management of an educational institution has been held to be a part of fundamental right being a right of occupation as envisaged under Article 19(1)(g) of the Constitution. A citizen cannot be deprived of the said right except in accordance with law. The requirement of law for the purpose of clause (6) of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. Such a law, it is trite, must be one enacted by the legislature."
>
> 43. It could thus be seen that this Court in Project Uchcha Vidya case has categorically held that a citizen cannot be deprived of the said right except in accordance with law. It has further been held that the requirement of law for the purpose of clause (6) of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. It has been held that such a law must be one enacted by the legislature.
>
> 46. It will also be relevant to refer to the following observation of the Constitution Bench, consisting of five Judges, of this Court in State of M.P. v. Bharat Singh : (AIR p. 1174, para 6)
>
> > "6. ... Viewed in the light of these facts the observations relied upon do not support the contention that the State or its officers may in exercise of executive authority infringe the rights of

> the citizens merely because the legislature of the State has the power to legislate in regard to the subject on which the executive order is issued."
>
> 47. It is thus clear that the Constitution Bench of this Court in Bharat Singh case holds that the State or its officers cannot exercise its executive authority to infringe the rights of the citizens merely because the Legislature of the State has the power to legislate in regard to the subject on which the executive order is issued."

61. In **Laxminarayan R. Bhattad and others vs. State of Maharashtra and another**[9] the question that arose for consideration of Their Lordships was whether the appellant can claim the benefit of land potential in lieu of compensation awarded in his favour by the arbitrator. Their Lordships held that a direction of the State Government in terms of Section 154 of the MRTP Act cannot supersede the statutory provisions contained either in the main enactment or the statutory regulations. Paragraphs 50, 51, 54 and 60 read thus :

> "50. The said instructions were issued keeping in view the new Regulations in respect of the areas where finally sanctioned town planning scheme had come into effect without waiting for compliance in the proceedings of variation of the Town Planning Scheme Regulations. The directive of State Government issued in terms of Section 154 of the 1966 Act clearly states that the development permission shall be strictly scrutinized in accordance with the sanctioned Development Control

9 (2003) 5 SCC 413

Regulations of Greater Bombay even in the area where finally sanctioned Town Planning Scheme is pending the procedure of variation of the Scheme.

51. The said Scheme does not refer to grant of any TDR and it will bear repetition to state that the development permission was required to be strictly scrutinized in accordance with the sanctioned Development Control Regulations. A direction of the State Government in terms of Section 154 of the Act cannot supersede the statutory provisions contained either in the main enactment or the statutory regulations. The State of Maharashtra had absolutely no jurisdiction to issue any directive contrary to the statute or the statutory regulations. Once the draft scheme became final, the provisions thereof shall prevail over the provisions of the Regulations in terms of the proviso appended to Sub-Regulation (2) of Regulation 1 of the 1991 Regulations. In such event, the doctrine of "relating back" shall apply. As indicated hereinbefore, in terms of the provisions of the said Act the arbitrator's award became final. The directive of the State Government could have been enforced till the Scheme received sanction and was made final but not thereafter. Furthermore, Regulations 33 and 34 of the 1991 Regulations provide for enabling provisions. No legal right to get additional TDR was created thereby. The appellants merely had a right to be considered. The said Regulations confer wide discretionary power on the part of the authorities. Each case was required to be considered on its own merit.

54. Each of the reasons assigned by the Corporation is valid. In terms of the proviso appended to Sub-Regulation (2) of Regulation 1 of the 1991 Regulations, it will bear repetition to state, the Scheme Regulations shall prevail thereover in case of any conflict. Submission of Mr Devarajan to the effect that Sub-Regulation (2) of Regulation 1 will apply and not the proviso appended thereto is misplaced.

60. In this case the applicability of the rule of incorporation of a statute by reference has no relevance inasmuch as, as noticed hereinbefore, the 1991 Regulations themselves would not be applicable in case of the appellants. So far as the letter of the State of Maharashtra is concerned, the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a

> party unless the same finds favour with a court of law dealing with the matter. The Corporation or the Stale while seeking to justify application of the 1991 Regulations as regards the pending Scheme did not have any occasion to consider the applicability of Sub-Regulation (2) of Regulation 1 or the proviso thereof. The question required consideration only having regard to the sanction of final Scheme by the State and not prior thereto. It is, therefore, idle to contend that the Corporation entertained such belief and/or the State Government issued such direction. Such contention is a matter of little or no consequence at this stage."

62. In **Godrej and Boyce Manufacturing Company Limited vs. State of Maharashtra and others**[10], Their Lordships observed that Maharashtra Town Planning law has evolved, with a view to promote planned development and decongest the highly congested areas, the imaginative concept of making, under certain circumstances, the development potential of a plot of land separable from the land itself and further letting the development rights to be transferable by the landowner. In *Godrej and Boyce Manufacturing Company Limited* (supra) there is no dispute between the parties in regard to the floor space index or transferable development rights granted to them for the surrendered pieces of land. But the parties were in serious controversy over the extent of floor space index or transferable

10 (2009) 5 SCC 24

development rights for the roads constructed on the surrendered lands at the owner's cost. The landowners claim that for constructing the roads they are entitled to floor space index or transferable development rights for the whole of the surface area of the roads. In this context the Hon'ble Supreme Court in paragraphs 61 to 65 held thus :

> "61. Mr Shishodia submitted that the appellants in all the cases had agreed to construct the road as part of the condition to surrender the land and getting 100% TDR in lieu of the land. According to him, since the construction of the road was a condition for grant of 100% TDR for the bare land the appellants and the petitioners were not entitled to claim any further TDR at all for construction of the roads by them.
>
> 62. Mr Shishodia further submitted that it was only indulgence shown to the appellants and the petitioners that the municipal authorities agreed to give them additional TDR to the extent of 15% of the road area after the issuance of Circular dated 9-4-1996 and 25% of the road area after the issuance of the Circular dated 5-4-2003.
>
> 63. The submission of Mr Shishodia is completely unacceptable. The conditions, that is to say, the mutual rights and obligations subject to which the landowner may offer to surrender the designated plot of land to municipal authority and the latter may accept the offer are enumerated in detail In the statutory provisions. Beyond those conditions there can be no negotiations for surrender of the land, particularly in derogation to the landowner's statutory rights.
>
> 64. Having regard to the nature of the law the submission advanced on behalf of the municipal authority would lead to palpably unjust and inequitable results. The landowner whose land is designated in the development plan as reserved for any of the purposes enumerated in Section 22 of the Act or for any of the

> amenities as defined under Section 2(2) of the Act or Regulation 2(7) [sic Regulation 3(7)] of the Regulations is not left with many options and he does not have the same bargaining position as the municipal authority. Therefore, surrender of the land in terms of clause (b) of Section 126(1) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions. It is of course open to the legislature to add to the conditions provided for in the statute (or for that matter to do away with certain conditions that might be in existence). But it certainly cannot be left in the hands of the executive to impose conditions in addition to those in the statutes for accepting the offer to surrender the designated land.
>
> 65. Mr Shishodia next submitted that the measure of 15% (later raised to 25%) of the area of the road constructed for grant of TDR by the impugned Circulars of 9-4-1996, 5-4-2003 and 5-5-2004 was decided in meetings in which Mr Nayan M. Shah, constituted attorney of the appellants, was also present as the representative of the industry. Hence, It was no longer open to the appellants and the petitioners to question those circulars. We are once again unable to accept the submission, Mr Shah might have been present in the meeting and he might or might not have voted for the graded scheme for grant of additional TDR but that would not authorise the municipal authorities to override or supersede the statutory provisions by issuing circulars in the nature of executive instructions."

63. Their Lordships thus held that the municipal authorities are not authorised to override or supersede the statutory provisions by issuing circulars in the nature of executive instructions. Their Lordships thus held that the stand of the municipal authorities is contrary to the law as it stood on that day.

64. In **Manohar Joshi vs. State of Maharashtra and others**[11]

11 (2012) 3 SCC 619

apart from other questions involved, the Hon'ble Supreme Court dealt with a question whether the State Government has the power to issue directions to the Municipal Corporation to act in a particular manner contrary to the development plan sanctioned by the State Government, and that too a number of years after the Municipal Corporation having taken the necessary steps in consonance with the plan. There Lordships were also dealing with what is the nature and significance of the planning process for a large municipal town area and in that process, what is the role of the statutory planning authority. While considering the scope of Section 154 of the MRTP Act Their Lordships have made some significant observations in paragraphs 108 to 114 which are relied by the petitioners in the factual context of the present case. The same reads thus :

> "108. One of the sections which was pressed into service to defend the Directions of the State Government dated 3-9-1996 and 29-7-1998 and the actions of the Municipal Commissioner was Section 154(1) of the MRTP Act. This section reads as follows:
>
> > "154. Control by State Government.— (1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from

time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final."

109. It was submitted that the State Government was thus entrusted with the overall control in the interest of efficient administration, and its directions had to be followed by the Planning Authority, and such directions could not be faulted on any count.

110. In a similar situation in Bangalore Medical Trust, a reservation for a public park was sought to be shifted for the benefit of a private nursing home. Amongst others Section 65 of the Bangalore Development Act, 1976 was sought to be pressed into service which authorised the Government to issue directions to carry out the purposes of the Act. This Court observed in para 52 of that judgment that the section authorises the Government to issue directions to ensure that provisions of law are obeyed and not to empower itself to proceed contrary to law.

111. In the present matter, it is to be seen that the section provides for directions or instructions to be given by the State Government for the efficient administration of the Act. This implies directions for that purpose which are normally general in character, and not for the benefit of any particular party as in the present case. The provisions of law cannot be disregarded and ignored merely because what was done, was being done at the instance of the State Government. Consequently, Section 154 cannot save the directions issued by the State Government or the actions of the Municipal Commissioner in pursuance thereof. Thus, the reliance on these provisions is of no use to the appellants.

112. It was submitted that while passing the order the

Government has referred to a wrong provision of law and reference to a wrong provision of law does not vitiate the order if the order can be traced to a legitimate source of power. Reliance was placed on the judgment of this Court in P. Radhakrishna Naidu v. Govt. of A. P. and Velji Lakhamsi and Co. v. Benett Coleman and Co. In the instant case, however, the Order of the Government dated 3-9-1996 cannot be traced to any legitimate source of power, and therefore, the situation cannot be remedied by reference to other sources of power. The Division Bench has, therefore, rightly commented on this submission in para 180 of its judgment that "the rub is that the action taken by the Planning Authority was otherwise not legal and justified". It could not therefore be justified by reference to other provisions of law because basically the decision itself was illegal.

113. Thus the submission canvassed on behalf of the appellants is that although the landowner never objected to the reservation either for a garden or a primary school during the process of the revision of the DP Plan during 1982 to 1987, and although he had received the compensation for its acquisition, he retained the right to develop the property for residential purposes merely because under the erstwhile Town Planning Scheme residential use was permissible, and it is supposed to be saved under Section 165(2) of the MRTP Act. However, as seen from the conjoint reading of Sections 39, 42 and 46, and the scheme of the Act, such a submission cannot be accepted. That apart, ultimately it was contended on his behalf that the deletion of the reservation of a primary school on this plot under Section 37 of the MRTP Act is not necessary, and the order passed by the State Government in his favour can be explained under Section 50 of the MRTP Act read with DC Rule 6.6.2.2.

114. As we have seen Section 50 as well as DC Rule 6.6.2.2 have no application to the present case, nor can the power of the State Government under Section 154 of the Act help the appellants. Besides, independent of one's right either under the DP plan or the TP scheme, one ought to have a permission for development granted by the Planning Authority traceable to an appropriate provision of law. In the present case there is none. The appellants are essentially raising all these submissions to justify a construction which is without a valid and legal development permission. The appellants have

> gone on improving and tried to change their stand from time to time with a view to justify the Government's order in their favour. However, "orders are not like old wine becoming better as they grow older" as aptly stated by Krishna Iyer, J. in para 8 of Mohinder Singh Gill v. Chief Election Commr. The submissions of the appellants in defence of the decision of the State Government are devoid of any merit and deserve to be rejected."

65. The Hon'ble Supreme Court in **Brihanmumbai Municipal Corporation and others vs. Vijay Nagar Apartments and others**[12] referred to the observations made by Their Lordships in *Godrej and Boyce Manufacturing Company Limited* (supra) which we have already reproduced hereinbefore. A reference to paragraph 41 of the decision is material in the context of the submission made by learned counsel for the petitioner that the right under Article 300A of the Constitution of India is not only a legal right under the Constitution of India, but it is also a human right and therefore, statutes which are expropriatory must be strictly construed. Their Lordship held that while the State is vested with the sovereign power of 'eminent domain', it must be juxtaposed against the public interest sought to be achieved and it should not place an unfair burden on the private rights which are sought to be

12 2026 SCC OnLine SC 904

curtailed. Paragraph 41 reads thus :

> "41. In this context, it is pertinent to mention that this is a case relating to acquisition of land since the FSI or TDR against the area of land surrendered as well as additional FSI or TDR against the development or construction of amenity on the surrendered land by the landowner at his own cost, is stated to be in lieu of other means of compensation as described in Section 126(1) of the MRTP Act. The right under Article 300A of the Constitution of India, therefore, squarely attract, which albeit is no longer a fundamental right; it is a sacrosanct Constitutional right. Article 300A in plain terms provides that 'No person shall be deprived of his property save by authority of law'. This Court has observed that the said right is not only a legal right under the Constitution of India, but it is also a human right and therefore, statutes which are expropriatory must be strictly constructed. It goes without saying that while the State is vested with the sovereign power of 'eminent domain', it must be juxtaposed against the public interest sought to be achieved and it should not place an unfair burden on the private rights which are sought to be curtailed."

66. It would also be significant to reproduce paragraph 42 which refers to the decision of the Hon'ble Supreme Court in Kolkata Municipal Corporation vs. Bimal Kumar Shah, heavily relied upon by Mr. Andhyarujina, learned Senior advocate. The seven sub-rights which are encapsulated within Article 300A of the Constitution of India, which also includes the right for fair compensation is laid down reading thus :

> "42. Furthermore, this Court in Kolkata Municipal Corpn. v. Bimal Kumar Shah, has laid down seven sub-rights which are encapsulated within Article 300A of the Constitution of India,

which also includes the right to fair compensation, in the following manner :

> "29. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the "power of eminent domain". Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated [State of Bihar v. Kameshwar Singh, (1952) 1 SCC 528]. Although not explicitly contained in Article 300-A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627; K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.
>
> 30. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are :
>
> (i) The duty of the State to inform the person that it intends to acquire his property — the right to notice,

> (ii) The duty of the State to hear objections to the acquisition — the right to be heard,
>
> (iii) The duty of the State to inform the person of its decision to acquire — the right to a reasoned decision,
>
> (vi) The duty of the State to demonstrate that the acquisition is for public purpose — the duty to acquire only for public purpose,
>
> (v) The duty of the State to restitute and rehabilitate — the right of restitution or fair compensation,
>
> (vi) The duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings — the right to an efficient and expeditious process, and
>
> (vii) The final conclusion of the proceedings leading to vesting — the right of conclusion."

67. The Hon'ble Supreme Court in the context of the facts in *Brihanmumbai Municipal Corporation and others vs. Vijay Nagar Apartments* (supra) has observed in paragraphs 43 and 44 as under :-

> "43. The plea that the Landowner had surrendered its right to claim additional amenity TDR under Section 126(1)(b) of the MRTP Act against the construction or development of amenity cannot be countenanced or sustained. The said provision of statute is a manifestation of Article 300A of the Constitution of India and once fair compensation as against surrender of land is prescribed under statute, in terms of Section 126(1)(b) of the MRTP Act when read with the relevant regulations, no deprivation of land without strict compliance thereof can be permissible. In the facts of Godrej

> and Boyce I (supra), this Court had specifically found in paragraph 63 of that judgment that once the compensation against acquisition of land under Section 126(1)(b) of the MRTP Act had been laid down, no further negotiations, especially in order to derogate from the landowner's rights can be permissible and no further conditions may have been imposed by the Corporation which derogate from the provisions of the statute. The plea that the landowners had specifically accepted not to claim additional amenity TDR against the construction or development of amenity was recorded and rejected by this Court giving specific reasons. We see no reason to take a different view in this matter when the same contention was rejected by this Court in Godrej & Boyce I.
>
> 44. In the facts of Godrej & Boyce I (supra), this Court was dealing with the question as to whether a circular which at best could be considered as executive instructions, may override the statutory right of compensation flowing from Section 126(1)(b) of the MRTP Act. The facts of this case are worse placed, in that the Corporation contends that an agreement between the authority/executive and the landowner may override the statutory provisions which contemplate the grant of compensation in a certain manner. We fail to understand how the Corporation can get out of the crutches of the findings of this Court in the said judgment or the judgment in Kukreja Construction (supra) where this Court, in paragraph 70 has negatived the argument of waiver and abandonment of claim raised by the Corporation therein. Similar is the view taken by this Court in Yeshwant Jagannath Vaity (supra) which also stares at the face of the argument of the Corporation in respect of waiver and abandonment of claims."

68. Then in the context of the proposition that once the statute read with the regulations framed thereunder provides for compensation to be granted in a certain manner, there was no occasion for the officials of the Corporation to enter into further

negotiations with the landowner to come up with a new mechanism for payment of compensation in derogation of the same, Their Lordships in paragraph 51 observed thus :

> "51. The LOI, Undertaking as well as the Maintenance Agreement cannot be divorced from the context in which they were entered into. There is invariably an inequal bargaining power between the authority, i.e. the Corporation on one hand and the landowner on the other. We are aware that the Landowner in the instant case is a corporation, a developer, but that would make no difference. Once the land has been demarcated for a public purpose under the MRTP Act, there is inherent imbalance of bargaining power between the authority carrying out the acquisition and the landowner and Courts must be wary of any possible economic duress which might affect parties' decision-making. In such circumstances, the agreement between the Landowner and the Corporation where the Landowner has purportedly 'given up' statutory rights which accrue in its favour, pales into insignificance, especially when giving up of such rights has been projected as a pre-condition at the very first step, as discussed above. Once the statute read with the regulations framed thereunder provides for compensation to be granted in a certain manner, there was no occasion for the officials of the Corporation to enter into further negotiations with the Landowner to come up with a new mechanism for payment of compensation in derogation of the same. There was no occasion for the authorities to contract out of the statutory conditions for payment of compensation. Such an act cannot be countenanced and sustained in law, and it therefore deserves interference by this Court. For the aforestated reasons, the contention of the Corporation that the Landowner cannot claim anything beyond the scope of contract between the parties and the reliance placed on Rajasthan State Industrial Development & Investment Corpn. (supra) is not acceptable."

69. This Court in **Sharayu d/o Ashok Gokhale and others vs.**

Nagpur Municipal Corporation and others[13] was considering a challenge raised to the insertion of fresh terms and conditions while renewing lease of land in a manner contrary to the law laid down by this Court. This Court held that it was not open for the State Government to add a new condition either during subsistence of the lease or at the time of renewal of the lease unless the conditions of the tenure so provide. The relevant observations can be found in paragraphs 7, 12 and 19 which read thus :

> "7. The Division Bench in Smt. Jaikumari (supra) considered the question as to whether it was open for the Revenue Authorities to impose a new condition in a subsisting lease-deed providing for seeking prior permission of the Authority to legitimize the proposed transfer of land as well as the question whether it could impose a condition to claim/levy unearned charges so as to legitimize and regularize the transfer of the land by a lessee. The question whether the State had authority to levy or claim unearned income was also considered by the Division Bench. After referring to the judgment of the Division Bench of this Court in Damodar Tukaram Mangalmurti (supra) it was observed in paragraph 23 and 24 as under :
>
> > "23. … ….. It necessarily follows that if the original (former) lease did not provide for obligation to pay unearned income to the State, such condition could not be introduced at a subsequent point of time during the subsistence of the lease or for that matter at the time of renewal of lease. On the other hand, if the original or previous lease contains condition authorising the Governmental authority to introduce new condition or is silent about renewal clause, it will be open to the authority to introduce new condition consistent

13 2023(2) Mh.L.J. 48

> with the law enacted by the State Legislature on that subject.
>
> 24. …. …. We are conscious of the fact pointed out by the Counsel for the State that the said matter dealt with the terms of the lease produced in that case. Nevertheless, in our opinion, the said decision would bind the State Government atleast in cases having similar leases, unless the State Legislature was to enact a law to overcome the said decision and to empower the State Government to add new conditions at the time of renewal of the lease or for that matter to levy unearned income. In absence thereof, we have no hesitation in taking the view that it is not open to the State Government to impose new conditions for the first time either during subsistence of the lease or at the time of renewal of the lease which conditions may be prejudicial to the grantee and inconsistent with the tenor of the original lease in absence of law on that subject or condition incorporated in the original lease in that behalf. … … …..".

It was concluded in paragraph 37 as under :—

> "37. Taking over ail view of the matter, we have no difficulty in accepting the claim of the petitioners that provisions enacted by the State Legislature as of now would not authorise the State Government to insert new conditions or modify any condition during the subsistence of lease period or for that matter at the time of renewal of the lease. The renewal of the lease necessarily should be on same terms and conditions as in the earlier lease except the change or revision in respect of Annual lease rent."

It is thus clear from the aforesaid decision that in view of the principle stated by this Court in Damodar Tukaram Mangalmurti (supra) it was not open for the State Government to add a new condition either during subsistence of the lease or at the time of renewal of the lease unless the conditions of the tenure so provide. As stated above, such clause permitting addition of new conditions while renewing the lease is absent in the original lease-deed dated 10-7-1935. We thus find that

Question (a) as framed has been considered and decided by this Court in Smt. Jaikumari (supra) and it is thus held that it was not permissible for the Nagpur Municipal Corporation to incorporate additional terms and conditions in the lease-deed while renewing it on 2-4-2009 since there is no stipulation in the original lease-deed dated 10-7-1935 permitting it to do so.

12. In the case in hand, the agreement for renewal of the lease is between private parties and the Municipal Corporation which is a local authority within the territory of India for the purposes of Article 12 of the Constitution. According to the petitioners they expected renewal of the lease on the same terms and conditions that existed earlier. It is pleaded that they had no option but to sign on the dotted line. The challenge to the insertion of new additional clauses is based on the decision of this Court in Smt. Jaikumari (supra) by urging that despite the aforesaid judgment, such insertions have been made in defiance thereof. The challenge to the insertion of additional clauses demanding transfer fees based on unearned income would thus have to be examined in the context of violation of public policy and breach of Article 14 of the Constitution of India. If it is found that insertion of such additional clauses requiring payment of unearned income notwithstanding the decision of this Court in Smt. Jaikumari (supra) is opposed to public policy and also violates Article 14 of the Constitution, the defence of estoppel raised by the Corporation is liable to fall to the ground since estoppel cannot operate against law. Useful reference in this regard can be made to the decision in Express Newspapers Pvt. Ltd. and others vs. Union of India and others, (1986) 1 SCC 133, wherein it has been held in paragraph 183 that in public law, the most obvious limitation and doctrine of estoppel is that it cannot be evoked so as to give an overriding power which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. This principle has been reiterated in Krishna Rai (dead) through LRs and others vs. Banaras Hindu University through Registrar and others, 2022 MhLJ Online (S.C.) 30 =AIR 2022 SC 2924 by observing that it is a settled position that the principle of estoppel cannot override the law.

19. Thus in view of the answers given to Questions (a) and (b), we find that the petitioners are entitled for a declaration that the insertion of Clauses (i), (j) and (k) in the renewed lease-deed dated 2-4-2009 and deletion of the earlier

> terms and conditions in the said lease-deed is contrary to the law laid down by this Court in Smt. Jaikumari (supra) and therefore invalid. The petitioners would be entitled to seek renewal of the said lease-deed in accordance with the original lease-deed dated 10-7-1935. Consequently, the demand of transfer fees is liable to be set aside since the Nagpur Municipal Corporation is not empowered to demand the same from the lessees in the absence of any such stipulation in the original lease-deed."

70. The decision in **Jay Anand Co-operative Housing Society Ltd. vs. State of Maharashtra and others**[14] is relied by learned Senior Advocates for the petitioners in support of the contention that the impugned circulars violate Sections 17 and 18 of the MCS Act. The observation in paragraph 71 being relevant reads thus :

> "71. In view of the exemption order being contrary to law the bifurcation of the Petitioner society could never have been granted. It is provided in Section 18 of the MCS Act read with Section 17 of the MCS Act that a bifurcation can only be a general body resolution of 3/4th of the members, unless, in exceptional cases it is in 'public interest' or 'in the interest of members' (plural/majority) and not miniscule minority. This has been held by the Supreme Court in Janata Dal v. H.S. Chowdhary (Supra). I find from the facts of the present case that it does not fall within the defined criteria of 'public interest' or in the 'interest of members' as it is not in larger interest of members apart from the majority of the members having opposed bifurcation. Further, the judgment relied upon by the Petitioner viz. Bombay Catholic CHS Ltd. (Supra) is apposite."

71. In **Smt. Damyanti Naranga vs. The Union of India and others**[15] the Hon'ble Supreme Court was considering a challenge to

14 2026 SCC OnLine Bom 537
15 1971 (1) SCC 678

the validity of the Hindi Sahitya Sammelan Act. Their Lordships in paragraph 6 observed as under :

> "6. It was argued that the right guaranteed by Article 19(1)(c) is only to form an association and, consequently, any regulation of the affairs of the Association, after it has been formed, will not amount to a breach of that right. It is true that it has been held by this Court that, after an Association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however, inapplicable to the present case. The Act does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its

composition as voluntarily agreed upon by the persons forming the Association. This aspect was recognised by this Court, though not in plain words, in the case of O. K. Ghosh and Another v. E. X. Joseph. The Court, in that case, was considering the validity of Rule 4(B) of the Central Civil Services (Conduct) Rules, 1955, which laid down that:

> "No Government servant shall join or continue to be a member of any Service Association of Government servants :
>
> (a) which has not, within a period of six months from its formation, obtained the recognition of the Government under the rules prescribed in that behalf, or
>
> (b) recognition in respect of which has been refused or withdrawn by the Government under the said rules."

This Court held:

> "It is not disputed that the Fundamental Rights guaranteed by Article 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Article 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form Associations or Unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government servants as soon as recognition accorded to the said Association is withdraw or if, after the Association is formed, no recognition is accorded to it within six months. In other words, the right to form an Association is conditioned by the existence of the recognition of the said Association by the Government. If the Association obtains the recognition and continues to enjoy it, Government servants can become members

> of the said Association; if the Association does not secure recognition from the Government or recognition granted to it is withdrawn, Government servants must cease to be the members of the said Association. That is the plain effect of the impugned rule."

72. In **Union of India vs. Rajendra N. Shah and another**[16] the Hon'ble Supreme Court was considering a challenge to the decision of the High Court of Gujarat in **Rajendra N. Shah vs. Union of India and another**[17]. The question which was raised in the petitions and decided by the High Court of Gujarat was as to whether Part IX-B is non est for want of ratification by half of the States under the proviso to Article 368(2) of the Constitution of India. The High Court of Gujarat had declared that the said constitutional amendment inserting Part IX-B is ultra vires the Constitution for want of the requisite ratification under Article 368(2) proviso, which however will not impact amendments that have been made in Article 19(1)(c) and in inserting Article 43-B in the Constitution of India. The observations made in paragraph 93 being relevant reads thus :

16 (2022) 19 SCC 520
17 2013 SCC OnLine Guj 2242

> "93. The judgment of the High Court is upheld except to the extent that it strikes down the entirety of Part IX-B of the Constitution of India. As held by us above, it is declared that Part IX-B of the Constitution of India is operative only insofar as it concerns multi-State cooperative society both within the various States and in the Union Territories of India. The appeals are accordingly disposed of."

73. The Hon'ble Supreme Court in **Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and others**[18] in paragraph 47 has held that the State is not permitted to change the fundamental character of the association or alter the composition of the society itself by statutory interventions. Paragraphs 45 to 47 are relevant which read thus :

> "45. Therefore, it is evident that the Court will not pass any order binding the Government by its promises unless it is so necessary to prevent manifest injustice or fraud, particularly, when the Government acts in its governmental, public or sovereign capacity. Estoppel does not operate against the Government or its assignee while acting in such capacity.
>
> 46. The Government has inherent power to promote the general welfare of the people and in order to achieve the said goal, the State is free to exercise its sovereign powers of legislation to regulate the conduct of its citizens to the extent, that their rights shall not stand abridged.
>
> 47. The cooperative movement by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. So, the basic purpose of forming a cooperative society remains to

18 (2011) 9 SCC 286

> promote the economic interest of its members in accordance with the well-recognised cooperative principles. Members of an association have the right to be associated only with those whom they consider eligible to be admitted and have right to deny admission to those with whom they do not want to associate. The right to form an association cannot be infringed by forced inclusion of unwarranted persons in a group. Right to associate is for the purpose of enjoying in expressive activities. The constitutional right to freely associate with others encompasses associational ties designed to further the social, legal and economic benefits of the members of the association. By statutory interventions, the State is not permitted to change the fundamental character of the association or alter the composition of the society itself. The significant encroachment upon associational freedom cannot be justified on the basis of any interest of the Government. However, when the association gets registered under the Cooperative Societies Act, it is governed by the provisions of the Act and the Rules framed thereunder. In case the association has an option/choice to get registered under a particular statute, if there are more than one statutes operating in the field, the State cannot force the society to get itself registered under a statute for which the society has not applied."

74. Following the *Andhra Pradesh Dairy Development Corporation Federation* (supra) this Court in **Dinanath Co-operative Housing Society Ltd. vs. The State of Maharashtra and others**[19] while referring to paragraphs 46 and 47 quoted above, observed in paragraph 97 thus :

> "97. As a result of the above discussion, we find that the impugned order is ex-facie illegal, erroneous, arbitrary and violates the mandate of Article 14 of the Constitution of India. Even in the matters of present nature, the state ought to act

19 2016 SCC OnLine Bom 9861

> fairly, reasonably and in non-arbitrary manner. It cannot, at the behest and instance of anybody, much less a stranger, interfere with the administration of a lawful association or a co-operative housing society as in the instant case and violate the mandate of Article 19(1)(c) of the Constitution of India as well. Once all these constitutional provisions are violated, then, the impugned order cannot be sustained. It is quashed and set aside. Rule is made absolute in terms of prayer clause (a). There would be no order as to costs."

75. **Olga Tellis and others vs. Bombay Municipal Corporation and others**[20] is relied upon in support of the proposition that the procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just and reasonable. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. The procedure prescribed by law for depriving a person of his fundamental right, must conform to the norms of justice and fair play. Procedure, which is unjust and unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. The observations made in paragraphs 40, 41 and 44 are relevant reading thus :

20 (1985) 3 SCC 545

"40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards : The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that, "from the point of view the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work". Therefore, "He that takes the procedural sword shall perish with the sword".

41. Justice K.K. Mathew points out in his article on 'The Welfare State, Rule of Law and Natural Justice' which is to be found in his book Democracy, Equality and Freedom, that there is "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power wherever it is found". Adopting that formulation, Bhagwati, J. speaking for the Court, observed in Ramana Dayaram Shetty v. International Airport Authority of India, that it is (SCC p. 504, para 10) "unthinkable that in a democracy governed by the rule of law, the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement".

44. The challenge of the petitioners to the validity of the relevant provisions of the Bombay Municipal Corporation Act is directed principally at the procedure prescribed by Section 314 of that Act, which provides by clause (a) that the Commissioner may, without notice, take steps for the removal of encroachments in or upon any street, channel, drains, etc. By reason of Section 3(w), 'street' includes a causeway, footway or passage. In order to decide whether the procedure prescribed by Section 314 is fair and reasonable, we must first determine the true meaning of that section because, the meaning of the law determines its legality. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down. Considered in its proper perspective, Section 314 is in the nature of an enabling provision and not of a compulsive character. It enables the Commissioner, in appropriate cases, to dispense with previous notice to persons who are likely to be affected by the proposed action. It does not require and, cannot be read to mean that, in total disregard of the relevant circumstances pertaining to a given situation, the Commissioner must cause the removal of an encroachment without issuing previous notice. The primary rule of construction is that the language of the law must receive its plain and natural meaning. What Section 314 provides is that the Commissioner may, without notice, cause an encroachment to be removed. It does not command that the Commissioner shall without notice cause an encroachment to be removed. Putting it differently, Section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the validity of the law. Reading Section 314 as containing a command not to issue notice before the removal of an encroachment will make the law invalid."

76. Thus, Their Lordships in paragraph 44 laid down that the

primary rule of construction is that the language of the law must receive its plain and natural meaning. Their Lordships leaned in favour of the interpretation as placed on Section 314 because it helps sustain the validity of the law.

77. Mr. Jahagirdar, learned Senior Advocate has relied upon the following decisions in support of his submissions :

(1) **Jamal Uddin Ahmad vs. Abu Saleh Najmuddin and another**[21] to support the submission in the present case that once the petitioner's contractual right for grant of registered lease deed is recognised by this Court's vide order dated 29/04/2014, MHADA is not left with any discretion, but, to act upon it by executing and registering a lease deed, which is a mere ministerial act/duty.

(2) In support of the principles governing doctrines of election, approbation and reprobation and promissory estoppel, reliance is placed on the decision in **Rajasthan State Industrial Corporation and another vs. Diamond &**

21 (2003) 4 SCC 257

Gem Development Corporation Ltd. and another[22].

(3) To support the contention that the State must act as a virtuous litigant which equally applies to MHADA, being an instrumentality of the State, reliance is placed on the decision in **Dilbagh Rai Jarry vs. Union of India and others**[23].

(4) To support the proposition that what cannot be done directly cannot be done indirectly and where a power is given to do a certain thing in a certain way, the thing must be done in that way, or not at all, reliance is placed on the decision in **State vs. Sanjeev Nanda**[24]

(5) To support the submission that principles of interpretation of statutes would equally apply to executive instructions such as Government Resolutions issued under Article 162 of the Constitution of India, reliance is placed on **Reghunath Rai Bareja and another vs. Punjab National Bank and others**[25]. It is submitted that when words of

22 (2013) 5 SCC 470 [para 15]
23 (1974) 3 SCC 554 [para 25 (unnumbered)]
24 (2012) 8 SCC 450 [para 28]
25 (2007) 2 SCC 230 [paras 55 and 58]

statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. The words themselves best declare the intention of the law-giver. The literal rule of interpretation is not only followed by judges and lawyers, but it is also followed by the layman in his ordinary life. The literal rule simply means that we mean what we say and we say what we mean.

(6) In **Kotak Mahindra Bank Limited vs. A. Balakrishnan and another**[26] it is observed that where the meaning of the words used in an enactment is plain and unambiguous, the courts must give effect to that meaning only. The court must proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said. This decision also deals with the principles governing ratio decidendi of a judgment.

(7) The decision in **State of Bihar and others vs. Project Uchcha Vidya, Sikshak Sangh and others**[27] is

26 (2022) 9 SCC 186 [paras 76-78]
27 (2006) 2 SCC 545 [paras 65-71]

referred to support the proposition that the executive orders under Article 162 are not "law" within Article 300A. Every executive action prejudicing a person must have sanction of law, and equity and good conscience must be at the core of government functions. It is submitted this decision contemned the State's attempt to achieve through executive fiat what it failed to achieve through legislation and also struck down the "take it or leave it" conditions imposed by the State on unequal bargaining parties in view of the mandate of Article 14 of the Constitution of India.

(8) The proposition then canvassed is that in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer, the norm in the higher layer will prevail. In the hierarchy of laws, the notification issued by the Executive must yield to the Constitutional provisions, the Act and the Rules. The powers under MHADA Act, MRTP Act and the GRs (issued

under Article 162) will be subject to constitutional limitations such as Articles 14, 19(1)(g), 21 and 300A of the Constitution of India. Reliance is placed on the decision in **M/s. Ispat Industries Ltd. vs. Commissioner of Customs, Mumbai**[28].

(9) To support the proposition that the term property includes not only ownership and possession but also the right of use, and enjoyment of the property for lawful purposes, it is submitted that the property, within constitutional protection, denotes group of rights inhering in citizen's relation to physical things as right to possess use and dispose it of. Reliance is placed on the decision in **Vikas Sales Corporation and another vs. Commissioner of Commercial Taxes and another**[29].

(10) To support the contention that persons in bona fide possession of structures constructed by them on Government land cannot be removed except by authority of law and not by executive action in view of the rule of

28 (2006) 12 SCC 583 [para 27-28]
29 (1996) 4 SCC 433 [para 19]

law, reliance is placed on the decision in **Bishan Das and others vs. State of Punjab and others**[30].

(11) The next proposition is that legitimate expectation arises from consistent past practice in allotment, even if there is no right in private law. In case an authority wants to defeat such legitimate expectation then prior hearing is a must. The decision in **Navjyoti Coop. Group Housing Society vs. Union of India and others**[31] is relied upon.

(12) It is then the contention that Government is a regulator and dispenser of special services and provides to the large public benefits including contracts. The discretion of the Government has been held to be not unlimited. The Government cannot give or withhold largesse in its arbitrary discretion or according to its sweet will. The Government cannot now say that it will transfer the property (land, etc.) or will give jobs or enter into contracts or issue permits or licences only in favour of

30 1961 SCC OnLine SC 136 [paras 12-14]
31 (1992) 4 SCC 477 [paras 15-16]

certain individuals. The decision in **Saroj Screens Private Limited vs. Ghanshyam and others**[32] is relied upon.

78. In **B. R. Enterprises vs. State of U.P. and others**[33] the Hon'ble Supreme Court in paragraph 81 has held thus :

> "81. The legal principle which emerges, as submitted, is that delegation of essential legislative power of the principal to the delegatee would amount to abdication of its legislative power and if it is bereft of any guidelines then it is unsustainable in the eye of the law. The authorities cited by various learned counsel and the law on the subject, cannot be doubted. But this principle is to be tested by scanning the impugned legislation which may differ one from the other in its nature, setting up or other circumstances which may have bearing to conclude. It is also well settled that first attempt should be made by the courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, maybe beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible

32 (2012) 11 SCC 434 [paras 33-37]
33 (1999) 9 SCC 700

ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. The kingdom of interpretation is enriched by the rule as laid down in Heydon's case as far back in the 16th Century. According to this, courts must see what was the law before the impugned provision, what was the mischief for which the then law did not provide, what is the reason to remedy that mischief and what remedy the impugned provision has provided. This rule has been accepted by this Court in Bengal Immunity Co. Ltd. v. State of Bihar and K.P. Varghese v. ITO AIR at p. 1929. In Hamdard Dawakhana v. Union of India this Court held :

> "Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary, i.e., its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy; Bengal Immunity Co. Ltd. v. State of Bihar, R.M.D. Chamarbaugwalla v. Union of India; Mahant Moti Das v. S.P. Sahi.
>
> Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the

> constitutionality of an enactment. Charanjit Lal Chowdhury v. Union of India; State of Bombay v. F,N. Balsara; Mahant Moti Das v. S.P. Sahi."

The following passage in Seervai's Constitution of India (3rd Edn.), p. 119 found approval in Delhi Transport Corpn. v. DT.C. Mazdoor Congress. The Court held : (SCC p. 711, paras 217-18)

> "217. Seervai in his book Constitutional Law of India (3rd Edn.) has stated at p. 119 that :
>
> '… the courts are guided by the following rules in discharging their solemn duty to declare laws passed by a legislature unconstitutional:
>
> (1) There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity".
>
> * * *
>
> (6) A statute cannot be declared unconstitutional merely because in the opinion of the court it violates one or more of the principles of liberty, of the spirit of the Constitution, unless such principles and that spirit are found in the terms of the Constitution.'
>
> 218. On a proper consideration of the cases cited hereinbefore as well as the observations of Seervai in his book Constitutional Law of India and also the meaning that has been given in the Australian Federal Constitutional Law by Colin Howard, it is clear and apparent that where any term has been used in the Act which per se seems to be without jurisdiction but can be read down in order to make it constitutionally valid by separating and excluding the part which is invalid or by interpreting the word in such a fashion in order to make it constitutionally valid and within jurisdiction of the legislature which passed the said enactment by reading down the provisions of the Act (sic)."

This principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any

impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power. The Delhi Transport Corpn. case was with reference to challenge to the provisions relating to termination of service of a permanent employee. In Registrar of Coop. Societies v. K. Kunjabmu this Court held : (SCC Headnote)

> "The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislate it must, by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute such as the preamble, the scheme or even the very subject-matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy."

This case holds that guidelines can be gathered from the subject-matter of the Act."

79. This Court in **The Chief Officer/Vice President, Maharashtra Housing and Area Development Board (MHADA) in the matter between Manjula Kadir Veeran vs. The State of Maharashtra and others**[34] in Interim Application (L) No.4611 of 2021 decided on 06/03/2025 ("Motilal Nagar", for short) was

34 2025 SCC OnLine Bom 533

dealing with the Public Interest Litigation ("PIL") alleging inaction on the part of the respondents in not removing the illegal structures, despite several complaints being made and for sitting tight over the issue, by completely remaining dormant. In the PIL several interim applications were filed and one such application was filed by MHADA for grant of permission to MHADA to redevelop Motilal Nagar I, II and III jointly with "Construction and Development Agency (ies)" to be selected through tender process on FSI sharing basis, in terms of the present DCPR 2034. This Court has observed that the relief in all the proceedings revolve around redevelopment of Motilal Nagar I, II and III.

80. Mr. Samdani, learned Senior Advocate submits that the issue in the PIL was only for demolition of unauthorised constructions and that is what is dealt with by the Division Bench of this Court. It is further submitted that the contentions and the ground which are raised in the present writ petition, mainly that of the rights under the existing sub-leases were never urged and noticed in the matter before the Division Bench. The aforesaid decision is further sought to be distinguished on the ground that

the issue before the Division Bench pertained to redevelopment under DCR 33(5), whereas the issue in the present case pertains to redevelopment under DCR 33(9) in the form of a cluster redevelopment. It is therefore urged by Mr. Samdani that the decision in Motilal Nagar is distinguishable.

Decision in Motilal Nagar

81. The decision in Motilal Nagar has an important bearing on the controversy. Two issues fell for the consideration of this Court :

(i) Whether the wording 'on its own' as used in order dated 17/10/2013, is capable of admitting the 'construction and development agency' to be appointed by MHADA subject to MHADA retaining control over the entire redevelopment process but the agency shall only facilitate the redevelopment.

(ii) Whether the amended DC Regulation 33(5) permits MHADA to carryout re-development by appointing an agency.

82. According to the learned Advocate General and learned Senior Advocates Mr. Darius Khambata and Mr. Ravi Kadam,

Motilal Nagar decision squarely covers the issues raised in the present writ petitions. We therefore refer to the relevant portion in Motilal Nagar in extenso for the sake of convenience. Paragraphs 14 to 36 of the said decision read thus :

> "14. MHADA which has been constituted under the Maharashtra Housing Act, 1976, an Act to whose principle object is to unify, consolidate and amend laws relating to housing, repairing and reconstructing dangerous buildings and carry out improvement work in slum areas.
>
> In the wake of the rapid growth of industries in the urban areas and the fast growth of population and commercial activities, the need for housing could not be met by limited housing construction activities in private sector and it was also felt necessary to reconstruct the buildings which have lived its life and since various slums had come up which necessitate taking up their improvement, the authority known as MHADA is constituted under Section 3 of the Act, which is cast with the functions, duties and powers as set out in MHADA Act, 1976.
>
> Principal object of having MHADA as a planning and statutory authority is aimed to achieve housing in urban area, as well to take effective steps and acquisition of lands and buildings for carrying out repairs, construction and re-construction. The proposed development of Motilal Nagar thus squarely fall within the objective and purposes and within the powers and authorities vested in MHADA. Under Section 28(1), which set out the duty and function of the authority constituted under the Act, MHADA possess the powers of the land owner, namely to develop and manage all lands vested in MHADA and to raise resources for the purpose of carrying out the object of the Act and also to develop the lands vested in it including the power of closure or demolition of dwellings or portions of dwellings unfit for human habitation and demolition of obstructive or dangerous and dilapidated buildings or portions of such buildings. MHADA is also empowered to enter into contracts and agreements while discharging its functions and duties. MHADA is also competent

to exercise the power of eviction and/or land acquisition and direct vacation of the premises for the purpose of implementing any plan or project and also to evict occupants, who are non-cooperative and obstruct any of the aforesaid activities.

The Maharashtra Housing and Area Development (Estate management, sale, transfer and exchange of tenements) Regulation 1981, prescribe that in case of a conveyance of the building, it will always be subject to a condition that the land beneath or appurtenant to such building shall be held on lease from MHADA and as per sub-rule (5) of Rule 21, the Housing Society, the Company or allottee shall hold the property on lease and only while such lease is in force the property shall remain as authority premises subject to the provision of MHADA Act, 1976. The conveyance of the building is thus made co-terminus and runs concurrently with the lease.

15. MHADA has proposed an integrated and holistic redevelopment for Motilal Nagar, which envisages:-

> (i) rehabilitation buildings for both existing and commercial users;
>
> (ii) development of markets, shopping centres, offices, houses and work places, mixed use buildings, cultural centres, clubs, public halls, recreational centres, schools, community centres, shelters for women and children, shelters for old, health-care and medical centres, hostels and residential buildings of various sizes of apartments for sale; and
>
> (iii) a network of open spaces and parks and pedestrian plazas."

16. Considering the nature of the proposed project, it may not be possible to be undertaken by individual co-operative housing societies, or associations formed by occupants thereof on a piecemeal and individual basis. Each co-operative society would look solely to the personal interest of itself and its members, and likely appoint a developer to undertake a narrow and limited development of its land / buildings. This would not be in the interest of orderly planning

and infrastructural development. It would also expose each society and its occupants to the exigencies of commercial developments by developers.

Moreover, it is only a holistic redevelopment that proposes a solution for the long-term problem of flooding and water-logging faced by the occupants of Motilal Nagar, which certainly cannot be resolved by individual and piecemeal redevelopment of separate parcels of land.

17. With this object, the interim applications filed by MHADA seeking permission for redevelopment by appointing C&DA to be selected through a tender process, on an FSI sharing basis and this application being filed on 12/02/2021, clearly highlighted that the C&DA shall infuse funds required for the redevelopment.

On 20/07/2021, this Court was informed through the learned Advocate General that MHADA will take steps towards the redevelopment, by obtaining cabinet approval, issuance and finalization of tender, etc. without prejudice to the rights and contentions of all parties, without claiming any equities and subject to further orders in the present proceedings. However, no work order will be issued in favour of the successful bidder till further orders of this Hon'ble Court.

18. On 08/09/2021, the Cabinet passed a Resolution approving redevelopment of Motilal Nagar by MHADA through C&DA and the Cabinet conferred a special project status on the project. On 06/10/2021, the State Government issued a Resolution taking a decision regarding redevelopment of MHADA colonies of Motilal Nagar I, II and III in the background of the directions issued by this Court on 17/10/2013 and as MHADA proposed to appoint C&DA for carrying out the redevelopment project.

Recording that the number of hutments and units on the said ground and the total area of the land, the density of units being 106 units per hector, which is less than 450 units per hector, as mentioned in DCPR 2034, so as to make available the maximum land for redevelopment, and the project being conferred a status of 'special project', by approving the construction area in excess of permissible construction area for residential and non-residential use,

approval was granted to appointment of C&DA through MHADA.

The approval is subject to the following conditions :-

"(1) While appointing C&DA, the share of carpet area index should be done on F.S.I. Sharing principle and the required tender process should be implemented by MHADA.

(2) While finalizing the tender of C&DA for the said redevelopment project, the tender of C&DA providing maximum share of the remaining carpet area excluding rehabilitation should be finalized.

(3) 1600 sq.ft. per acre for residential use under the said redevelopment project Construction area (BUA) should be sanctioned. However, this 1600 sq.ft. out of the construction area, 833.80 sq.ft. construction costs for an area larger than the construction area should be borne by the C&DA assigned to the redevelopment project.

(4) For non-residential use 987 sq.ft. construction area (BUA) should be sanctioned and as per DPR Rules 2034 of 33(5) the construction area 502.83 sq.ft. construction costs for an area larger than the construction area should be borne by the C&DA to be assigned to this redevelopment project.

(5) Protected slum holders coming under the redevelopment project at Motilal Nagar 1, 2 and 3 should be given rehabilitation areas as per the prevailing provisions of the Maharashtra Slum (Improvement, Elimination and Redevelopment) Act, 1971.

(6) C & DA to be appointed for this redevelopment project. Development rights, carpet area index etc. cannot be transferred to third parties in any way without the permission of MHADA. So they cannot create the rights of any third party without the prior permission of MHADA."

19. The appointment of C&DA is justified by MHADA, on the ground that the project envisaged is a massive redevelopment exercise involving approximately 143 acres land in Goregaon and, since, the redevelopment intends to

holistically develop residential and commercial centre, MHADA would require assistance, funding, expertise, competence, network and capacity of skilled third party, which it expects from C&DA, who possess the potential to employ best of the technology for speedy and quality construction. In addition, C&DA shall bear the cost related to the project and shall bring in financial outlay and management expertise, which according to MHADA is not within its permissible limits.

20. The Interim Applications faced an opposition from Mr. Tekchand Khanchandani, the PIL Petitioner and also from the individual societies. We have heard learned counsel Mr. Datta Mane with Mr. Shreyas Chaudhari for the Petitioner in WPL/22731/21, learned counsel Mr. Rajendra K. Vaingankar for the Petitioner in WP/3863/24 and in WP/2370/23 as well as Mr. Gaurav Rane, petitioner-in-person in WP/776/23 and Mr. Pradeep Havnur for the Petitioner in PIL(L)/6555/22. The aforesaid Petitions have opposed the redevelopment through C&DA.

21. In Writ Petition No.2370 of 2023, filed by Motilal Nagar Shiv Co-Operative Housing Society Limited, challenge is raised to the Government Resolutions dated 08/09/2021 and 06/10/2021 and it is submitted that the decision of the State Government be set aside as MHADA has been set up to protect the public interest in large at Mumbai and not to sanction the destruction. It is the specific contention raised in the Petitioner that if the Petitioner is a co-operative housing society and it is conferred with the welfare of the occupants, it has a right to re-develop the society and it is specifically urged before us that the societies are formed by the occupants of different localities, with an object of getting conveyance in their favour, and on 16/06/2011, the society got the conveyance and its name was enrolled in the property card. In this background, it is the claim of the society that it is their prerogative to re-develop the society and not for MHADA to decide the redevelopment programme with appointment of C&DA, though valid resolution being passed by the occupants of the society as mentioned in DCR 33(5) and, particularly, when this Court on 17/10/2013 had permitted development of Motilal Nagar by MHADA on its own.

22. Writ Petition No.3863 of 2024 is filed by Motilal Nagar Rahivasi Vikas Sangh, a co-operative housing society,

raise similar challenge to the aforesaid Government Resolutions and it opposed the Interim Applications on the ground that the order dated 17/10/2013 is sought to be modified after much water has flown, as this Court had permitted the redevelopment to be carried out by MHADA itself.

23. In Writ Petition No.776 of 2023, Mr. Gaurav Rane, while raising a challenge to the very said GRs would submit that no consent of the society was obtained before MHADA decided to get the work of redevelopment done through C&DA and, therefore, there is principle of violation of natural justice. In addition, it is also urged that MHADA should develop the property on its own, without intervention of any other agency and he would also vehemently submit that MHADA has fixed its rent, compensation unilaterally and Mr. Rane has urged before us that in the past, while developing Patra Chawl, MHADA has goofed-up the entire project, as a result, the members are still awaiting their houses and he would submit that he do not want that this should be repeated in Motilal Nagar. It is the insistence of Mr. Rane that tripartite agreement shall be executed if at all the C&DA is permitted to redevelop, so that the societies have an assurance of the compliances.

24. In PIL(L) No.6555 of 2022 filed by Mr. Kamal Jagdish Singh, it is urged that if MHADA develops the property on its own, it can retain the FSI and it will be able to accommodate more people, as ultimately its object is housing and it must ensure that the benefits of redevelopment of Motilal Nagar accrues FSI, which is permitted to be utilized for rehabilitating many people of economically weaker section from the society. Even this Petitioner has raised an apprehension that the residents of Motilal Nagar shall not be made to suffer the same fate as Patra Chawl.

25. We have also heard the Petition filed by Motilal Nagar-1-Panchshil Co-Op. Housing Society Ltd. which has sought a permission for self redevelopment and challenged the impugned communication/letter dated 06/08/2019, refusing the permission by stating that a consolidated redevelopment process in terms of DCR 33(5) is proposed and no individual permission can be granted.

26. Mr. Khambatta, has invited our attention to the RFQ

cum RFP for the redevelopment of the Motilal Nagar at Goregaon, floated by MHADA for 'redevelopment of Motilala Nagar- I, II and III colonies by MHADB through a construction cum development agreement by appointed of C&DA. Bid document has incorporated the principle terms and conditions of the construction cum development contract and it has defined C&DA to mean the SPB Company formed by the selected Bidder for the project, who will construct the rehabilitation component and MHADB premises, reservation amenities along with the infrastructure as set out in the construction cum development agreement.

The draft construction cum development agreement to be entered with the C & DA or the SPB company is also placed before us by MHADA and we have perused its clauses minutely.

The agreement has highlighted scope of the project and this contemplate preparation of master plan of the project, preparation of necessary architectural and structural drawings for each component that is to be constructed and to obtain necessary approvals in the name of MHADA for rehabilitation component, reservation amenities and MHADA premises. It also shall incur the cost to ensure shifting and rehabilitation of the MHADA eligible tenants shops, and slum dwellers and is responsible for facilitating and supporting their redevelopment which shall be phase/sector wise.

The agreement clearly stipulate that C & DA shall undertake at their cost for and on behalf of MHADA/MHADB, the redevelopment of rehabilitation component, reservation amenities and MHADB premises, which shall consist of the following:-

> "a. Rehabilitation houses for approximately 3,372 numbers of MHADA eligible tenements, each having Built-up area of 1600 sqft.
>
> b. Rehabilitation MHADA eligible shops for approximately 328 numbers, each having built-up area of 987 sqft.
>
> c. Rehabilitation of MHADA eligible slums dwellers and development of amenities for approximately 1,600 number, as per applicable SRA norms and

DCPR 2034.

d. MHADB Premises as per the Bid Criteria Share.

e. Services and infrastructure based on town planning standards, MCGM rules and relevant provisions of MHADA.

f. Transit accommodation as required for residential and commercial units, as per the DCPR 2034.

g. Further the C& DA shall also be responsible to construct, for and on behalf of MHADB, and at the costs of the C& DA, the various Reservation Amenities."

27. Clause 2.1, which deals with grant of development right categorically prescribed that the authority, grant development right in respect of the C & DA share coupled with the right and entitlement to use the same in the development and construction and disposal of the C & DA premises including any right generated of such development, in the same proportion to such proportion of Rehabilitation Component and the MHADA premises and associates amenities, the construction of which has been sanctioned/ approved in phasewise manner.

It is also further contemplated that the commencement certificate and the occupation certificate for C& DA share will be issued by MHADA in phases proportionate to the commencement certificate issued for rehabilitation premises and MHADA share.

28. The agreement also contemplate that the entire cost of the project shall be borne by C & DA and the compensation to be awarded to it shall be only in form of FSI and the bidder quoting the highest bid criteria share of the sale FSI will be appointed.

29. The agreement also cover the necessary details of grant of development right and the effective date and clause 2.1.3.2 record thus:-

"2.1.3.2 Project land is owned by MHADB who

> shall continue to retain land ownership. Land or land ownership rights will not be parted with the C&DA. The ownership (free hold rights) of the land shall at all times remain with MHADB. However, MHADB shall convey the leasehold rights in respect of parts of the land to the respective holders, purchasers and owners thereof, including registered co-operative societies or similar such bodies, C&DA or organisations formed by C&DA/C&DA nominated agencies, in a phased manner concurrent to the completion of such buildings and such lease period shall be for a period as per the prevailing policies of MHADA/MHADB."

30. When, we have perused the draft agreement, it is evident to us that the MHADA shall continue to hold the title to the land even after appointment of the agencies and in no case the ownership shall be parted with C & DA. In addition, it will not be permissible for C & DA to mortgage the land in order to raise finance and create the third party interest. Apart form this, MHADA continue to exercise complete control over the project and for this purpose it is imperative for C& DA to furnish monthly progress reports to MHADA and attained the quarterly review meetings. MHADA is also empowered to conduct monthly inspections of the project so as to discourage any delay/deficiency.

31. Certain safeguards in the proposed arrangement will allay the fears of the Petitioners, who are opposing the Interim Applications as well as the PIL Petitioner, and this includes the following safeguards :-

> (i) Timebound Development: Project completion timeline established at 7 years, subject to limited exceptions such as force majeure, approvals and permission from various authorities, and facilitation by MHADA;
>
> (ii) In case of delay due to a material breach on the part of the C& DA (not on account of a force majeure event or delay in facilitation by MHADA), pre-estimated damages for delay at 0.01.% per month in proportion to the cost of the cluster affected, shall be levied.

(iii) Performance Guarantee: C& DA to furnish a performance bank guarantee to MHADA equivalent to 3 % of ready reckoner value of the Rehabilitation Component + Reservation Amenities + MHADA share (estimated to be approximately INR 500 crores).

(iv) Phased Redevelopment: C& DA will implement the Project in phases. During the construction of any phases, residents of balance phases will be residing in the same place or in transit accommodation. Further, the shifting of infrastructure will be undertaken in a way that existing infrastructure and services to other existing buildings/chawls is not affected and remains functional. Additionally, MHADA will convey leasehold rights in respect of parts of the land to the relevant person/body in a phased manner concurrent to the completion of such buildings.

32. In addition, the MHADA has reserved its rights to substitute the C& DA in case of any event of default, which includes situation such as no progress in work in respect of the rehabilitation component, reservation amenities, by specifically setting out the event of default.

33. The aforesaid factors assist us in consideration of the reliefs prayed in the Interim Applications filed by MHADA seeking appointment of C& DA and also in modifying the order dated 17/10/2013.

We have already noted order dated 17/10/2013, which was passed when the unamended DCR 33(5) pertaining to development/redevelopment of housing schemes of Maharashtra Housing and Area Development Authority MHADA was in force, the said DCR contemplated, re-habilitation area entitlement for an existing residential tenement in the manner set out in clause (A) along with the incentive FSI under clause (B) with the sharing of balance FSI as prescribed in clause (c).

The Government of Maharashtra through its Urban Development Department on 5/12/2018 modified the regulation 33(5) of DCR for greater Mumbai and at the

relevant time regulation 33(5) read thus:-

> "33(5) Development/redevelopment of Housing Scheme of Maharashtra Housing & Area Development Authority..
>
> 1) The FSI for a new constructed tenements scheme of Low Cost Housing Schemes on vacant lands for Economically Weaker Section, Low Income Groups & Middle Income Group of the MHADA having at least 60% built up area in the form of tenements under EWS, LIG & MIG categories shall be 2.50.
>
> 2) For redevelopment of existing housing schemes of MHADA, undertaken by the MHADA departmentally or jointly with societies/occupiers of buildings or by housing societies/occupiers of building or by lessees of MHADA or by the developer, the FSI shall be as under -
>
> a) Total permissible FSI shall be 2.5 on gross plot area.
>
> b) The incentive FSI admissible against the FSI required for rehabilitation shall be as under."

34. The aforesaid was substituted by notification dated 12/11/2018 and clause 2.2 of Regulation 33(5) thereafter, read thus:-

> "2.2 Where redevelopment of buildings in the existing Housing Schemes of MHADA is undertaken by MHADA or jointly by MHADA along with the housing societies or along with the occupiers of such building or along with the lessees of MHADA, the Rehabilitation Area Entitlement shall be as follows."

35. The amended clause therefore permit the redevelopment of buildings in the existing housing scheme of MHADA, by MHADA in either of the following modes:-

(i) MHADA;

(ii) jointly by MHADA along with Housing Society;

(iii) Jointly by MHADA along with occupiers of such building or;

(iv) jointly by MHADA along with lessees of MHADA.

36. In light of the amended DCR Regulation 33(5), when a statement was made before this Court, on behalf of MHADA that it was willing to undertake development itself, as per amended DCR 33(5), this Court recorded that if MHADA is willing to undertake development, the issue of unauthorized construction will be taken care of and there is no necessity for issuing directions for demolition of unauthorized constructions. MHADA was clear in its stand to undertake redevelopment of the entire colony situated on the land belonging to MHADA as a systematic activity and in the wake of the deletion of the words 'departmentally' which was present in the Regulation 33(5) prior to its amendment, the contradiction is apparent that MHADA may not necessarily contemplate the re-development departmentally i.e. by using an inhouse mechanism. By deletion of the words 'departmentally' when the modified DCR 33(5) permit development to be carried out by MHADA, we see no legal impediment in MHADA carrying out the work of re-development by appointing an agency who shall act on its behalf but the entire control over the agency shall be retained by MHADA itself and this is implicitly clear form the tender document as well as the draft of the agreement to be entered with the entity who shall act as a C&DA.

If MHADA can redevelop the societies and buildings situated on its land through any other agency since it is its specific stand, that it do not have the resources of its own to undertake such a gigantic project and also do not possess the expertise in technical field, we do not think that we are entitle to substitute its decision, which is taken after considering the pros and cons of the matter and with a avowed purpose of reconstruction of the dilapidated buildings, which are now posing threat and danger to life of its occupants. Acting in tune with this objective as contemplated under the Statute under which it is establish, MHADA is all it way to carry out the project of redevelopment of Motilal Nagar I, II and III but through an agency to be chosen by it by an open tender process with specific stringent condition being imposed, which we are not call upon to decide here, but since Mr. Khambatta, the learned Senior Counsel has made a statement that the DCR

> in relation to re-development by MHADA i.e. Regulation 33(5) shall be stringently followed and all the occupants shall be given their due share of rent/compensation and separate agreements will be executed with them and we have no hesitancy in our mind that MHADA is on its forefront to re-develop Motilal Nagar I, II, III, which are the building constructed around the year 1960, under the slum rehabilitation scheme and almost what unit holders have made structural alteration in the original structure of the unit without necessary permission and that is why the PIL petitioner has approached this Court calling for its demolition. However, since now MHADA has undertaken to re-develop Motilal Nagar I and II by itself in terms of the amended DCR regulation 33(5), with the said project being declared as 'Special Project' by the State Government, the only argument advanced that MHADA has sufficient funds and it has advanced loans to various entities definitely shall not deter us from granting our approval to MHADA by permitting redevelopment to be carried out by appointing C & DA as stated in the application. According to us, though the order dated 17/10/2013, do not fall for modification, but we must clarify that when it was directed that the MHADA shall carry out the re-development 'on its own' in the wake of the amended DCR 33(5), it is permissible for MHADA to appoint an agency to carryout the project of re-development."

83. In answer to the question as to what extent the economic policies are amenable to judicial review, Their Lordships in Motilal Nagar in paragraphs 37, 38 and 39 observed thus :

> "37. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it is demonstrated that the policy is contrary to any statutory provision or the constitution itself. It is not open for the Courts to consider the relative merits of different economic policies and consider whether a wiser or better one can be evolved. In the areas of commerce involving financial decisions, a greater latitude is available to the executive and the Court shall not sit in judgment over the wisdom of the policy of the legislature or

the executive. In BALCO Employees Union (REGD) vs. Union of India, the Court observed thus:-

> "92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.
>
> 93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001."

It is categorically held that 'it is not the domain of the Court to embark upon an unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better policy could have been evolved and such exercise is left to the discretion of the executive and the legislative authorities as the case may be'.

38. The Courts are expected to act with a great caution while it interferes with the priorities fixed by the Government, unless it is established that the decision taken by it is patently arbitrary and/or not in larger public interest. The Government should be free to take policy decisions or to decide priorities and it is better left to the wisdom of the State, which is well advised by the bureaucrats, and its other officers, who posses an expertise in taking policy decisions, which may involve various factors like the availability of fund, the requirement of the State to focus upon a particular sector in precedence over the other etc. The wisdom and advisability of such policy decisions are not ordinarily amenable to judicial review and it

> is time and again specifically held that economic and fiscal regulatory measures are field, where Judges should encroach upon warily as Judges are not experts in these matters.
>
> 39. In the present case, when the State Government has declared the project of Motilal Nagar as a 'Special Project' by issuing a government resolution and has accorded its green signal for MHADA to undertake the re-development of Motilal Nagar- I, II and III, by appointing a C & DA, by ensuring that MHADA retains its control over the project but in absence of the necessary potential to accomplish the huge project, it is chosen to work through the C&DA and, since, the decision is based on economic viability as well as the capability of MHADA to undertake the process of re-development, we are not inclined to entertain with the same, in the wake of limited scope being available to us in exercise of writ jurisdiction under Article 226 of Constitution."

Analysis and Consideration

84. Bearing in mind the well-settled legal principles, now we analyse the submissions made in the factual backdrop, due regard being had to the constitutional and statutory framework governing the controversy.

85. To appreciate the challenge, it would be material to note that the Bombay Housing Board Act, 1948 ("BHB Act, 1948", for short) was enacted, which had similar provisions to the MHADA Act, 1976. In 1948, the Bombay Housing Board Regulations, 1948 were enacted. In 1949, MCGM granted the said lands on perpetual

lease to the Bombay Provincial Housing Board and eventually to MHB, the predecessor of MHADA. The predecessor of MHADA built around 56 colonies for Middle Income Group (MIG) and Low Income Group (LIG) between 1950-1960. MHB allotted tenements of the said buildings on a rental basis or on a “hire purchase” basis. In 1969, the Bombay Building Repairs and Reconstruction Board Act, 1969 was enacted. In 1970, the Maharashtra Housing Board (Allotment, Management and Sale of Tenement) Regulations, 1970 were enacted. The allottees of tenements of the said buildings (total 24 buildings) situated on the said lands came together to form the petitioner society on 31/10/1973. The MHADA Act was brought into force in 1977. Pursuant to the dissolution of MHB in the year 1977, all the rights, obligations and the entire property of MHB stood vested in MHADA.

86. Sub-Lease Deeds were executed on 24/12/1981 by and between MHADA and the petitioner society, thereby granting the land beneath and appurtenant to the said buildings to the petitioner society on lease for the period of 99 years on terms and conditions mentioned therein. In 1981, the Maharashtra (Disposal

of Land) Rules, 1981 were framed by MHADA under the provisions of Section 184(2)(vii) and Section 28(3)(ii) and Section 64 of MHADA Act, 1976. The Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 were framed by MHADA in 1981.

87. In 1981, the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 were enacted. The regulations provided for allotment of tenements, allottees forming the co-operative society or a company, and thereafter the body of the allottees to get a sub-lease of the land and the entire premises being treated as "authority premises" as defined under Section 2(4) of the MHADA Act, 1976. The 1981 Regulations repeal previous Regulations and now apply to all authority premises including the subject lands. Regulation 21 deals with allotment and grant of leases and provides that all such lands will be held by allottees as "authority premises".

88. In 1982, the Maharashtra Housing and Area Development

(Disposal of Land) Regulations, 1982 were framed by MHADA under Section 185(1) of the MHADA Act read with Rule 17 of the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981.

89. The Government of Maharashtra issued a Notification on 23/05/2018 under the MRTP Act, authorising MHADA to exercise the powers of Planning Authority under the provisions of Chapter IV of the MRTP Act, 1966 in respect of the area of lands of MHADA layouts under its jurisdiction in Brihanmumbai area and projects under the Pradhan Mantri Awas Yojana. This notification has a schedule of MHADA properties in respect of which it has been appointed as planning authority. Item 35 in the Schedule is the Adarsh Nagar Worli property and Items 89, 90 and 91 are Bandra West properties. On 16/03/2023, the State of Maharashtra issued a GR thereby revising the income criteria classification and permissible entitlement of carpet area for EWS, LIG, MIG and HIG.

90. On 27/10/2023, the petitioner society filed an application before MHADA seeking NOC for the redevelopment of the said

property. On 06/03/2024, a Government of Maharashtra Resolution was issued for appointment of C & DA for integrated cluster redevelopment of the Abhyudaya Nagar (Kala Chowky) MHADA layout. According to learned Advocate General, this GR is almost identical to the impugned 2025 GR. Clause 10 of this Resolution provides for obtaining consent of 51% of members of the layout. On 09/04/2025, the petitioner society appointed M/s. Vivek Bhole Architects Pvt. Ltd. as its Project Management Consultant for redevelopment. The State of Maharashtra issued the impugned GR on 25/04/2025. The petitioner society raised an objection to the inclusion of the petitioner society in the cluster redevelopment under GR dated 25/04/2025. The State through the Housing Department issued a GR dated 15/12/2025 prescribing policy for cluster/joint redevelopment of MHADA layouts exceeding 20 acres in Brihanmumbai and Suburbs. MHADA floated a tender in April 2026 for appointment of C & DA for cluster redevelopment of Adarsh Nagar layout including the said lands. A representation was addressed by the petitioner society to MHADA on 30/04/2026 requesting not to take any steps in

furtherance of the tender.

91. Let us first deal with the contention of the petitioners that the impugned GRs are without the authority of law. The two relevant provisions to address the contention of the petitioners are Article 162 of the Constitution of India and Section 154 of the MRTP Act, which reads thus :

> "**162. Extent of executive power of State.** – Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :
>
> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

> "**154. Control by State Government**
>
> [(1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the large public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions.]
>
> (2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Regional Board, Planning Authority or Development Authority under this Act, any dispute

> arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final."

92. Article 162 of the Constitution of India provides that the executive power of a State shall extend to matters with respect to which the State Legislature has power to make laws. Any subject which is not within the domain of the judicial powers or legislation the same falls within the executive power under Article 162 of the Constitution of India. In **Rai Sahib Ram Jawaya Kapur and others vs. State of Punjab**[35], the Hon'ble Supreme Court in paragraphs 14 and 15 held thus :

> "14. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not

35 1955 SCC OnLine SC 14; (1955) 1 SCC 553

> follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.
>
> 15. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State."

93. Section 154 of the MRTP Act specifically confers supervisory and controlling power upon the State Government over the Planning Authorities. Under Section 154 of the MRTP Act, Regional Boards, Planning Authorities and Development Authorities are bound to carry out such directions or instructions as may be issued by the State Government from time to time for carrying out the purposes of the Act. Such directions issued by the State Government in relation to implementation of DCRs, redevelopment policy, and systematic housing distribution are

within the competence of the State Government, as they are issued for carrying out the purposes of the Act and are not inconsistent with any statutory provision.

94. We therefore must necessarily keep in mind whether the directions issued by the State Government by way of the GRs override the statutory provisions or are inconsistent thereto. Having carefully examined the directives in the GRs, we do not find any direction which is inconsistent with any statutory provisions; in fact, the same are for carrying out the purposes of the MRTP Act. We have adverted to this aspect in some detail at a later part of this judgment.

95. This Court in **Nishant Karsan Bhagat vs. City and Industrial Development Corporation of Maharashtra Ltd. and others**[36] has considered the scope of Section 154 of the MRTP Act and the contours of that power. The decisions on this aspect relied by the petitioners are considered in this judgment. Paragraph 81 and the relevant portion of paragraph 82 are significant, hence extracted which reads thus :

36 2022 SCC OnLine Bom 1758

"81. We next examine the petitioner's contention on the validity of the State Government's notification dated 14 June, 2021 and 6 September, 2021 issued under Section 154 of the MRTP Act. The petitioners contend that it was beyond the powers of the State Government as conferred under section 154 of the MRTP Act to issue such notification. We are unable to subscribe to such contention of the petitioners. This is for the fundamental reason that the situation as confronted before the State Government arising out of two public bodies having independent statutory powers, is a classic situation. The petitioners did not have a quarrel to the two bodies, CIDCO and the NMMC, functioning within their spheres and as per the powers conferred on them under the statutory provisions as discussed above prior to the issuance of the notifications dated 14 June, 2021 and 6 September, 2021. In our opinion, such a situation is most appropriately falling within the purview of Section 154 of the MRTP Act, for the State Government to step in, in the wake of the subsequent developments, namely, to define and clarify the boundaries of the respective powers, duties and functions of both CIDCO and the NMMC to function as independent authorities under the MRTP Act for the Navi Mumbai area. It is hence not only an apt situation but also most deserving that such clarificatory orders were issued by the State Government under section 154. Moreover, to resolve any conflict internal to the working of the Act, which may be created between two or more authorities functioning within the MRTP Act by virtue of its different provisions being set into motion, the legislature thought it appropriate to make a provision such as Section 154 providing for 'control by the State Government'. Much has been stated on behalf of the parties on the nature of powers which can be exercised by the State Government under section 154, such provision has been extracted above.

82. On a plain reading of Section 154, it is manifest that the provision overrides all other provisions of the MRTP Act or the rules and regulations made thereunder authorizing the State Government to exercise its powers inter alia for the efficient administration of the Act or in the larger public interest to issue from time to time such directions or instructions as may be necessary to the Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions. In our

> clear opinion, the nature of the directions as contained in the notification dated 14 June, 2021 and 6 September, 2021 are directions certainly for the efficient administration of the MRTP Act and undoubtedly in larger public interest and binding on the NMMC as also CIDCO. Thus, there is no gainsaying that such directions which are intended to remove any internal conflict in the NMMC and CIDCO exercising their respective powers, functions and duties can in any manner be said to be illegal or beyond the powers conferred on the State Government under Section 154."

96. We thus find that the State in its executive wing has sufficient powers to exercise the executive authority which is considered as a residual function of the State which is not exhausted by legislative or judicial functions.

97. The next contention of the petitioner which we have dealt with is as regards their rights on the subject building and lands by virtue of the sub-lease deeds executed between MHADA and the petitioners. To deal with this submission, it is significant to bear in mind the relevant provisions dealing with the scheme and object of the MHADA Act. MHADA was officially established by the MHADA Act to provide a comprehensive coordinated approach towards the problem of housing development and planning to ensure a wholesome civic life, paying special attention to ecology, pollution,

overcrowding and amenities. The declaration at Section 1A of the MHADA Act states that the purpose of the Act is to give effect to the Directive Principle of State Policy as enunciated in Article 39(b) of the Constitution of India viz. that the State shall direct its policy towards securing the ownership and control of material resources of the community towards serving the common good. Section 1A further states that the Act is for 'execution of the proposals, plans or projects therefor and the acquisition therefor of the lands and buildings and transferring the lands, buildings or tenements therein to the needy persons and the co-operative societies of occupiers of such lands or buildings.' The object of the MHADA Act inter alia includes creating housing stock and providing public housing.

98. Some of the relevant statutory provisions of the MHADA Act need to be noted thus :

> "(i) Section 2 (3) defines "Authority" means the Maharashtra Housing and Area Development Authority established under Section 3.
>
> (ii) Section 2 (4) defines "Authority premises" means any premises belonging to, or vesting in, the Authority, or taken on lease by the Authority, or entrusted to, or placed at the disposal of, the Authority for management and use for the purposes of this Act. Explanation — In this clause "Authority premises"

includes any premises taken by persons from the Authority under hire-purchase agreement, during the period any payments are to be made by such person to the Authority under such agreement or until such agreement is duly terminated.

(iii) Section 2 (13) defines “development”, with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, or over, or under, any land (including land under sea, creek, river, lake or any other water) or the making of any material change in any building or land, and includes re-development and layout and sub-division of any land, also the provision of amenities and “to develop” shall be constructed accordingly.

(iv) Section 2 (16) defines “land” which includes open sites and land which is being built upon or is already built upon, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth; and also include land under sea, creek, river, lake or any other water.

(v) Section 2 (25) defines “occupier” includes—

(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;

(b) an owner in occupation of, or otherwise using, his land, or building;

(c) a rent-free tenant of any land or building;

(d) a licensee in occupation of any land or building; and

(e) any person who is liable to pay to the owner damages for the use and occupation of any land or building.

(vi) Section 2 (27) defines “premises” means any land or

building, or part of a building, whether authorised or otherwise, and includes -

(a) gardens, grounds and out-houses, if any, appertaining to such building or part of a building;

(b) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof; and

(c) building or a part of building let or intended to be let or occupied separately.

(vii) Section 2 (31) "regulations", means regulations made under section 185."

99. It is the submission of learned Advocate General that the land comprising the MHADA layout on which the petitioner society buildings are standing is "Authority Premises" as defined under the MHADA Act. There is much debate on the term "Authority Premises." Learned counsel for the petitioners are at pains to point out that once there is a valid lease in favour of the petitioner society and conveyance/allotment of the buildings, which are of the ownership of the petitioner societies, the said buildings and the land on which they are situated, have ceased to be "Authority premises" as defined under the MHADA Act. Heavy reliance is placed on the proviso of Regulation 21(4) of the regulations.

100. The class of occupiers of “Authority Premises,” as pointed by learned Advocate General with which we find favour would be broadly the following :-

(a) Allottees with outstanding payments;

(b) Allottees with no outstanding payments;

(c) Body of Allottees with conveyance of the buildings;

(d) Sub-lessees without conveyance of the buildings;

(e) Sub-lessees with conveyance of the buildings;

(f) Lessees without conveyance of the buildings;

(g) Lessees with conveyance of the buildings.

101. Learned Advocate General submitted that all the above classes would still be ‘Occupiers’, with varied degrees and shades of property rights, of “Authority Premises”. The petitioners are claiming based on sub-lease. The provisions of the MHADA Act under which the lease-deeds are executed and the clauses of the lease-deeds leave no manner of doubt that MHADA is the owner of the subject lands. The tenements and/or the lands allotted by MHADA to the petitioner societies are held by the petitioners as ‘Authority premises’. The lands which are leased/allotted to the

petitioner's vest in the authority and/or are placed at the disposal of, the authority for management and use for the purposes of the MHADA Act. Any other interpretation would be contrary to the object of the MHADA Act. What we must bear in mind is whether the actions and decisions of MHADA are consistent with the underlying basis of its parent statute. Further, a reference to Regulation 21(4) and (5) of the MHADA (Estate Management Sale, Transfer and Exchange of Tenements) Regulations, 1981 is relevant, which provides thus :

> "21(4) On the formation of the housing society or company, the Board shall arrange to lease the property to the housing society or the company and in any other case, the Board shall lease the tenements in the Building to each allottee where the allottees have expressed desires to submit the building to the provisions of the Apartment Act, and thereupon, the society or the company or the allottees shall hold the property, or as the case may be, the land and the tenement purely as tenant of the Authority, until all the allottees have paid the full purchase price of the tenements and all other outstanding dues, if any, to the Authority, and the property is duly conveyed to the housing society or company or to the Association :
>
> Provided that, where the allottees have paid the full purchase price and there are no outstanding dues due to the Authority, and the property is duly conveyed to the society, company or association, as provided in this Regulation, the tenancy executed in favour of the housing society, company or allottees shall stand terminated and the building shall cease to be Authority premises and the housing society or company or the allottees, as the case may be, shall hold the building as owner thereof subject, however, to the condition that the land

> beneath or appurtenant to the building shall be held on lease from, the Authority as provided in these Regulations.
>
> 21(5) The housing society, the company, or as the case may be, the allottees shall hold the property on lease duly executed in that behalf as tenants of the Authority and till the lease is in force, the property shall remain as the Authority premises subject to the provisions of the Act."

102. It is for a good reason why Regulation 21(5) provides that the property shall remain as the Authority premises till the leases are in force. These are lands placed at the disposal of MHADA for the purposes enumerated in the Act. MHADA cannot act beyond its authority by divesting itself completely of its rights in the property. It can execute a lease creating limited rights within the confines of its prescribed powers. There is nothing unconstitutional about this provision. On the contrary, such a provision is necessary to ensure that MHADA shall always act within the confines of its powers, thereby ensuring the public interest and the object of the Act is not scuttled in any manner by creating some unwarranted interest in the said property.

103. Though a challenge is raised that Regulation 21(5) is unconstitutional, the same is not seriously pressed. Mr. Samdani,

learned Senior Advocate, did try to advance an argument that the petitioners have become owners of the said property by virtue of the lease in terms of the proviso to Regulation 21(4), but in our opinion 21(4) cannot be read in isolation for the same is controlled by and subject to 21(5). Even a reading of the proviso to Regulation 21(4) indicates that at the highest the petitioner can hold the building as owner thereof when there are no outstanding dues to the Authority, but that is subject to the condition that the land beneath or appurtenant to the building shall be held on lease from the Authority as provided in these Regulations.

104. Further, Regulation 21(5) clearly stipulates that the allottees shall hold the property on the lease duly executed in that behalf as tenants of the Authority and till the lease is in force, the property shall remain as the Authority premises subject to the provisions of the Act. Thus, so far as the property is concerned, the allottees shall hold the property on the lease duly executed in that behalf as tenants of the Authority. The property remains as Authority Premises subject to the provisions of the Act. It is therefore more than clear that the lease creates limited rights in

favour of the occupants.

105. At this stage, we may refer to Section 28 of the MHADA Act which deals extensively with the powers of MHADA, which broadly involve the promulgation and promotion of housing accommodation in urban areas and specifically empowers MHADA to develop the 'land vested in the Authority' as stipulated at sub-clause (a)(vi) and to manage such lands is provided in sub-clause (b). Section 28 lays down the powers, functions and duties of MHADA which inter alia includes the power to prepare and execute plans and proposals for housing accommodation, development of areas within MHADA's jurisdiction. Section 29 confers similar powers on the MHADB. Section 28, being an important provision in the present context is extracted thus:

> "**28. Functions, duties and powers of Authority** - (1) Subject to the provisions of the Town Planning Act, and the provisions of clauses (b) and (h) of sub-section (1) of section 12 and section 13 of the Metropolitan Act, it shall be the duty and function of the Authority,-
>
> (a) to prepare or direct the Boards to prepare and execute proposals, plans or projects for -
>
> (i) housing accommodation in the State or any part thereof, sale, including transactions in the nature of hire-purchase of tenements in any building vested in, or belonging to, the Authority, letting, or exchange of property of the Authority;

(ii) development including provision for amenities in areas within the jurisdiction of the Authority;

(iii) clearance and re-development of slums in urban areas;

(iv) development of peripheral areas of existing urban areas to ensure an orderly urban overspill;

(v) development of commercial centres;

(vi) development of new towns in accordance with the provisions of the Town Planning Act;

(vii) development of lands vested in the Authority;

(viii) the closure or demolition of dwellings or portions of dwellings unfit for human habitation;

(ix) the demolition of obstructive or dangerous and dilapidated buildings or portions of such buildings;

(x) repairs to, or construction and reconstruction of buildings;

(xi) the slum improvement works and improvement of sanitary arrangements required in any slum improvement area, including the conservation and prevention of any injury or contamination to rivers or other sources and means of water-supply;

(xii) undertaking and promoting prefabrication and mass production of buildings components;

(b) to manage all lands, houses and buildings or other property vested in, or belonging to the Authority;

(c) to approve proposals, plans or projects prepared by Boards;

(d) to raise resources for the purpose of carrying out the objects of this Act and subject to the directions, if any, made by the State Government, to make suitable allocations of resources to the Boards;

(e) to approve the budgets of the Boards;

(f) to lay down policy regarding disposal of developed sites and

housing tenements of the Authority;

(g) to give directions to Boards for developing areas which in the opinion of the Authority should be developed;

(h) to advance loans or to assist persons in obtaining loans from banking or finance institutions in accordance with the provisions of Chapter X;

(i) to do all such matters and things as are necessary for the exercise or performance of all or any of the functions and duties of the Authority including incurring of expenditure in that behalf.

(2) In addition to the duties and functions referred to in sub-section (1), the Authority may undertake such other duties and functions, including those of a Planning Authority or Special Planning Authority under the Town Planning Act, as the State Government may assign to the Authority in any specified area, and in doing so, the Authority shall be deemed to be fulfilling the purposes of this Act and the provision of Act shall apply to the Authority in respect of those duties and functions also.

(3) The Authority may exercise all or any of the following powers for the purpose of discharging its functions and performing its duties under this Act, namely :-

(i) to borrow;

(ii) to enter into agreements and contracts;

(iii) to sell, purchase, lease, mortgage, exchange, partition or otherwise transfer any land or building or to hold land entrusted to it by Government or by any authority;

(iv) to make regulations regarding-

(a) procedures to be followed regarding contracts,

(b) [* * * *]

(c) operation of accounts of the Authority;

(d) all matters pertaining to staff of the Authority;

(v) to promote or to participate in the formation of limited

companies under the Companies Act, 1956 (1 of 1956), in furtherance of the objectives of the Authority with the prior permission of the State Government;

(vi) management of each estate including co-operative societies;

(vii) to enter and search any Authority premises after due notice, when necessary to the inmates thereof;

(viii) to execute or carry out any repairs to the lands or buildings vesting in or belonging to, the Authority;

(ix) all other powers necessary for carrying out the purpose of this Act including the power to levy or charge fees."

106. The said property is subject to MHADA's authority to develop/redevelop the same. The petitioner societies and its members are only 'occupiers' who are subject to such authority and the provisions of the MHADA Act. Section 29 prescribes powers and functions of the Regional Boards, which are somewhat similar to the powers and functions of the authority and the boards function under the provisions of supervision of authority. As has been indicated earlier, the predecessor authority of MHADA was Bombay Housing Board established under the BHB Act, 1948, which Act was repealed by MHADA Act, 1976. The Bombay Housing Board also had a similar objective under Sections 23 to 41 of BHB Act, 1948 for creating housing stock, making housing

schemes and allotment of tenements, houses etc. However, the said Act was repealed to consolidate various Acts operating in different parts of Maharashtra with overlapping functions. The BHB Act, define housing scheme under Section 2(8), establishment of board under Section 3 and implementation of housing scheme under Sections 23 to 41 of the Act.

107. We have already referred to Section 2(4) of MHADA Act and have no hesitation in holding that the tenements and/or the lands allotted by the Authority are held by the allottees of MHADA whether by way of allotment, lease or sub-lease constitute “authority premises” as defined under Section 2(4). The authority premises held by any person are subject to Rules and Regulations made by MHADA or by the Government from time to time and these Rules and Regulations include the MHADA Land Disposal Rules, MHADA (Estate Management Sale, Transfer and Exchange of Tenements) Regulations, 1981 as well as the DCRs made under the MRTP Act.

108. The sub-lease executed in favour of the petitioner, in

Clause 5 requires the society to comply with rules, regulations, by-laws and conditions prescribed by the Government, local authority or statutory body, whether existing then or prescribed thereafter. Similarly, Clause 10 requires the society to observe and be bound by the rules, regulations and by-laws under the relevant Act. We have already referred to Regulation 21(5) which clearly stipulates that the allottee shall hold the property on lease duly executed in that behalf as tenants of the Authority and till the lease is in force, the property shall remain as the authority premises subject to the provisions of the Act.

109. It is significant to note that MHADA's statutory power is recognised by the DCPR 2034 which contains provisions for regulating and incentivizing the redevelopment of its existing housing schemes. The object and purpose of MHADA Act and its overriding powers, functions and duties have thus to be kept in mind while considering the petitioners' claim that they have unfettered rights to develop the property in view of the lease/sub-lease executed by MHADA in their favour. The leases/sub-leases and/or the allotments are made in terms of the statutory

framework of MHADA Act and therefore the petitioner societies cannot claim any immunity from the aforesaid statutory and regulatory regime but are expressly subject thereto. For MHADA layout, MHADA retains authority to regulate redevelopment in accordance with applicable laws and policies.

110. The proprietary rights claimed by the petitioners therefore is a limited, regulated and restricted right and is not an absolute right. We are therefore in agreement with the learned Advocate General, Mr. Darius Khambata and Mr. Ravi Kadam, learned Senior Advocates that MHADA continues to have overarching authority to develop MHADA schemes, colonies, layouts etc. or in other words any “Authority Premises”. The limited rights of all the allottees/lessees/sub-lessees of MHADA by whatever name such right is held is subject to Authority’s rights to develop/redevelop such lands. The only requirement is to provide equivalent or better occupancy rights to such persons in accordance with the extant regulations. All the occupants of MHADA schemes are ‘occupiers’ of ‘authority premises’ and are subject to overarching authority of MHADA to develop/redevelop these premises in accordance with

law.

111. We do not find any substance in the contention of the petitioner that they have an unfettered right to development of the plots under the terms of the sub-lease deeds and sale agreements. It is the submission on behalf of MHADA that the rights of the petitioner societies are subject to and subservient to MHADA's rights and authority; their rights are not unfettered but are limited both statutorily and contractually. As indicated earlier, MHADA is the owner of the subject land. In some cases, the buildings are constructed by the occupiers /allottees, however, the land occupied by the petitioner societies at the highest are subleased to them which is subject to the provisions of MHADA Act. The members of the petitioner societies are thus allottees of MHADA.

112. The terms and conditions in the letter dated 24/04/1971 issued by the predecessor of MHADB to Kamalpushpa Cooperative Housing Society Ltd., (the Petitioner in Writ Petition (L) No.15631 of 2026) say that in terms of Clause 12, the petitioner society will not start construction of any building on the land without obtaining

prior approval of Maharashtra Housing Board. In terms of Clause 6 of the memo of terms and conditions, the petitioner society is entitled to utilise only the then available FSI for the purpose of construction of its buildings. In terms of Clause 10, the petitioner society is not entitled to transfer, assign, encumber or part with their interest or benefit of the lease without the consent of Maharashtra Housing Board. In terms of Clause 11, the petitioner society is not entitled to assign or part with possession of the land or underlet or transfer their interest therein without the consent of MHADA.

113. MHADB had circulated a draft lease deed with the petitioner society for lease of the underlying land to the petitioner society for a period of 99 years. Clause 2(e) of the draft lease provides that the land will be used for the bona fide purpose of residential use and not for any other purpose not specifically permitted by MHADA. Clause 2(f) provides that the society will abide by all the rules and regulations of the Government, MCGM and MHADA in so far as they relate to the said land and in regard to the construction of the buildings and maintenance thereof.

114. Clause 2(g) provides that the society will abide by and be bound by the provisions of the MHADA Act and the rules and regulations made by or any other law for the time being in force so far as they relate to the said land and in regard to the construction of the buildings and maintenance thereof. Clause (k) provides that the society is not entitled to assign, mortgage, sublet, underlet or otherwise transfer or part with possession of the said land or the Society's interest thereunder or benefit of the lease without the previous written permission of MHADA. Clause (m) provides that the society is entitled to utilise the existing FSI permissible for the said plot. The said clause expressly states that the society shall be entitled only to the FSI consumed under the building conveyed to them and that any unutilized FSI becoming available for the said land in excess of the society's buildings or any additional FSI becoming available due to any change or modification in the DC Rules and Regulations at any point in time shall be the property of the Authority. Clause 2(n) provides that the society shall not make any excavation upon the said land without the previous consent of MHADA.

115. It is the contention of the petitioner society that MHADA is bound to execute the formal lease deed with the society and relies on a lease deed executed by MHADA in favour of one Pradeep Co-operative Housing Society Limited. Though it is the submission of learned Advocate General that in the absence of such lease being executed, the consequence would be that the petitioner societies are not entitled to any rights, in our considered view, having regard to the fact that there is a valid allotment in favour of the members, we proceed on the assumption that valid lease-deeds are executed in their favour.

116. The said lease-deed reserves MHADA's rights over the land in categorical terms by providing inter alia as under :-

> "a. That the land will be used for the bona fide purpose of residential use and not for any other purpose not specifically permitted by MHADA [Clause 2(f)];
>
> b. That the Society will abide by all rules and regulations of the Government, MCGM and MHADA in so far as they relate to the said land and in regard to the construction of the buildings and maintenance thereof [Clause 2(g)];
>
> c. That the Society will abide by and be bound by the provisions of the MHADA Act and the rules and regulations made by or any other law for the time being in force so far as

they relate to the said land and in regard to the construction of the buildings and maintenance thereof [Clause 2(h)];

d. Not to assign, mortgage, sublet, underlet or otherwise transfer or part with possession of the said land or the Society's interest thereunder or benefit of the lease without the previous written permission of MHADA [Clause (l)]

e. That the Society is entitled to utilize the existing FSI permissible for the said Plot as per the approved plan sanction by BMC. The Society shall be entitled only to the FSI consumed under the building conveyed to them and that any unutilized FSI becoming available for the said land in excess of the Society's buildings or any additional FSI becoming available due to any change or modification in the DC Rules and Regulations at any point in time shall be the property of the Authority [Clause (n)]

f. That the Society shall not make any excavation upon the said land without the previous consent of MHADA [Clause 2 (o)]"

117. The aforesaid clauses, in our opinion, are absolutely in consonance with the object and purpose for which the MHADA Act is enacted. It is settled law that the rights of the owner of the land are not subservient to the rights of the lessee. This Court in **G. M. Heights LLP vs. Municipal Corporation of Greater Mumbai and others**[37] held that tenancy rights cannot be stretched to such an extent that the course of redevelopment can be taken over by the

37 WP 5302/2022; Judgment of BHC Division Bench dated 29/03/2023

tenants, so as to take away the basic corporeal rights of the owner of the property, to undertake redevelopment of the owners choice. The only rights that the tenants have, would be to be provided an alternate accommodation of an equivalent area occupied by them before the building was demolished.

118. MHADA being the planning authority and superior lessor in respect of MHADA layouts, retains authority to regulate redevelopment in accordance with applicable laws and policies. Mere execution of the Sub-Lease Deeds does not confer upon the petitioner/societies any unfettered right to redevelop the said property superior to that of the sub-lessor. The use of land by the petitioner society is always subject to the terms of the Sub-Lease Deeds, which expressly state that they must comply with Government rules, conditions, schemes at all times. The Sub-Lease Deeds also incorporate, inter alia, clause 6 of the Deed of Lease of 1949.

119. The petitioner's reliance on Clauses 6 and 12 of the Sub-Lease Deeds, to assert the society's unfettered entitlement to utilise

the entire FSI emanating from the sub-leased plot, is misplaced. On entitlement to FSI, the Sub-Lease Deed states:

> "6. The Society shall not make any excavation upon any part of the said land without the consent of the Authority in writing first had and obtained, except for the purpose of repairing, removing or rebuilding on the said land or for utilizing the floor space index (F.S.I.).
>
> 12. On conveyance of the buildings to the Society, the legal ownership therein shall vest in the Society together with the right of utilising the available F.S.I. or otherwise without any interference by the Authority."

120. The aforesaid provisions can only be construed to mean that the petitioner society is entitled to only the built-up area of the building ultimately conveyed to the petitioner society. The entire balance FSI of the land including the future FSI would continue to vest with MHADA. It is settled law that FSI is undoubtedly a benefit which the owner of the property enjoys.

121. We now test the submission of the petitioners that Regulation 33 (5) of the DCPR 2034 gives an unfettered right to petitioners to redevelop. The DCPR 2034 for Greater Mumbai are statutory regulations framed as part of the development plan under Section 22(m) read with Section 159 of the MRTP Act, 1966. The

said Regulations have been sanctioned by the State Government in exercise of powers under Section 31(1) of the MRTP Act. Any subsequent modification, amendment or change to the sanctioned Regulations is required to be undertaken in accordance with the procedure prescribed under Section 37 of the MRTP Act. Section 154 of the MRTP Act confers power upon the State Government to issue directions or instructions to Regional Boards, Planning Authorities and Development Authorities for carrying out the purposes of the Act and also for effective implementation of the Act and DC Regulations. Thus, the DCPR 2034 derives its statutory force from the provisions of the MRTP Act, 1966 and operates as delegated legislation governing planning, development, redevelopment and land-use regulation within Greater Mumbai.

122. It is of some importance to notice the scheme of DCR 33(5) and now DCPR 33(5). DC Regulation 33(5) was originally introduced under 1991 Regulations and provided only for development of MHADA schemes in accordance with FSI prescribed in that Regulation and other regulations contained in Appendix I. Appendix I broadly provided for MHADA schemes. There is no

express provision for redevelopment of MHADA schemes.

123. By amendment introduced on 06/12/2008, Regulation 33(5) of 1991 Regulations was substituted to provide for redevelopment of MHADA schemes. The revamped Regulation 33(5) was introduced by 2034 Regulations, which is much wider and provides various policy matters and parameters for development of MHADA schemes by MHADA alone, either itself or through an agency; MHADA jointly with an association of occupiers or societies, etc.

124. Thus, it is evident that Regulation 33(5) applies to developments/redevelopment of “Schemes of MHADA”. The scheme is much larger concept which would include all developments/redevelopments on Authority Premises. Housing schemes of MHADA include housing provided by whatever name called such as scheme, layout, colony on the “Authority Premises” as defined under section 2(4) of MHADA Act. Thus, the MHADA scheme would include occupiers who are occupying the premises as mere allottees, lessees or sub-lessees, etc. The difference in these

classes would only be in respect of their entitlement for alternate rehabilitation areas and amenities. In this context, it would be appropriate to extract the relevant provisions of DCPR 2034 which reads thus:

> "**33(5) Development/Redevelopment of Housing Schemes of Maharashtra Housing & Area Development Authority (MHADA)**
>
> (1) The FSI for a new scheme of Housing, implemented by MHADA on MHADA lands for Economically Weaker Sections (EWS), Low Income Group (LIG) and Middle Income Group (MIG) categories shall be 3.0 on the gross plot area (exclusive of the Fungible Compensatory Area) and at least 60% BUA in such scheme shall be in the form of tenements under the EWS, LIG and MIG categories, as defined by the Government in Housing Department from time to time.
>
> [Provided that the Floor Space Indices above may be permitted to be exceeded up to 4.00 FSI in case of plots, having area of 4000 sq. m or above which front on roads having width of 18.00 m or more with prior approval of Govt.]
>
> (2) For redevelopment of existing housing schemes of MHADA, containing (i) EWS/LIG and/or (ii) MIG and/or (iii) HIG houses with carpet area less than the maximum carpet area prescribed for MIG, the total permissible FSI shall be 3.0 on the gross plot area (exclusive of the Fungible Compensatory Area).
>
> [Provided that the Floor Space Indices above may be permitted to be exceeded up to 4.00 FSI in case of plots, having area of 4000 sq.m. or above which front on roads having width of 18.00 m. or more with prior approval of Govt.]
>
> 2.1 Where redevelopment of buildings in existing housing schemes of MHADA is undertaken by the housing co-operative societies or the occupiers of such buildings or by the lessees of MHADA, the Rehabilitation Area Entitlement, Incentive FSI and sharing of balance FSI shall be as follows:-

(A) Rehabilitation Area Entitlement:

(i) Under redevelopment of buildings in existing Housing Schemes of MHADA, the entitlement of rehabilitation area for an existing residential tenement shall be equal to sum total of-

(a) a basic entitlement equivalent to the carpet area of the existing tenement plus 35% thereof, subject to a minimum carpet area of 35 sq. m, and

(b) an additional entitlement, governed by the size of the plot under redevelopment, in accordance with the Table-A below:-

Table-A

Area of the Plot under Redevelopment	**Additional Carpet Area on the Existing Carpet Area of Tenement**
Above 4000 sq. m to 2 ha	15%
Above 2 ha to 5 ha	25%
Above 5 ha to 10 ha	35%
Above 10 ha	45%

[Explanation:

(a) Plot under redevelopment means land demarcated by MHADA for redevelopment.

(b) For the purpose, "existing Carpet-area/carpet area" means the net usable floor area within a tenement excluding that covered by the walls or any other areas specifically exempted from floor space index computation as per then/prevailing Regulation but including the areas of balcony, if allowed free of FSI as per then Regulation.]

Provided that the maximum entitlement of rehabilitation area shall in no case exceed the maximum limit of carpet area prescribed for MIG category by the Govt, as applicable on the date of approval of the redevelopment project.

(ii) Under redevelopment of buildings in existing Housing Schemes of MHADA, the entitlement of rehabilitation area of any existing commercial/amenity unit in the Residential Housing Scheme shall be equal to the carpet area of the existing unit plus 20% thereof.

(B) Incentive FSI: Incentive FSI admissible against the FSI required for rehabilitation, as calculated in (A) above, shall be based on the ratio (hereinafter referred to as Basic Ratio) of Land Rate (LR) in Rs/sq. m. of the plot under redevelopment as per the Annual Schedule of Rates (ASR) and Rate of Construction (RC) in Rs/sq. m. applicable to the area as per the ASR of the date of approval of plan and shall be as given in the Table B below:-

Table-B

Basic Ratio (LR/RC)	Incentive (As % of Admissible Rehabilitation Area)
Above 6.00	40%
Above 4.00 and up to 6.00	50%
Above 2.00 and up to 4.00	60%
Up to 2.00	70%

Provided that the above incentive will be subject to the availability of the FSI on the Plot under redevelopment and its distribution by MHADA.

Provided further that in case there are more than one land rate applicable to different parts of the plot under redevelopment, a weighted average of all the applicable rates shall be taken for calculating the Average Land Rate and the Basic Ratio.

Provided further that the Land Rate (LR) and the Rate of Construction (RC) for calculation of the Basic Ratio shall be taken for the year in which the redevelopment project is approved by the Competent Authority.

2.2 Where redevelopment of buildings in the existing Housing Schemes of MHADA is undertaken by MHADA or

jointly by MHADA along with the housing societies or along with the occupiers of such building or along with the lessees of MHADA, the Rehabilitation Area Entitlement shall be as follows:

Rehabilitation Area Entitlement

The Rehabilitation Area Entitlement shall be increased by 15% of the existing carpet area, over and above the Rehabilitation Area Entitlement calculated in (A) of 2.1 above.

Note: Fungible compensatory area as applicable on the surplus area to be handed over to MHADA shall not be allowed to be utilized on sale component. No premium shall be charged on the fungible compensatory area, in respect of area to be handed over to MHADA and surplus area to be handed over to MHADA shall be exclusive of the Fungible compensatory BUA if availed.

(7) (a) In any Redevelopment Scheme where the Registered Co-operative Housing Society/Developer appointed by the Registered Co-operative Housing Society/Federation/Association/Union has obtained NOC from the MHADA/Mumbai Board, thereby sanctioning additional balance FSI with the consent of 51% of its members and where such NOC holder has made provision for alternative permanent accommodation in the proposed building (including transit accommodation/Rent Compensation), then it shall be obligatory for all the occupiers/members to participate in the Redevelopment Scheme and vacate the existing tenements for the purpose of redevelopment. In case of failure to vacate the existing tenements, the provisions of section 95A of the MHAD Act mutatis mutandis shall apply or the purpose of getting the tenements vacated from the non-co-operative members.

(b) For redevelopment of buildings in any existing Housing Scheme MHADA under clause 2.2 hereinabove, by MHADA, the consent of the Co-operative Housing Society in the form of a valid Resolution as per the Co-operative Societies Act, 1960 will be sufficient. In respect of members apt co-operating as per approval of the redevelopment project, action under section 95(A) of the Maharashtra Housing and Area Development Act, 1976 may be taken by MHADA.”

125. The petitioner places reliance on Regulation 33(5)(2.1) to allege that it has an absolute unfettered right to redevelop the property. A reading of Sub-Regulations (2.1) and (2.2) of Regulation 33(5) would indicate that the same are not independent vested rights available at the unilateral option of every society. The choice as to whether redevelopment is to be carried out independently or in an integrated manner is a planning and policy decision vested with the State Government and MHADA. Regulation 33(5)(2.1) is only a mode of redevelopment and does not grant any absolute or unfettered right to the society to independently redevelop. The provisions of the Regulation clearly mandate that even to carry out independent redevelopment by the society under the said Regulation, consent of MHADA is necessary. The society has in fact sought no objection from MHADA for redevelopment under Regulation 33(5) of DCPR 2034, thereby acknowledging that MHADA is the ultimate authority to decide upon the redevelopment of the said plot and the society has no vested or absolute right of redevelopment.

126. The provisions of Regulation 33(5) pertain to

development/redevelopment of all housing schemes of MHADA. The housing scheme could be on lands owned by MHADA, or it could be on the lands of a public authority such as MMRDA, MCGM or any other municipal corporation, or the State Government.

127. Sub-Regulations 2.1 and 2.2 of Regulation 33(5) deal with the undertaker of the development/redevelopment scheme. Sub-Regulation 2.1 provides that "where redevelopment of buildings in existing housing schemes of MHADA is undertaken by the housing co-operative societies or the occupiers of such buildings or by the lessees of MHADA, the Rehabilitation Area Entitlement, Incentive FSI and sharing of balance FSI shall be as follows :---"

128. Sub-Regulation 2.1 of Regulation 33(5) thus deals with redevelopment in existing MHADA housing schemes undertaken by :-

a. Cooperative Housing Societies; or
b. Occupiers of such buildings; or
c. Lessees of MHADA.

129. In cases where the redevelopment is by any of the aforesaid three categories, then provision is made for rehabilitation

area entitlement, incentive FSI and sharing of balance FSI in the rest of the Sub-Regulation 2.1. These beneficial provisions will apply only in cases of MHADA Housing Schemes and not otherwise.

130. Sub-Regulation 2.2 of Regulation 33(5) provides that "Where redevelopment of buildings in the existing Housing Schemes of MHADA is undertaken by MHADA or jointly by MHADA along with the housing societies or along with the occupiers of such building or along with the lessees of MHADA, the Rehabilitation Area Entitlement shall be as follows : ---"

131. Thus, Sub-Regulation 2.2 of Regulation 33(5) deals with redevelopment of buildings in existing MHADA housing schemes undertaken either by :

a. MHADA; or
b. Jointly by MHADA along with the housing societies; or
c. Jointly by MHADA along with the occupiers of such buildings; or
d. Jointly by MHADA along with the lessees of MHADA.

132. In cases where the redevelopment is undertaken by any of

the aforesaid categories, provision is made for rehabilitation area entitlement in the rest of the Sub-Regulation 2.2. These beneficial provisions will apply only in cases of MHADA Housing Schemes and not otherwise.

133. We now deal with Sub-Regulation (7) of Regulation 33(5) which is in two parts viz. 7(a) and 7(b). Sub-Regulation 7(a) deals with cases where the redevelopment is undertaken by a housing cooperative society i.e. under Sub-Regulation 2.1. To bind the dissenting members of societies, it is provided that the consent of 51% of its members is required. Once 51% consent of members is obtained, then 'it shall be obligatory for all the occupiers/members to participate in the redevelopment scheme and vacate the existing tenements for the purpose of redevelopment'. In default of this, the provisions of Section 95A of the MHADA Act will apply for getting the tenements vacated from non-cooperating members. It is therefore a facility given to Housing Co-operative Societies to bind their own members.

134. We are in agreement with learned Senior Advocates for

the respondents that on a reading of Sub-Regulation 7(b) of Regulation 33(5) which we have already extracted, applies in cases where the redevelopment is undertaken under Sub-Regulation 2.2 and involves the cooperative housing society i.e. jointly by MHADA and the housing society. In such cases, since MHADA is a joint developer, there is no need for consent of 51% of all the members of the housing society [as required under Sub-Regulation 7(a)], but a valid resolution of the housing society (i.e. passed by a majority of its members present and voting at the meeting) will be sufficient. Here too, dissenting members of the housing societies who do not cooperate will be liable to action under Section 95A of the MHADA Act.

135. The reason why Sub-Regulation 7(b) logically involves only cases where the redevelopment is undertaken by the housing societies jointly with MHADA is because the purpose of Sub-Regulation (7) is to bind dissenting non-cooperating members of such societies.

136. However, if MHADA under Sub-Regulation 2.2 undertakes

the redevelopment itself, the provisions of Sub-Regulation (7) are not meant to give cooperative housing societies a veto power over redevelopments undertaken by MHADA; they are only meant to operate within cooperative housing societies, that is to bind their non-cooperating members. Thus, in our view, the petitioners' reliance on Regulation 33(5)(2.1) to allege that it has an absolute unfettered right to redevelop is erroneous. Sub-Regulations 2.1 and 2.2 of Regulation 33(5) are not independent vested rights available at the unilateral option of every society. The choice as to whether redevelopment is to be carried out independently or in an integrated manner is a planning and policy decision vested with the State Government and MHADA.

137. Upon reading of the aforesaid provisions, we have no hesitation in holding that Regulation 33(5)(2.2) is an independent power of MHADA to develop schemes in respect of "authority premises" and for such execution of schemes consent of the occupiers is not warranted. It is evident from the aforesaid Regulation that any "Authority Premises" in MHADA Schemes/Layout/Colonies can be developed by MHADA by

following the procedure under this Regulation, and the allottees/lessees cannot complain about the same and can only insist upon compliance with the Regulation and rehabilitation.

138. We thus find force in the submissions of learned Senior Advocates for the respondents that if MHADA decides to develop its scheme on its own (which includes an appointment of C & DA as held in Motilal Nagar case in paragraph 36), the allottees or lessees of land cannot veto such a scheme claiming that their consent is necessary. MHADA is proposing to carry out redevelopment through a C & DA. This Court in *Motilal Nagar* (supra) held that the requirement of MHADA carrying out redevelopment by itself under Regulation 33(5) is fulfilled even when the redevelopment is carried out through appointment of a C & DA which acts on behalf of MHADA, while the control over the agency is retained by MHADA. In fact, under the regime of DC Regulation 1991, the development of schemes by MHADA under Sub-Regulation 2.1 was contemplated to be undertaken by MHADA "departmentally". This provision has been deleted in 2034 Regulations. Thus, the provisions of DCPR make it abundantly clear that any person who

has an absolute right in the land is entitled to develop such a land by resorting to Regulation 32 which provides for general FSI. Regulation 33 is a specific regulation which confers additional FSI in respect of various categories of developments as enumerated in various Sub-Regulations.

139. The very fact that the petitioners could claim right of redevelopment only under Regulation 33(5), that too with the consent of MHADA, demonstrates that the MHADA allottees or lessees are subject to discipline of Regulation 33(5) which confers right upon MHADA to redevelop its schemes without consent of the occupiers. The only requirement in such a scenario is that the occupiers are provided with the rehabilitation, infrastructure, amenities and other benefits as contemplated under the regulation.

<u>Objection of the petitioners for their inclusion in cluster redevelopment</u>

140. The next point to be considered is the objection of the petitioners' inclusion in the cluster redevelopment. A "Cluster" means any defined area with proper access comprising dwelling units, buildings, chawls, etc. Regulation 33(9) of DCPR 2034

specifically deals with reconstruction or redevelopment of cluster(s) of buildings under Cluster Development Scheme. The requirement for resorting to Regulation 33(9) is the minimum area requirement for the cluster as provided in Clause 1.1. The ownership of such a cluster may be with a different set of persons, and hence for propounding a scheme under this regulation, consent of a minimum 70% of owners is required. The scheme under Regulation 33(9) does not confer an absolute or vested right upon any individual building, society or occupier to insist upon isolated or standalone redevelopment where the planning authority or State Government considers integrated redevelopment necessary. The power to determine whether redevelopment should proceed independently or as part of a larger cluster/urban renewal scheme is a matter of planning, policy implementation and larger public interest.

141. Regulation 33(9) needs to be extracted for a proper appreciation of the submissions of learned counsel.

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

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

1.1 Cluster Development Scheme(CDS)means any scheme for redevelopment of a cluster of buildings and structures over a minimum area of 4000 sq. m in the Island City of Mumbai and 6000 sq. m in the Mumbai Suburbs &Extended Suburbs, bounded by existing distinguishing physical boundaries such as roads, nallas and railway lines etc. and accessible by an existing or proposed D.P. road which is at least 18m wide whether existing or proposed in the D.P. or URP or a road for which Sanctioned Regular line of street has been prescribed by the MCGM under MMC Act, 1888. Such cluster of buildings (hereinafter referred to as “Cluster Development (CD)”) shall be a cluster or a group of clusters identified for urban renewal:

Provided further that HPC may consider after verifying traffic simulation study to allow CDS on a plot having access from existing minimum 12m. wide dead end road originating from 18 m. wide public road.

1.2 The CD may consist of a mix of structures of different characteristics such as

(i) Cessed buildings in Island City, which attract the provisions of MHAD Act, 1976.

(ii) (a) Buildings at least 30 years of age and acquired by MHADA under MHAD Act, 1976.

(b) Authorized buildings at least 30 years of age

Explanation : Age of a building shall be as on the 1st of January of the year in which redevelopment proposal for CDS is

submitted to the Commissioner and shall be calculated from the date of occupation certificate or where such occupation certificate is not available, from the first date of assessment as per the property tax record in respect of such building, available with the Municipal Corporation.

(iii) (a) Buildings belonging to the Central Govt, the State Govt, Semi-Govt Organizations and the MCGM, as well as institutional buildings, office buildings, tenanted municipal buildings and buildings constructed by MHADA, that are at least 30 years of age.

(b) Any land belonging to the State Govt, any semi-Govt Organization, MCGM and MHADA (either vacant or built upon) which falls within the area of the proposed CDS including that which has been given on lease or granted on the tenure of Occupant Class II.

Provided that in case of buildings or lands belonging to the Central Govt, the State Govt, Semi-Govt Organizations, MCGM or MHADA, prior consent of the concerned Department shall be obtained for including such buildings or lands in any proposal of CDS.

(iv) Other buildings which by reasons of dis-repair or because of structural/sanitary defects, are unfit for human habitation or by reasons of their bad configuration or the narrowness of streets are dangerous or injurious to the health or safety of the inhabitants of the area, as certified by the Officer or the Agency designated for this purpose by MHADA/MCGM or Mumbai Repair & Reconstruction Board.

(v) Slum areas declared as slums under section 4 of Slum Act or slums on Public lands existing prior to 1.1.2000 or such other reference date notified by the Govt, provided such slum areas do not constitute more than 50% of the area of CD.

Explanation : If some areas are previously developed/or are in the process of development under different provisions of the DCPR, such areas can be included in the CDS only for planning purposes. However, such areas shall be excluded for calculation of FSI under this Regulation and the admissible FSI shall be calculated as per the relevant provisions of the DCPR under which such areas are developed or are being developed. However, it shall be necessary to obtain consent of

owner/owners of such areas for becoming part of the CDS."

142. Regulation 33(9) is applicable for cluster redevelopment. For a parcel to constitute a cluster, requirements are provided in terms of area in Clause 1.1. Sub-Regulation 4(a) prescribes that for the purposes of redevelopment under Cluster Development Scheme ("CDS", for short) "Irrevocable notarised written consent by eligible tenants/occupiers of all authorised buildings not less than 51% of each building or 60% overall of the scheme involved in the CDS."

143. This regulation further provides that consent of occupiers shall not be required if MHADA/MCGM undertakes redevelopment on its own lands directly without any developer. The phrase "own lands" means the lands which constitute Authority premises and the cluster does not include any private land which is not Authority premises. MHADA undertaking redevelopment directly means either departmentally or through an agency which is considered as redevelopment by MHADA itself. For this, we rely on paragraph 36 of *Motilal Nagar* (supra) which is already reproduced hereinbefore.

144. A reading of DCPR 33(9) makes it very clear that the consent of tenants/occupiers is not required if MHADA undertakes redevelopment on its own land directly without any developer as provided in Regulation 33(9)(4). The ownership of land contemplated in this paragraph is in the context of the cohesive ownership of the cluster (in terms of Sub-Regulation 1.1) and hence, if in the cluster MHADA is not the sole owner, the consent requirement of tenants/occupiers would have to be complied with. So far as the present writ petitions are concerned, MHADA admittedly is the owner of the entire cluster and hence the requirement of consent is not applicable. The ownership in this context would include whether the premises are “Authority Premises” and therefore even the lands leased by MHADA would fit in the context of lease. The leases granted by MHADA are governed by the MHADA Act and MHADA Regulations and anything inconsistent under the Transfer of Property Act, 1882 would not apply to MHADA leases or subleases.

145. The learned Senior Advocates for the petitioners were at pains to submit that even under Regulation 33(9) the consent by

eligible tenants/occupiers is necessary. The argument is completely misplaced. For one, Regulation 33(9)(3), which is relied upon viz. 'Land Pooling for the CDS', contemplates that the promoter of the scheme, who may not be the owner of all the lands in the CDS has 5 options for land pooling. MHADA being the owner of all the lands in the present CDS is not concerned with the land pooling provisions and therefore, there is no question of invoking the provisions. On the contrary the provision of Regulation 33(9)(4)(a) specifically provides that consent of the tenants/occupiers for reconstruction or redevelopment shall not be required, if MHADA/MCGM undertakes redevelopment, on its own land, directly without any developer. In the present case, MHADA is undertaking redevelopment on its own land, directly without any developer, and hence the consent of the tenants/occupiers is not required. The argument of learned Senior Advocates for the petitioners on the aspect of consent, though sounded attractive at the first blush, does not find support from the statutory provisions. In fact, the provisions are otherwise.

146. We agree with the learned Advocate General that Sub-

Regulation 4(a) of Regulation 33(9) has nothing to do with binding dissenting or non-cooperating members within cooperative housing societies, which is covered in the case of a Regulation 33(5) scheme by Sub-Regulation 7(a) and (b). Thus, Regulation 33(5)(7)(a) and (b) on one hand and Regulation 33(9)(4)(a) on the other, operate in different fields. Even in a scheme jointly under Regulations 33(5) and 33(9), the provisions of Sub-Regulation (7) of Regulation 33(5) has no application if a co-operative Housing Society is not undertaking the redevelopment either under Regulation 33(5)(2.1) or jointly with MHADA under Regulation 33(5)(2.2). If MHADA alone is the re-developer under Sub-Regulation 2.2 of Regulation 33(5), then no question of binding dissenting member of a Co-operative Housing Society arises because it is the Co-operative Society as a whole, being an allottee of MHADA, that is bound, by virtue of MHADA's position as a landowner. Sub-Regulation (7) of Regulation 33(5) is a provision to facilitate binding of dissenting members within a Co-operative Housing Society to the decision of the majority of members. The petitioner societies are bound by the provisions of MHADA Act,

DCPR and lease deeds and Housing Schemes of the State Government and MHADA.

147. Learned Advocate General submitted that no arguments have been advanced on the unconstitutionality of Regulation 33(9)(4)(a) of the DCPR 2034. The challenge is raised in the petition. The argument was more on the interpretation of the aforesaid provision that the requirement of consent is not done away with, rather than the unconstitutionality of the provision. In any case, we have adverted to the logic behind no consent being required when MHADA itself is undertaking the cluster redevelopment as an owner. The challenge to the unconstitutionality of the provision is vague.

Challenge to GRs dated 25/04/2025 and 15/12/2025

148. The petitioner societies are challenging the GRs broadly on the following grounds :

(a) That inclusion of HIG tenements in the impugned GRs is arbitrary.

(b) The petitioner has absolute and unconditional

development rights including utilisation of FSI with respect to the said lands which rights are abridged by the impugned GR dated 24/04/2025 and the impugned tender dated 15/12/2025.

(c) The impugned GRs do away with the mandatory requirement of consent of the societies under Regulation 33(5).

149. This Court is expected to act with a great caution while it interferes with the priorities fixed by the Government, unless it is established that the decision taken by it is patently arbitrary and/or not in larger public interest. The Government should be free to take policy decisions or to decide priorities and it is better left to the wisdom of the State, which is well advised by the bureaucrats, and its other officers, who possess an expertise in taking policy decisions, which may involve various factors like the availability of fund, the requirement of the State to focus upon a particular sector in precedence over the other etc. The wisdom and advisability of such policy decisions are not ordinarily amenable to judicial

review, and it is time and again specifically held that economic and fiscal regulatory measures are a field, where Judges should encroach upon warily as Judges are not experts in these matters. We have borrowed these observations from the decision in *Motilal Nagar* (supra). It is material to state that the challenge to the decision of this Court in *Motilal Nagar* (supra) has been dismissed by the Hon'ble Supreme Court.

150. The GR dated 25/04/2025 directed integrated redevelopment of MHADA layouts including Adarsh Nagar Worli under Regulation 33(5) of DCPR 2034. The GR dated 15/12/2025 concerns formulation of policy for cluster/joint redevelopment of MHADA layouts in Mumbai and suburbs having area of 20 acres or more. The tender was floated by MHADA in the month of April 2026 for appointment of a C & DA for integrated/cluster redevelopment of the Adarsh Nagar Worli and Bandra Reclamation layout.

151. The main grievance of the petitioner is that the said GRs come in the way of the petitioners undertaking independent

redevelopment of their property which they are holding under a valid lease. It is thus that the petitioners are not against redevelopment but it is their case that their right to redevelop on their own is hampered and that therefore, they do not want to be a part of the cluster. They seek an individual standalone redevelopment.

152. No doubt the cluster redevelopment will involve some degree of adjustments, displacement and inconvenience to the members of the petitioner society. However, the statutory framework of the DCPR especially Regulation 33(5) which permits MHADA to undertake redevelopment of its own lands and Regulation 33(9) which permits a cluster redevelopment have to be kept in mind. It is also to be borne in mind that the petition seeks to challenge a policy decision of the State Government and MHADA taken in larger public interest and in furtherance of planned redevelopment of MHADA layouts. Unless any patent illegality is demonstrated or the same is contrary to law or mala fide, such redevelopment undertaken by MHADA cannot be interfered with in the exercise of the extra ordinary writ jurisdiction of this Court.

153. The relevant provisions of the MHADA Act have already been discussed. The object of MHADA is inter alia planning, execution and redevelopment of housing schemes and layouts for public housing purposes. Adarsh Nagar Worli layout was originally developed by the erstwhile BHB comprising multiple buildings and societies constructed several decades ago. The State of Maharashtra exercises supervisory and policy powers over MHADA under the MHADA Act and under Section 154 of the MRTP Act. The State of Maharashtra is empowered to issue policy directions and instructions in public interest to planning authorities and development authorities including MHADA, the embargo obviously being that such a policy does not contravene the statutory framework. The impugned GRs are issued by the State of Maharashtra in the exercise of such policy and executive powers for integrated redevelopment of MHADA layouts including Bandra Reclamation and Adarsh Nagar.

154. We have also discussed the scheme of Regulation 33(5) of DCPR 2034 which governs redevelopment of MHADA layouts and housing schemes. The GRs merely operationalise the powers

already available under Regulation 33(5)(2.2) by directing integrated redevelopment of layouts through MHADA. We find force in the submission of learned Senior Advocates for the respondents that Sub-Regulations 2.1 and 2.2 are not independent vested rights available at the unilateral option of every society. The choice as to whether redevelopment is to be carried out independently or in an integrated manner is a planning and policy decision vested with the State Government and MHADA. We do not find any arbitrariness or unreasonableness in the stand of the respondents that if every society in a MHADA layout is permitted to undertake piecemeal redevelopment independently, the very object of integrated planning, infrastructure development and coordinated redevelopment would stand defeated. Therefore, we have no hesitation in finding, and as discussed hereinbefore, the GRs are fully intra vires Regulation 33(5) of DCPR 2034 and are legally valid.

155. The impugned GRs are issued in exercise of powers under Section 154 of the MRTP Act and Article 162 of the Constitution of India. We have already held that the GRs are within the contours

of the executive authority of the State. The question is whether the impugned GRs are supplementary and complementary to DCRs or they are in breach of the statutory provisions or do they override the statutory provisions and/or in breach thereof. In **MIG Cricket Club vs. Abhinav Sahakar Education Society and others**[38] it is held that the matters relating to making of development plan, development schemes, regulations etc., are matters of technical and town planning expertise and the Courts do not generally interfere in these matters. Further, the wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it is demonstrated that the policy is contrary to any statutory provision or the Constitution itself. It is not open for the Courts to consider the relative merits of different economic policies and consider whether wiser or better one can be evolved. In the areas of commerce involving financial decisions, a greater latitude is available to the executive, and the Court shall not sit in judgment over the wisdom of the policy of the legislature or the executive. If any authority is required in support of this proposition, we refer to

38 (2011) 9 SCC 97

Balco Employees Union vs. Union of India and others[39] (paragraph 92) and in *Motilal Nagar* (supra) (paragraphs 37 and 38).

156. It is the specific stand of the respondents that when the agency appointed by MHADA would undertake the redevelopment of MHADA Schemes, it is bound to follow all "applicable laws" including DCRs and MCS Act. This is expressly provided in clause 1.5.1.16 in the tender document which reads thus:

> "1.5.1.16 – The C & DA shall follow all relevant prevailing Indian Laws, Rules, and Regulations, necessary IS codes, Slum Act, Labour laws, MHADA Act etc."

157. Mr. Y. S. Jahagirdar, learned Senior Advocate for the petitioners, laid much emphasis on the terms MHADA layout, MHADA colonies, MHADA schemes which, according to him, have different and distinct connotations. However, the provisions of Regulation 33(5) of the DCPR clearly indicate that the same are applicable in respect of redevelopment of existing housing schemes of MHADA which would include colonies, layouts etc. In fact, if MHADA undertakes the redevelopment scheme under the impugned GRs, the occupiers would be entitled to much more area

39 (2002) 2 SCC 333

and benefits than what they would get on their own redevelopment under Regulation 33(5) where there is a cap on the occupants' entitlement.

158. The learned Advocate General categorically submitted that the agency appointed by MHADA is bound to follow all applicable laws including DCRs and the MCS Act. It is too premature a stage to entertain the petitioners' submissions that the circulars breach the provisions of Sections 17, 18 and 79A of the MCS Act. As indicated above, the respondents have categorically stated that they would follow the applicable laws including the MCS Act.

159. It is the stand of the State Government and MHADA that redevelopment of MHADA schemes as an integrated cluster is in larger public interest as it would streamline provisions of amenities, infrastructure, creation of additional housing stock for general use, as well as providing better and new accommodations of the existing occupiers.

160. MHADA has been implementing the schemes in accordance with DC Regulation 33(5) since the same was first

introduced in 1991. For redevelopment of Motilal Nagar layout at Goregaon, a similar provision was made through GR dated 06/10/2021. For redevelopment of MHADA layout at Abhyudaya Nagar at Kala Chowki, a similar provision was made through GR dated 06/03/2024. In *Motilal Nagar* (supra), the co-operative societies of occupants had leases in respect of areas under their occupation and had filed petitions challenging the redevelopment by MHADA through appointment of C & DA. A somewhat similar challenge to the one raised in this writ petition in respect of another MHADA scheme was rejected by this Court in Andheri P.M.G.P. Colony Co-op.Hsg. Societies Association Ltd. vs. State of Maharashtra and Ors. vide a decision dated 28/01/2026 in Original Side Writ Petition (L) No.19246 of 2025.

161. So far as the contention that the inclusion of HIG tenements in the impugned GRs is arbitrary, we find force in the submission of learned Advocate General that redevelopment of a MHADA layout cannot be viewed building-wise or category-wise in isolation, but for the purposes of systematic housing distribution, infrastructure planning and balanced redevelopment, the entire

layout as a whole has to be taken into consideration. Regulation 33(5)(2.2) confers power upon the State Government to prescribe carpet area entitlement for each category viz. EWS, LIG, MIG and HIG. By way of GR dated 16/03/2023, the petitioner (HIG) society would now be categorised as MIG as per the newly prescribed carpet area entitlement. The said classification is a policy decision intended to rationalise housing categories and ensure planned availability of housing stock across all income groups. It is the submission of learned Advocate General that the MIG category carries greater policy protection and affordability-based consideration, whereas HIG is treated as a higher income category with lesser need for such protective housing policy treatment. The redevelopment of HIG colony is also permissible under Regulation 33(5) since these are “Authority Premises” and MHADA schemes. The contention of Mr. Andhyarujina, learned Senior Advocate for the petitioner HIG society that the exclusion of HIG category from the GRs/tender would mean exclusion from Regulation 33(5), is therefore completely misconceived.

162. So far as the contention of the petitioners that they have

absolute and unconditional development rights including utilisation of FSI with respect to the said lands which rights are abridged by the impugned GR dated 24/04/2025 and the impugned tender dated 15/12/2025 is concerned, it is important to refer to some of the relevant clauses of the sub-lease deeds dated 24/12/1981 and 15/09/1982. Clause 5 requires the society to comply with rules, regulations, by-laws and conditions prescribed by the Government, local authority or statutory body, whether existing then or prescribed thereafter. Clause 9 provides that the society shall not assign, underlet or part with possession of the land without previous written consent of the authority. Clause 10 requires the society to observe and be bound by rules, regulations and by-laws under the relevant Act so far as they relate to the land. Clause 11 provides that the society shall not transfer rights under the Sub-Lease except with prior written consent of the authority. Clause 12 provides that upon conveyance of the buildings to the society, the legal ownership therein shall vest in the society together with the right of utilising FSI available as of date. The relevant clauses of Schedule A of the Sub-Lease Deed viz. Clause 6

provides that the user of the plot will be for the Housing Scheme of Government and amenities connected therewith. Clause 7 provides that the buildings to be constructed on the plots shall be according to the building rules of the estate and their heights shall not exceed a ground and three upper floors.

163. It is therefore evident that the holding of lands by the petitioners is subject to extant statutory regulations which are the 1991 Regulations as of today. Under these Regulations, the said lands and the buildings occupied by the petitioner are authority premises and the authority is entitled to develop the same in accordance with law, which is the DC Regulations, and the petitioners cannot object to the same. On reading of the relevant clauses of the lease-deed, we are of the view that in the present facts, the society cannot claim an independent, unconditional or unilateral right to redevelop contrary to the statutory provisions and MHADA's policy.

164. Substantial arguments have been advanced by learned Senior Advocates for the petitioners that the impugned GRs do

away with the mandatory requirement of the consent of the societies under Regulation 33(5). Clause 12 and 21 respectively of the GR dated 15/12/2025 are as follows:-

> "12. The provisions of the Development Control and Promotion Regulations 2034, the provisions of the MHADA Act, as well as the Government Decisions/Orders/Circulars issued by the Government from time to time, should be strictly implemented by MHADA.
>
> 21. The provisions of DCPR 2034, the provisions of the MHADA Act and the Government Resolutions/orders/circulars issued by the Government from time to time should be strictly implemented by MHADA."

165. Clause 1.5.1.16 of the e-tender reads as follows:-

> "1.5.1.16 The C& DA shall follow all relevant prevailing Indian Laws, rules and regulations, necessary IS codes, Slum Act, Labour laws and MHADA Act, etc."

166. Clause 11 of the GR dated 25/04/2025 which deals with consent reads as under :-

> "Since the redevelopment of these layouts will be done through the C & Agency (developer) finalized by MHADA through a tender process, it will be mandatory for the appointed developer (C & DA) to submit consent letters of 51% of the total members in the layout to MHADA."

167. We have already held that the DCPR provisions do not require any consents to be obtained if the redevelopment is to be

undertaken by MHADA on its own lands in a cluster layout. However, the State Government has in the GR dated 25/04/2025, nevertheless, required MHADA to obtain the consent of 51% of the total members in the layout. Total members in the layout would necessarily mean the total societies in the layout and not the total number of residents in the layout. It is the stand of the respondents that MHADA could have undertaken redevelopment of these layouts directly under Regulation 33(9) wherein the requirement of consent is specifically dispensed with. However, in the submission of learned Advocate General, since the entitlement of the existing lessees is lower in Regulation 33(9) than that stipulated in Regulation 33(5), the GR wants to provide the maximum possible rehabilitation to the existing societies, a stand which we find to be rational and fair. Hence, the maximum areas under Regulation 33(5) have been taken into consideration. Clause 1.5.1.9 of the tender states as follows :

> "C & DA shall be responsible for obtaining and submission of consents in the form of valid society resolutions of at least 51% societies. For slum structures (if any) consents as per Regulation 33(10) shall be obtained and submitted."

168. Thus, the requirement under the tender is evidently in conformity with the provisions of the GR dated 25/04/2025, wherein consent of 51% of the societies is contemplated.

169. We find force in the submission of learned Senior Advocate Mr. Khambata for MHADA that since MHADA is undertaking the redevelopment itself, there is no requirement of consent of the societies. Nonetheless, the said GR dated 25/04/2025 provides that it shall be mandatory for the C & DA to submit consent letters form of 51% of all members (the societies) in the layout.

170. In a redevelopment project especially of this magnitude, it stands to reason that the consent of the majority is sufficient, otherwise the redevelopment can be halted by limited societies/members, that is dissenting member/societies. It is only when MHADA undertakes redevelopment in association with the society in terms of Regulation 33(5)(7)b) that a consent of housing society in form of valid resolution is the requirement (as distinct from consent of 51% members) and hence the contention of the

petitioner is clearly misconceived. We do not therefore find any force in the submissions of learned Senior Advocates for the petitioners that the impugned GRs are violative of DCR 33(5) or 33(9). In fact, the GRs provide additional requirements over and above what is prescribed under the DCPR.

171. In our view, the statutory provisions must be construed from a broad perspective of facilitating redevelopment of this magnitude taking place in an important city like Mumbai, especially when the law permits such a course. MHADA has to factor in several aspects to make the project viable. In our view, when a statutory agency like MHADA is undertaking the project, through an agency funding the entire redevelopment, the sanctity attached to such a project is much more compared to a standalone individual development. This is not a case of a few individual societies but as many as 5000 societies which form a part of the cluster. MHADA retains control over the project. The planning authorities are best suited to undertake such an exercise taking into consideration myriad aspects of planning, execution, implementation, finance etc., thereby ensuring the project is

workable and viable. It is not possible for us to substitute our opinion for that of the planning authority. Our task is to find out any patent illegality in the decision-making. When there is overwhelming material that the project is in public interest, any attempt on our part to interfere on the plea that inconvenience is caused to some individual societies, in the absence of a substantial prejudice and in the absence of patent illegality, would amount to stalling redevelopment which in our view would be against public interest, apart from the same coming in the way of the beneficial object for which MHADA Act is enacted. We therefore do not find any merit in the challenge raised that the GRs are contrary to the provisions of existing laws governing redevelopment.

Challenge to the tender floated in April 2026 for appointment of C & DA

172. So far as Adarsh Nagar CHS is concerned, the MCGM is the owner of the subject layout and the same has been demised to MHADA on 21/07/1949 as a 'lessee in perpetuity'. In **Bhupendra Villa Premises Co-operative Society Limited and others vs. The**

Union of India and others[40] in paragraph 37, this Court held that "The aforesaid will apply with even greater force to the said Indenture of Lease as, by the said Indenture of Lease, a lease has been granted for a period of 999 years, which, as held by the following judgments, is permissible, and virtually amounts to sale of the said land…" Therefore, MHADA as a lessee in perpetuity is effectively the owner of the said land since the conveyance by lease in perpetuity virtually amounts to a sale.

173. The State Government of Maharashtra and MHADA also retain a range of overriding powers under the MHADA Act. Sections 41 and 42 comprised in Chapter V of MHADA Act empower the State Government to acquire land for enabling MHADA to discharge its functions. Section 66 comprised in Chapter VI of the MHADA Act empowers the MHADA Authority to evict persons from the premises of the Authority and to vacate their premises if they have '(vi) failed to vacate the premises required by the Authority for the purpose of implementing any plan or project for the sale of tenements and to accept alternative accommodation

40 2024 SCC OnLine Bom 8

offered by the Authority'. Section 95A of the MHADA Act empowers MHADA to evict occupiers who refuse to vacate their premises for the purposes of reconstruction. The GRs and the tender put forth a beneficial scheme for all concerned. The rights of the members of the petitioner society are safeguarded, and in fact they are entitled to additional benefits as detailed by the respondents which we have referred to in the later part of this judgment.

174. The challenge to the tender dated April 2026 is therefore completely misconceived. The tender is floated by MHADA to appoint C & DA for consolidated layout redevelopment which is in larger public interest. The petitioner societies have no absolute or unfettered right over the said property and their rights over the said lands are restricted by the sub-lease deeds, statutory regulations, and the provisions of the DCRs. By appointing C & DA, none of the rights of the petitioners' members are adversely impacted.

175. As is the stand of the respondents, the petitioners'

members' rights will be enlarged post-redevelopment by way of additional areas and corpus and better and streamlined amenities and infrastructure. MHADA retains overarching rights over the authority premises which include the said lands. MHADA has authority to develop these lands in terms of DC Regulation 33(5)(7)(b) and as long as there is a compliance of the said Regulation, the petitioners cannot complain about violation of their rights as no such right is violated. Even under the Sub Lease Deeds, petitioner society holds the said lands subject to all statutory rules, regulations, issued from time to time which includes the abovementioned DC Regulation. The implementation of redevelopment schemes by MHADA through an agency is also expressly permitted as held in *Motilal Nagar* (supra). The stand of the respondents is specific that all applicable laws, rules and regulations will be observed and followed.

176. So far as the contention that the societies on authority premises are being forced to amalgamate or dissolve themselves and this would amount to violation of their rights under the MCS Act as well as rights guaranteed under Article 19(1)(c), such stand

is completely misconceived. As submitted by learned Senior Advocates for the respondents, no society is being forced to be dissolved or amalgamated and whatever reconstitution or adjustments are warranted will have to be done in accordance with law. For the societies at this juncture to assume that issuance of the GRs and floating the tender virtually has the effect of dissolving or amalgamating the petitioner societies without following the due process is completely misconceived and premature. Much emphasis is laid by the petitioners that the right guaranteed under Article 19(1)(c) to form an association or a co-operative society. The respondents categorically state that the right to form a society is not being taken away or restricted or abridged. The right to form an association or a co-operative society does not include an unfettered right to run such a society and manage it in the way they want. The society has to function subject to law made in that behalf regulating a society under which it is formed. The right to manage the affairs of the society has to be in accordance with the law and it does not mean that the society can be managed in an unrestricted unfettered manner contrary to the provisions of law.

177. So far as the apprehension that the societies will be merged/amalgamated so to form a new Co-operative Housing Society, thereby defeating their rights to form an association which includes Co-operative Societies, the contention is raised at a premature stage. As submitted by learned Advocate General, due procedure under the MCS Act shall be followed in this regard. It is MHADA's responsibility to act fairly and reasonably.

178. Mr. Tamboly, learned counsel for the petitioners relied upon the following decisions in support :-

(i) Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and another[41]

(ii) M/s. Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay[42]

(iii) New India Assurance Company Ltd. Vs. Nusli Neville Wadia and another[43]

179. Even though the amendment incorporating the right to form co-operative society as fundamental right is struck down, still

41 (2004) 3 SCC 214
42 (1989) 3 SCC 293
43 (2008) 3 SCC 279

right to form association which includes Co-operative Societies continues. We are not expressing any opinion at this stage on this aspect, but it is necessary to bear in mind that when the stage comes for merger/amalgamation of the Co-operative Housing Societies, the procedure under Sections 17, 18 of the MCS Act and the other provisions obviously shall have to be resorted to. The test that such a course is in the interest of the members of the societies or in the interest of Co-operative movement or essential in the public interest and so on will obviously be applied.

180. It is the contention of the petitioners that the rehabilitation policy is being implemented in the same manner as slum dwellers. Such contention is not well founded. The members have been allotted the tenements in their respective category after payment of due consideration. Bearing this in mind, for the purpose of redevelopment, the formula prescribed by the Regulations has to be applied before allotting the redeveloped tenement. In any cluster redevelopment the allottees are bound to suffer inconvenience, adjustments and there is every possibility that having regard to the master plan, the members of the petitioner

society may be relocated in a different building. There obviously will be deliberations in view of requirement for the C & DA to obtain consent. The provisions for merger and amalgamation in the impugned GRs do not make the policy of the Government very clear. The learned Advocate General having taken a stand that the provisions of the MCS Act will be resorted to, obviously the State Government/MHADA would look into this aspect and take an informed decision in consonance with the provisions of law.

181. There is no doubt that the members of the societies who are residing in the tenements for years together, expect more clarity on the procedure to be adopted which obviously the State Government/MHADA is expected to provide. The Grievance Cell has not been constituted so far. The State Government to take appropriate steps for expeditious constitution of the Grievance Cell.

182. In Jamshed Hormusji Wadia (supra), the issue was about responsibility of the instrumentality of the State while dealing with its tenant. It was held that the instrumentalities cannot be left with unbridled and uncontrolled powers as landlord. The Supreme

Court held that balance has to be struck between responsibility on the State and the protection of the tenants. As held in M/s. Dwarkadas Marfatia and Sons (supra) the decision of the State has to satisfy the test of fairness and reasonableness. The decision of the State must be informed by reasons and guided by public interest. Obviously these factors are to be borne in mind by the State/MHADA when the question of amalgamation/merger of the societies would arise.

183. The entire case of the petitioners is that during the subsistence of a valid sub-lease in their favour, standalone redevelopment should be permitted at the behest of the individual societies. There are approximately 5000 societies forming part of MHADA layouts/housing stock, and therefore if the State of Maharashtra has taken a policy decision which is in conformity with the statutory provisions that a standalone redevelopment at behest of one society will defeat the object of integrated/cluster redevelopment, we do not find such a stand unreasonable or arbitrary especially when no prejudice is caused to the petitioner members and their rights in the tenement are secured. The policy

decision of MHADA and the State Government is intended to secure systematic, uniform and planned redevelopment at the layout level. That the petitioner societies do not have unfettered right to redevelop will answer the submission of Mr. Surel Shah, learned Senior Advocate for one of the petitioners.

184. The argument of learned Senior Advocate Mr. Y. S. Jahagirdar is that the cluster is broken as some of the societies in the adjacent plots have been permitted to carry on the development in terms of permission already granted. We are afraid the contention that the cluster is broken can only be stated to be rejected. The petitioner is seeking to carve out its property from the integrated/cluster redevelopment scheme on the basis of a private preference for standalone redevelopment. Permitting such standalone redevelopment would be counterproductive to the planned redevelopment undertaken at the layout level as the entire policy may become unworkable. Further, such redevelopment would also be against public interest, and it will compromise integrated development of infrastructure amenities and better town planning. Integrated/cluster redevelopment enables redevelopment

of the entire MHADA layout in a planned and comprehensive manner, instead of permitting fragmented and piecemeal redevelopment by individual societies. It ensures coordinated planning of internal roads, fire access, parking, open spaces, drainage, sewerage, water supply, common amenities, utility services and overall infrastructure for the benefit of all occupants in the layout.

185. There is no violation of Article 14 of the Constitution of India, since the societies which have valid and subsisting approvals from MHADA for their redevelopment have been excluded from this redevelopment on the basis of 'intelligible differentia'. As per the plan submitted to this Court of the proposed redevelopment of Bandra Reclamation as well as the Adarsh Nagar Redevelopment demonstrates that even after the exclusion of the societies (which have been excluded in GR and Tender) a cohesive and integrated development is possible of all the balance societies. In the absence of the decision being arbitrary or unreasonable or the same being contrary to law, it is not possible for us to substitute our opinion for that of the planning authority.

186. The GRs impugned in the writ petition are not isolated administrative action. They form part of a larger housing and redevelopment policy of MHADA. We find force in the submission of learned Advocate General and learned Senior Advocates for the respondents that the redevelopment of individual MHADA layouts such as Adarsh Nagar, Bandra Reclamation cannot be viewed merely as redevelopment of individual societies. It forms a part of the larger statutory housing policy framework concerning public housing stock, rehabilitation entitlements, income group distribution and planned urban development. The concept of integrated/cluster development under Regulation 33(9) is for the larger benefit of the city as infrastructure, amenities and utilities are considered from the larger perspective.

Benefits of integrated/cluster redevelopment to occupants and public interest

187. Let us now test what the benefits to the occupants are in terms of the redevelopment to be undertaken by MHADA. Under Regulation 33(5), final rehabilitation entitlement consists of multiple components, including basic entitlement, additional area

depending on plot size, and fungible compensatory area. MHADA, in its affidavit has stated that under the society-led redevelopment, entitlement to additional area may range from minimum 50% to maximum 105% over and above the existing carpet area, whereas under cluster redevelopment, the entitlement to additional area is about 120% over and above the existing carpet area. The petitioner therefore suffers no prejudice by inclusion in the integrated redevelopment framework. Moreover, such additional entitlement is in terms of the statutory framework. The petitioner society is substantially benefiting from such redevelopment.

188. MHADA-led redevelopment is justified considering the nature and size of the layout, the age of the buildings, the public housing-policy framework and the need for integrated planning. Under Regulation 33(5), 2.1, proviso to explanation (b) stipulates that the maximum entitlement of rehabilitation area shall in no case exceed the maximum limit of carpet area prescribed for MIG category by the government as applicable on the date of approval of redevelopment project. Such an entitlement as of date under the 16/03/2023 GR is 90 square meters.

189. Even in terms of the tender document following are the benefits of integrated/cluster redevelopment over independent redevelopment :-

(i) The Tender Document, Volume I, Clause 1.5.1.12(a), specifically sets out the proposed carpet area entitlement of the existing residential tenements after redevelopment. By way of illustration, an existing MIG-D tenement, with an existing carpet area of 79.96 sq. m., will be rehabilitated as a 200 sq. m. tenement in the redeveloped layout representing an enhancement of approximately 150% over the existing carpet area. The corresponding figures for other categories are : MIG-A from existing 48.73 sq. m. to 122 sq. m.; MIG-B from 50.83 sq. m. to 127 sq. m.; MIG-C from 61.25 sq. m. to 153 sq. m. We thus find that the petitioner society's members, holding tenements in the MIG categories are getting substantial benefits of these enhanced entitlements. Pertinent to, this reconstruction is entirely free of cost to the occupants.

(ii) In addition to the substantially enhanced carpet area, the petitioner society's members shall also receive, during the redevelopment period monthly rent, commencing in the first year of vacation at Rs.35,000 to Rs.85,000 per month (the amount being graded to the existing carpet area), with 10% annual escalation, payable by the C and D Agency from the date of vacation till the date of issue of the Occupation Certificate for the respective rehabilitation building (Clause 1.5.1.12(a) of the tender document); A corpus fund ranging from Rs.18 lakhs to Rs.45 lakhs per tenement (graded to the existing carpet area), to be distributed by MHADA in such manner and at such time as MHADA may decide; A one-time shifting charge of Rs.25,000 per tenement (Clause 1.5.1.8 of the tender document); A one-time brokerage charge equal to the starting rent of the first month (Clause 1.5.1.12(a) of the tender document). Further benefits include provision for the redeveloped layout with high-grade infrastructure and amenities, including separate

two-wheeler and four-wheeler parking, visitors' parking, fire-fighting infrastructure, solar systems, rainwater harvesting, energy-efficient services, GRIHA or LEED-equivalent sustainability certification (Clauses 1.5.1.18 to 1.5.1.21) as well as the central playground at the existing Worli Sports Club ground, reservation amenities under Regulation 17 of the DCPR, 2034 (EOS 1.4, EE 1.1, EE 1.2 and other prescribed amenities), and a network of internal access roads of statutory width.

(iii) The Master Plan and Block Model annexed at Volume IV of the tender document conclusively demonstrate the integrated character of the redevelopment. The Master Plan envisages multiple towers for the existing tenements (categorised by tenement type, such as MIG-A, MIG-B, MIG-C, MIG-D, LIG, SIHS and C1), MHADA towers for the MHADB Premises, multiple sale towers for the C&DA Premises together with the central playground, the commercial complex, the welfare centre, and a network of open

spaces. The Master Plan thus preserves the identity and accommodation of each existing tenement type and dispense the petitioner's concern that the integrated redevelopment results in any "merger" or "amalgamation" of identities.

190. The proposed redevelopment would confer enormous benefits not only to the society/its members but also the public at large. The quality, durability and safety of the new construction are safeguarded by mandatory independent technical oversight. All rehabilitation plans, elevations and amenities require MHADA's prior approval. Residents' health, safety and convenience during the works are expressly protected. Security of tenure and society rights are structurally protected. Residents' occupancy is formalised through registered tripartite Permanent Alternative Accommodation Agreements.

191. Commencement Certificate and sale rights for the developer's free-sale component are released only in proportion to the progress of the rehabilitation component and the MHADA share

and only after payment of the requisite FSI premium. The C & DA is obliged to complete the rehabilitation component, MHADA premises and amenities within six years of satisfaction of the 'Conditions Precedent'. The Agency is liable for damages for the delay. The public exchequers secure substantial monetary consideration at no cost or risk. MHADA realises an FSI premium of Rs.754 Crore for FSI up to 3 + consideration for the 4th FSI of either a free-built MHADA share of 23,281 sq.mt. (31,429 sq.mt. with fungible) or a premium of not less than Rs.768 Crore. The entire cost of construction, statutory premiums, approvals, surveys, relocation of religious/hutment structures, road widening to 18.3 mts., clearance of societies' existing dues, and maintenance until the 'Taking Over Date' is to be borne by the C & DA, and the C & DA is bound to indemnify MHADA against all claims.

192. Besides various buildings as stated above, it is envisaged to have a network of open spaces and parks. The central idea of redevelopment, as per the master plan is to achieve an integrated program of building activities and spaces.

193. Similarly, the following salient features of the Bandra Reclamation Tender document demonstrate the benefits of integrated/cluster redevelopment over independent redevelopment in Bandra Reclamation Layout:

(i) Planned development of the entire layout/ scheme with international standard amenities and comprehensive housing for all residents in the housing scheme :

Besides redevelopment of the existing buildings and construction of new buildings, it is envisaged to have a network of open spaces and parks. The central idea of the redevelopment, as per the Master Plan is to achieve an integrated redevelopment of buildings activities and spaces with international standard amenities.

(ii) Increased area of premises :

All eligible tenements in Bandra Reclamation Layout will get 2.65x times their existing area, free of cost. In a location like Bandra Reclamation Layout, it is a substantial increase in area.

The redevelopment confers a substantial, quantifiable enhancement of carpet area. Every resident receives a materially enhanced tenement, free of cost. There is an

increase of upto 163% per tenement .

(iii) Transit Rent :

A tiered monthly rent of ₹45,000 to ₹1,00,000 (escalating 10% p.a., with a compounding mechanism extending the protection to every phase of vacation) from the date of vacating until the Occupation Certificate of the respective building.

(iv) Generation of new corpus through the C&D Agent :

The proposed corpus fund is stated to be Rs.17 to Rs.40 lakh per tenement;

(v) Creation of additional housing stock/ payment of premium to enable MHADA to achieve objectives :

In Bandra Reclamation Layout MHADA will receive premium of around Rs. 3900 crores [Rs. 2083 crores + Rs. 1817 crores], which MHADA can utilize for its objectives.

(vi) Other Benefits :

a. distribution of sinking fund to members;

b. ₹25,000 shifting charge;

c. one month's brokerage;

d. registered tripartite Permanent Alternative

Accommodation Agreements with tenement holders.

e. 'Defect Liability Period' of five years from the Occupation Certificate; and

f. unconditional and irrevocable Performance Security of ₹60.35 Crore.

Individual interest must yield to larger public interest

194. In a redevelopment of such magnitude and that too undertaken by a responsible agency like MHADA, the owner of the layout, this Court would be loath to come in the way of redevelopment undertaken in the larger public interest merely because the rights of a limited number of individuals may be affected. In advancing public welfare, there may be situations where certain individual rights are necessarily restricted or curtailed. However, such consequences, by themselves, do not and cannot constitute valid ground to restrain the State from taking action in furtherance of public interest. The decision in **Haryana Urban Department Authority vs. Abhishek Gupta**[44] and **State of Haryana and others vs. Vinod Oil and General Mills and another**[45]

44 2024 SCC OnLine SC 2991
45 (2014) 15 SCC 410

are significant in this context. Moreover, paragraph 16 in *Motilal Nagar* (supra) is important which reads thus :

> "16. Considering the nature of the proposed project, it may not be possible to be undertaken by individual co-operative housing societies, or associations formed by occupants thereof on a piecemeal and individual basis. Each co-operative society would look solely to the personal interest of itself and its members, and likely appoint a developer to undertake a narrow and limited development of its land / buildings. This would not be in the interest of orderly planning and infrastructural development. It would also expose each society and its occupants to the exigencies of commercial developments by developers.
>
> Moreover, it is only a holistic redevelopment that proposes a solution for the long-term problem of flooding and water-logging faced by the occupants of Motilal Nagar, which certainly cannot be resolved by individual and piecemeal redevelopment of separate parcels of land."

Petitioners' reliance on doctrine of legitimate expectation

195. It is the submission of learned Advocate General and learned Senior Advocates for the respondents that the petitioners' reliance on the doctrine of legitimate expectation is misplaced. The petitioner societies do not have any absolute rights over the said land or any unfettered right to redevelop the same. This is clear from the express terms of the statute, as well as the draft sub-leases deeds and/or sample lease-deed relied upon by the petitioners

themselves. We have no hesitation in observing that the statutes as well as the lease-deeds relied upon reiterate the superior rights, power and authority of MHADA and that the petitioners' rights are subject and sub-servient thereto. The petitioners cannot invoke legitimate expectation to obtain a benefit contrary to this express statutory and contractual framework. The principle of legitimate expectation cannot be used to vary statutory provisions which are binding on parties and contractual terms. Further and in any event, the doctrine of legitimate expectation does not fetter the freedom of the State to change policy where such change is justified in the public interest. We are in agreement with the submission of learned Senior Advocates for the respondents that whether the expectation is reasonable or legitimate is to be determined not according to the claimant's perception, but in the larger public interest.

Violation of Article 300A of the Constitution of India as a result of the proposed redevelopment

196. Article 300A of the Constitution of India reads as follows :

"300A. Persons not to be deprived of property save by

authority of law :

No person shall be deprived of his property save by authority of law."

197. In **Jilubhai Nanbhai Khachar and others vs. State of Gujarat and another**[46] the Hon'ble Supreme Court interpreted the scope of Article 300A of the Constitution of India and inter alia specifically dealt with compensation. The Court held that while the law may fix an amount for compensation as may be specified by said law, the adequacy of compensation so fixed cannot be questioned by the Court, save that it must not be illusory and must not be evolved using arbitrary principles.

198. The Hon'ble Supreme Court in **K.T. Plantation Private Limited an another vs. State of Karnataka**[47] while citing with approval Jilubhai, also discussed compensation in relation to Article 300A. In this case, the Court held that the right to claim compensation under Article 300A can be inferred from the Article and it is for the State to justify the compensation 'on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.' The Court also

46 1995 Supp (1) SCC 596 [para 52]
47(2011) 9 SCC 1 [188-192]

held that nil compensation could be awarded for acquisition/deprivation of property under 300A citing cases where the State discharges liability on the property and distinguished this from a case of 'no compensation' on the grounds that a law stating the latter was impermissible.

199. The Hon'ble Supreme Court in **Rajiv Sarin and another vs. State of Uttarakhand and others**[48] has held that payment of market value or indemnification to the owner of the property expropriated is not a condition precedent for acquisition.

200. In the present case, the alternative accommodation and benefits that will be provided to the individual occupiers which is in consonance with the statutory provisions would clearly satisfy the requirement of Article 300A. We have already held that the petitioner societies do not have an absolute or unfettered right over the subject land. Limited right and interest that the petitioner societies have over the subject land is subject inter alia to MHADA's overarching ownership rights, power and statutory and regulatory authority. Secondly the MHADA Act and DCPR expressly permits

48 (2011) 8 SCC 708

redevelopment by MHADA on its layout without the requirement of consent from the petitioner societies or its members. The GRs have been issued in pursuance of such statutory provisions. The deprivation of the petitioners' right/interest on the subject land, even assuming this amounts to deprivation, is the 'authority of law' as provided under Article 300A. It has been expressly stated by the learned Advocate General and learned Senior Advocates for MHADA that in any event, all sub-rights and safeguards form a part of Article 300A that protect the proposed redevelopment. The C & DA is bound under the e-tender to obtain consent of 51% of the co-operative societies in the layout. The societies are thus afforded the opportunity to accord their consent to the proposed redevelopment. The petitioners' members are being more than adequately compensated with a rehabilitation area of more than twice the area of their present tenements. As far as dissenting members are concerned, it is expressly made clear that MHADA will take recourse to the mechanisms prescribed under the relevant law, and strictly follow the procedures laid down therein. The proposed redevelopment is for a public purpose, and therefore the

said requirement is also fulfilled.

Contention of the petitioner as regards unjust gains for the C & DA at the cost of corresponding gains for MHADA

201. Learned counsel for the petitioners were at pains to point out that there is hardly any gain for MHADA in the project and that the C & DA is virtually a developer who not only has absolute control over the project but is the biggest gainer. Our attention is invited to the facts and figures from the tender document. In this context, from the submissions made by learned Senior Advocates for the respondents, as indicated earlier, it needs to be noted that the project envisages a massive redevelopment exercise of integrated redevelopment of Bandra Reclamation layout involving approximately 98.27 acres of land in Bandra; and 34.33 acres of land in Worli. It is the case of the respondents that to effectively undertake a redevelopment of this magnitude and facilitate a holistically developed and integrated layout, MHADA would require assistance, funding, expertise, competence, network and capacity of a skilled third party. According to MHADA, C & DA will employ suitable high-rise technology for speedy and quality

construction. C & DA is also directed to follow all GRIHA or LEED certification or equivalent norms for sustainability in the development. All structural designs/drawings are to be vetted from IIT Mumbai or VJTI before obtaining approval from MHADA for commencing construction. The C & DA will bear all costs related to the project. Hence, C & DA will bring in financial outlay and management expertise, beyond the immediate sources of MHADA.

202. The petitioner societies are pushing for independent redevelopment where the control over such independent, haphazard and piecemeal redevelopment/development would vest with different third-party developers. However, unlike such haphazard and piecemeal redevelopment, MHADA in this case will have absolute and complete control over the redevelopment and will be personally undertaking the same. MHADA denies that the C & DA has been vested with powers and discretion independently as submitted by the petitioners. It is the stand of MHADA that it retains total control over the redevelopment and over the C & DA with more than adequate safeguards to ensure performance as set out herein below. The terms of appointment as envisaged from the

tender document and draft construction cum development agreement in the proposed arrangement between MHADA and C & DA are relevant. In terms of these documents, learned Advocate General submitted that MHADA will continue to hold title to the land, at all times, even after the C & DA is appointed. Further, land or land ownership rights will not be parted with the C & DA. C & DA will not be permitted to mortgage or create any charge, lien or third-party interest in the land in order to raise finance and create any third-party interest in the land. Clause 1.5.1.11 of the tender expressly provides that "*All the plans proposed by C & DA related to rehabilitation component as well as MHADA share including but not limited to layout plans, architectural plans, elevations, provision of amenities, infrastructure will be approved by MHADA only after modification/changes as per MHADA requirements have been made by C & DA*". Thus, MHADA retains control over the master plan.

203. There are several clauses in the draft C & DA agreement which show that MHADA retains control over development permissions. The development permissions for C & DA share are

linked proportionately to permissions of rehabilitation component and payment of MHADA premium. C & DA will be entitled to construct the C & DA premises only in proportion to the construction of the Rehabilitation Component which has been sanctioned, approved or construction commenced in a phase-wise manner only. The commencement certificate for C &DA's share will be issued by MHADA in phases proportionate to the commencement certificate issued for rehabilitation premises. The C & DA will be required to furnish monthly progress reports to MHADA and attend quarterly review meetings. MHADA will also conduct monthly inspection of the project. This can be seen from Clauses 1.7 and 1.8 of the tender document. It is thus evident that MHADA will retain complete control of redevelopment and release of FSI basis performance.

204. The C & DA will bear all costs related to the project, including costs in relation to shifting and rehabilitation of MHADA eligible tenements, shops and slum dwellers, as well as redevelopment of rehabilitation component, reservation amenities and MHADA premises. Clauses 1.1(2), 1.1(3), 1.1(8), 1.1(12) are

indicative of this. Further, the tentative costs estimate of undertaking a redevelopment project of this magnitude viz. so far as Bandra Reclamation layout is concerned, is Rs.24,075 crores. So far as Adarsh Nagar Worli redevelopment is concerned, the tentative costs estimate of undertaking such a redevelopment project is Rs.13,200 crores. The C & DA has to pay all taxes, levies, duties, cess and all other statutory charges or outgoings payable in respect of the project. The C & DA will also pay all construction related electricity bills, water charges and property tax charges. Clause 1.1(28) of the tender document indicates this. Thus, the entire cost of the project to be borne by C & DA. As indicated earlier, according to learned Senior Advocates for the petitioners, this demonstrates that C & DA is virtually a developer and therefore the requirement of consent in terms of the DCPR triggers in. In our opinion, such a submission is completely misconceived.

205. Learned Senior Advocates for the petitioners submitted that there is no requirement of additional infrastructure as the available infrastructure at Adarsh Nagar and Bandra Reclamation layout is sufficient. However, in our opinion, these are matters of

planning. MHADA has proposed a cluster redevelopment in the island city of Mumbai in a planned and inclusive manner. Whether the infrastructure is adequate or has become obsolete in the era of rapid urbanization, whether this comes in the way of the growth of an important commercial capital of India like Mumbai and ultimately in the growth of the nation is a planning exercise which has to be done by the planning authorities having experts on board. This cannot be viewed only from the standpoint of individual standalone societies, who say that their beneficial right to enjoyment of the property during the subsistence of the lease-deeds is affected.

206. The planning authorities are of the view that the cluster redevelopment is a feasible way of developing the island city of Mumbai in a planned and inclusive manner. The city of Mumbai has to grow and keep pace with the changing times, catering to the needs of flourishing markets and economic opportunities. It is not possible for this Court to substitute its opinion for that of the planning authority like MHADA, when it acts in furtherance of the holistic approach of the Government of Maharashtra to undertake a

cluster redevelopment in the city. By introducing the DCPR, it incentivised and rewarded cluster redevelopment over individual schemes. The reasons therefor have been stated in the impugned GRs. The decisions of the State Government cannot be said to be arbitrary or irrational or for that matter it is not possible for us to form an opinion that the petitioners have produced sufficient materials on record demonstrating the arbitrariness or the unreasonableness of the State Government's decision.

207. Thus, when this is the scale of the redevelopment project undertaken by MHADA where it will have absolute and complete control over the redevelopment, personally undertaking the same through a C & DA with more than adequate safeguards to ensure performance of its commitment, merely because the C & DA will bear all costs related to the project by bringing in financial outlay and management expertise beyond the immediate sources of MHADA, does not make the C & DA 'a developer' as sought to be propounded by learned counsel for the petitioners.

208. MHADA says that the compensation to the C & DA will be

in the form of free sale FSI which will be approved by MHADA only in proportion to the construction of the rehabilitation component. The safeguards in the proposed arrangement are a time-bound development; the project completion timeline stipulated is at 6 years, subject to limited exceptions such as force majeure, approvals and permission from various authorities, and facilitation by MHADA. This is evident from Clauses 1.5.1.3.1, 1.5.3.3, 1.31 and 1.3. In case of delay due to a material breach on the part of C & DA (not on account of a force majeure event or delay in facilitation by MHADA), pre-estimated damages for delay at 0.01 % per month in proportion to the cost of the construction affected, shall be levied. The C & DA is required to furnish a performance security to MHADA equivalent to Rs.60.35 crores.

209. While carrying out a phased redevelopment, C & DA will implement the project in phases. During the construction of any phases, residents of balanced phases will be residing in the same place or in transit accommodation. Further, the shifting of infrastructure will be undertaken in a way that existing infrastructure and services to other existing buildings are not

affected and remain functional. Clauses 1.1(23) and 1.2(j) demonstrate the aspect of phased redevelopment.

210. There are provisions for termination of the agreement. Clause 10.4 provides for termination of the agreement between MHADA and C & DA in the event of default. In terms of Clause 10.4, MHADA reserves its right to substitute the C & DA, in the case of an event of default by C & DA, which includes situations such as no progress towards work in respect of the rehabilitation component for a period of one year.

211. Though the issue of redevelopment by MHADA through C & DA agency has already been decided in *Motilal Nagar* (supra) case by this Court, it was necessary for us to advert to the contentions raised by the petitioners. We have no hesitation in observing that in terms of the materials on record and after going through the tender document as well as the draft of C & DA agencies, we find substance in the submission of the learned Senior Advocates for the respondents that the redevelopment of Bandra Reclamation and Adarsh Nagar layout through C & DA is being

undertaken by MHADA ‘on its own’.

On the aspect of NOC granted in Bandra Reclamation by MHADA on 27/05/2025 after issuance of GR dated 25/04/2025

212. In our opinion, the petitioner societies cannot claim an indefeasible right to redevelop the property on its own especially when the redevelopment is being undertaken by MHADA on its own and in terms of the policy of the State while safeguarding the interest of the members of the petitioner societies. Thus, because one NOC is granted by MHADA after the GR dated 25/04/2025 does not confer any right on the petitioner societies to claim rights of redevelopment on its own. In any case it is the stand of the respondents that under Regulation 2.1 of DCPR, the society first applies to MHADA for NOC if the redevelopment is at the instance of the society. Once the society applies for NOC, the first ‘offer letter’ by MHADA is issued. Some conditions are mentioned in the ‘offer letter’. Upon compliance with the same, NOC is issued by MHADA. This case in point made out by the petitioner is a case where MHADA had already issued ‘offer letter’ in favour of the society before the issuance of the GR and NOC was issued after the

GR. MHADA is relied upon a table below which shows the dates of offer letters issued by MHADA in Bandra Reclamation layout. All offer letters are prior to the impugned GR dated 25/04/2025.

Details of offer letter issued societies prior to GR			
Sr. No.	**Name**	**Plot area (sqm)**	**Offer letter issued on**
1	PRADEEP (Indraneel)	836.1	23.01.2024
2	MAHARASHTRA FISHERIES	836.1	23.01.2024
3	CREECKSIDE	836.13	10.01.2024
4	SAIDUTTA PRASAD	1672.2	18.09.2023
5	NIYOGEN		
6	NEW DEEP (Al-Hilal)	836	18.09.2023
7	MAHARASHTRA RAJYA CHSL	1672.26	29.12.2021
8	PRABHAKAR		
9	SEA-LINK	1166.56	10.01.2024
10	SALES TAX		
11	SANDHYAVANDAN	585.29	11.01.2024
12	NATIONAL SERVANTS (Mayur)	1254.2	11.01.2024
13	PRASAD SUYASH	668.9	05.07.2024
14	MEERA MADHURA	668.9	05.07.2024
	Total	**11032.64**	

213. We therefore do not find any substance in this submission.

Contention that MHADA is taking 'premium' instead of 'housing stock' being bad in law

214. Much arguments have been advanced by the petitioners that MHADA is taking premium instead of housing stock and therefore the entire exercise is with a view to favour the developer. For one, we have already held that C & DA agency is not a developer. For the next, MHADA has complete control over the project. A reference to Regulation 33(5) of DCPR indicates that it gives option to MHADA under Table C-1 to receive FSI premium instead of taking housing stock for FSI up to 3 (Rs.2083 Crores in case of Bandra Reclamation and Rs.754 Crores in case of Adarsh Nagar Worli). Also for 4th FSI, sharing is governed by Table C-2 of Regulation 33(5) of DCPR. However, DCPR 33(5) also gives option to MHADA to receive FSI premium instead of housing stock for MHADA share for 4th FSI. This premium for 4th FSI is to be calculated at 60% of prevailing ASR (ready Reckoner Land Rate), which works out to be around Rs.1583 Crores in the case of Bandra Reclamation and Rs.526 Crores in the case of Adarsh Nagar Worli.

215. As submitted by the learned Advocate General, MHADA however has raised the benchmark for this 4th FSI premium by converting the housing stock for 4th FSI (as per Table C-2) into the FSI premium amount by multiplying the housing stock by ready reckoner rate for residential premises. The benchmark FSI premium for 4th FSI premium was kept as Rs.1817 Crores. The calculations are in the tender document Volume I. The benchmark for 4th FSI premium for Adarsh Nagar Worli has been raised by around 242 Crores.

216. Therefore, based on the above, MHADA is expected to receive a minimum aggregate premium of Rs.2083 Crores + Rs.1817 Crores i.e. Rs.3900 Crores in respect of the Bandra Reclamation and in respect of the Adarsh Nagar Worli it is expected to receive a total minimum premium of Rs.754 Crores + Rs.768 Crores which comes to totaling Rs.1522 Crores. For Bandra Reclamation the highest bidder has quoted a premium of Rs.1847 Crores against the benchmark of Rs.1817 Crores whereas for Adarsh Nagar Worli the highest bidder has quoted a premium of Rs.794 Crores against the benchmark of Rs.768 Crores. Therefore,

MHADA having received the aforesaid premium instead of housing stock is a reason why MHADA's share is shown as 0 in the table which is at page 78 of the tender Volume-I.

217. In the tender document a table shows distribution of FSI viz. Rehabilitation of 26.57% and 73.43% towards free sale in respect of Bandra Reclamation and in respect of Adarsh Nagar Worli Rehabilitation 34.75% and free sale 65.25%. Our attention is drawn to the aspect that if instead of above premium option, housing stock option would have been selected by MHADA, the equivalent FSI distribution would have been as follows in case of Bandra Reclamation :

Summary FSI BUA					
		W/o fungible	With fungible	Unit	Percent
1	Total Plot potential	5,26,785	7,11,159	sqm	100%
2	Rehabilitation FSI area	1,39,963	1,88,950	sqm	26.57%
3	MHADA share for 3 FSI & 4th FSI	1,53,233	2,06,865	sqm	29.09%
4	Sale area for developer	2,33,588	3,15,345	sqm	44.34%

218. In so far as Adarsh Nagar Worli is concerned, the summary FSI of built up area would be as under :

Summary FSI BUA					
		W/o fungible	With fungible	Unit	Percent
1	Total Plot potential	2,54,215	3,43,190	sqm	100%
2	Rehabilitation FSI area	88,329	1,19,245	sqm	34.75%
3	MHADA share for 3 FSI & 4th FSI	59,163	79,870	sqm	23.27%
4	Sale area for developer	1,06,722	1,44,075	sqm	41.98%

219. Therefore, in view of the submission of learned Senior Advocates for the respondents that if in the tender, premium option is shown, which is nothing but conversion of MHADA share into FSI premium, which conversion is allowed as one of the options under Regulation 33(5) of DCPR, we do not find such a course adopted by MHADA as contrary to law. The contention of learned counsel for the petitioners that the gain of the C & DA is at the cost of MHADA's share can only be stated to be rejected.

220. It is the stand of MHADA that the redevelopment of MHADA layouts such as Adarsh Nagar and Bandra Reclamation cannot be viewed merely as an isolated redevelopment exercise of individual societies, but forms part of the larger statutory housing policy framework implemented by the State Government and MHADA, for balancing public housing stock, rehabilitation entitlements, income-group distribution and planned urban housing development. The respondent No.1-State has issued GR dated 16/03/2023 revising the classification and permissible carpet areas for EWS, LIG, MIG and HIG housing categories in projects developed and redeveloped under MHADA schemes. The said GRs specifically recognises that MHADA layouts and redevelopment projects are required to be planned in a manner ensuring structured housing distribution and availability of housing stock across various income groups.

221. The GR dated 16/03/2023 further records that piecemeal and unregulated housing allocation or redevelopment adversely affects the availability and distribution of housing stock meant for different income groups, and therefore the State Government

revised permissible carpet area norms and income limits for MHADA housing projects. The said policy decision demonstrates that redevelopment of MHADA layouts is not merely a private redevelopment exercise between a society and a developer but is intrinsically linked with larger housing policy objectives of the State and MHADA concerning planned housing distribution, urban infrastructure, housing affordability and balanced development of public housing stock.

222. It is a stand of MHADA that permitting individual societies in layouts such as Adarsh Nagar and Bandra Reclamation to independently redevelop isolated buildings through private developers would completely defeat the larger policy framework underlying the aforesaid GR and Regulation 33(5), since redevelopment potential, housing stock planning, FSI utilisation and infrastructure creation are all required to be considered comprehensively at the layout level. The contention of the petitioners that their right to redevelopment as an independent proprietary right is affected irrespective of larger planning and housing policy considerations applicable to the entire MHADA

layout, is a contention which militates against larger public interest and the object for which the MHADA Act has been enacted.

223. Adarsh Nagar and Bandra Reclamation layouts comprise several old buildings developed decades ago. The State Government has consciously taken a policy decision that layouts such as Adarsh Nagar should be redeveloped in an integrated and planned manner instead of fragmented and piecemeal redevelopment. Integrated redevelopment ensures proper infrastructure planning, open spaces, internal roads, parking, amenities, drainage, water supply and coordinated development of the entire layout. We do not find anything irrational or arbitrary in the stand of the respondents that permitting independent redevelopment of isolated buildings by separate developers would result in haphazard and unplanned development causing prejudice to larger public interest and orderly urban planning. The GRs are issued in the larger public interest, not offending any statutory provision and is a policy decision which we do not find any reason to interfere with in the realm of this Court's power of limited interference in policy matters.

224. If as a planning authority MHADA is of the view that implementation of isolated redevelopment proposals in a dense MHADA layout such as Adarsh Nagar materially impacts internal road networks, amenity distribution, fire access, rehabilitation logistics, fungible FSI balancing, common infrastructure loading and future integrated planning for adjoining plots and societies, is a decision in which we are not inclined to interfere, as except for saying that the individual rights of the petitioners under the sub-lease are affected, there is nothing to indicate that the decision taken is patently arbitrary and/or not in larger public interest.

225. We therefore find substance in the submission of learned Senior Advocates for the respondents that the petitioner cannot seek to override public planning policy by claiming unilateral redevelopment rights, for MHADA being the planning authority and superior lessor in respect of MHADA layouts, retains authority to regulate redevelopment in accordance with applicable laws and policies.

226. When MHADA says that under the proposed layout-wide

redevelopment framework, MHADA proposes to provide planned internal road networks, improved fire tender access, scientifically planned drainage and sewerage systems, upgraded water supply infrastructure, organised parking facilities, open recreational spaces, landscaped common areas, better amenity distribution, integrated utility planning and uniform urban infrastructure through the layout, apart from the fact that this Court shall not sit in judgment over the wisdom of such a policy, there is nothing to indicate that the decision is patently illegal or arbitrary to law. The petitioner societies may be of the opinion that the existing infrastructure is adequate, but in matters of planning such matters are best left to the wisdom of the State, which is well advised by the experts in matters of planning. Further, MHADA, being a statutory planning and housing authority, is in a position to ensure uniformity, accountability, quality control and long-term infrastructure sustainability for the entire layout, which private piecemeal redevelopment projects undertaken by different developers cannot guarantee. The integrated redevelopment therefore substantially enhances not only the rehabilitation

entitlement of occupants but also the overall quality of life, safety standards, civic infrastructure and future urban planning potential of the entire layout which the planning authorities have kept in mind. We do not see any reason to interfere in such matters of policy.

227. We have already set out the comparative rehabilitation entitlement demonstrating the benefits to the occupants. We are in agreement with the submissions of learned Senior Advocates that the rights of the occupants are safeguarded and no irreparable prejudice whatsoever is caused to the petitioners as the petitioners would continue to receive benefits under the integrated redevelopment framework. The redevelopment concerns as many as 5000 housing societies. Though the writ petitions are filed at the instance of some of the petitioner societies, we are satisfied that the interest of the bona fide occupants of all these societies have been safeguarded. Any interference in the redevelopment process would affect the larger body of occupants and the residents in the layout.

228. We therefore do not find any merit in these writ petitions. Recording the assurances on the behalf of the respondents as indicated in the affidavit-in-replies, and as noted in this judgment, these writ petitions being devoid of any merit are dismissed with no order as to costs.

229. Rule stands discharged.

(S. M. MODAK, J.) (M. S. KARNIK, J.)