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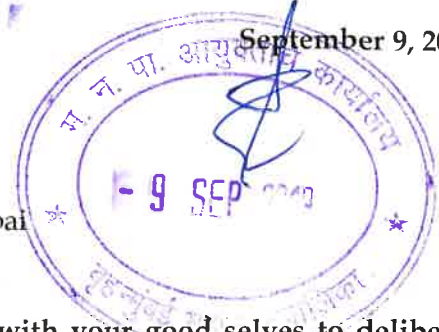
To,

Shri Praveen Pardeshi (I.A.S.)

Municipal Commissioner

Municipal Corporation of Greater Mumbai

Mumbai - 400 001.



Re: (i) Meeting held on July 17, 2019 with your good selves to deliberate issues faced in redevelopment of Municipal leasehold and tenanted properties ("Our Meeting")

(ii) Issues in the Implementation of the Slum Rehabilitation Scheme due to the presence of Municipal Tenants ("MTs") and Vacant Land Tenures ("VLTs")

Respected Sir,

1. We write to you in furtherance of our Meeting especially in respect of issues with regards to development of municipal tenanted properties in combination of Regulation 33(7) and Regulation 33(10) of Development Control and Promotional Regulations 2034 ("DCPR 2034") and preparation of Annexure - II for municipal tenanted properties.

2. As you are aware, MCHI is a recognized autonomous body of Real Estate developers in Mumbai and MMR region that serves as a platform to address the issues faced by the real estate industry. We, on behalf of the developers, write to you to bring to light certain glaring issues that are being faced upon the developers in the implementation of the Slum Rehabilitation Schemes ("SR Scheme") in Mumbai and thus address you as under:

(i). The accelerated growth in the service sector in India led to a massive migration of people from rural to urban areas in search of jobs and better standard of living, thus giving rise to issues of over-crowding in metropolitan cities. This resulted in a proliferation of slums in cities like Mumbai.

(ii). To address the issue, the Central and the State Governments initiated Schemes to deal with the problem of urban slums and one of the key policy intervention to facilitate slum redevelopment was the change in the land development regulations to allow for an increased density of redevelopment in the slums. Thereafter, the state of Maharashtra enacted the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1956 amended in 1971 which brought about major changes in the policies governing the slum areas (hereinafter referred to as "the Slum Act").

(iii). The main object of the Slum Act was to make better provision for the improvement and clearance of slum areas in the State, for their

redevelopment, for the protection of occupiers from eviction and distress warrants.

- (iv). Subsequently, the neoliberal approach by the Government in respect of the SR Schemes facilitated greater public private partnership in order to ensure effective implementation and rehousing of slum dwellers. The Government bodies including Municipal Corporation of Greater Mumbai ("MCGM") and Maharashtra Housing Area Development Authority ("MHADA") who owns tracks of lands in or around the city of Mumbai, which are encroached by slums are also pivotal in furthering the object of the Slum Act by implementing an SR Scheme for the benefits of the slum dwellers.
- (v). Although the purpose of the SR Schemes was to ensure effective rehousing of the slum dwellers, it also assured certain benefits to the developers to incentivize the implementation of such Schemes.
- (vi). Though the completion of the Scheme was meant to benefit all concerned parties, however, it is disheartening to state that there have been major impediments in the sanctioning of the Schemes resulting in incessant delays in the implementation. It is stated that the developers have been facing serious issues in the implementation of the SR Schemes resulting in huge loss, injury and hardship to the developers and consequently to the slum dwellers who are waiting in expectation of appropriate settlement.
- (vii). Amongst other issues one of the major issue faced by the developers in implementing a SR Scheme on municipal lands is (i) determination of rights of MTs and VLTs, (ii) insistence on the part of MCGM, contrary to the applicable provisions of relevant Development Control Regulations, to submit a separate proposal under Regulation 33(7) of the applicable development control regulations and (iii) MCGM's demand of payment of capitalized value from the developers before Annexure - II is certified & issued by MCGM.
- (viii). With utmost respect and gratitude, the issues set out in paragraph No. (vii) above was adjudicated and determined by the Hon'ble Bombay High Court, in its judgment passed in the case of *Shivaji Krishna Zunjare v. State of Maharashtra & Ors reported in 2004 (4) MhLJ 764*, where the Hon'ble Bombay High Court has manifestly held that the provisions of Development Control Regulation 33(10) read with Appendix IV was intended to protect the interest of actual occupants of slum lands and the rights of MTs and VTs stood terminated. For ease of reference relevant portion of the judgment is extracted below:

16. ... What the Slum Rehabilitation Scheme has provided for in Development Control Regulation 33(10) read with Appendix IV thereto is to confer a legal recognition on the actual occupant and to the exclusion of the structure owner. Therefore, it is not necessary for the Court to express any conclusive opinion on whether an employer who has allotted service accommodation to an employee can still

continue to be regarded as an occupier for the purpose of section 2(e)(ii). Even if the argument as suggested by MSRTC is accepted, what the provisions of Development Control Regulation 33(10) have done is to confer legal recognition only upon a certain category of occupiers viz., those whose names appear in the electoral roll as on 1st January, 1995 or for a prior period and who are in actual occupation of structures situated on slum lands. Constructive occupation (if indeed such can be the nature of the right of an employer such as MSRTC in the present case) does not fall for protection under the terms of the Slum Rehabilitation Scheme. Development Control Regulation 33(10) confers legal recognition on the rights of an actual occupant whose occupation dates back at least to 1st January, 1995, to the exclusion of the rights of the structure owner. Even otherwise as already noted earlier, Development Control Regulation 33(10) read with Appendix IV specifically terminates a vacant land tenure. The provisions which have been laid down in Development Control Regulation 33(10) and Appendix IV thereto are manifestly intended to subserve an important purpose of protecting the interest of actual occupants of slum lands provided their occupation is as of 1st January, 1995, or prior thereto.

(emphasis supplied)

A copy of the judgment is hereto annexed as **Annexure A**.

- (ix). Thus, evidently, upon a SR Scheme being sanctioned under the Slum Act the rights of MTs and VLTs stood determined by operation of law and there required no separate proposal for these municipal tenants as they formed part of the SR Scheme and MCGM was obligated to certify their eligibility by issuing an Annexure - II after following procedure prescribed under the provisions of Slum Act.
- (x). As a corollary legitimacy in respect of demand for payment of capitalized value in respect of a plot of municipal land upon which SR Scheme is implemented by MCGM and sanctioned by Chief Executive Officer, Slum Rehabilitation Authority ("the CEO, SRA") becomes questionable and assuming there was legitimate authority for such demand, then it ceases to exist.
- (xi). This position was further fortified by advent of DCPR 2034. As per Clause 1.12 of Regulation 33(10) of DCPR 2034, upon a SR Scheme being sanctioned by issuance of Letter of Intent the rights of MTs and VLTs automatically ceases to exist by operation of law. For ease of reference Clause 1.12 of Regulation 33(10) of DCPR 2034 is reproduced as under:

"33(10)

...

1.12 Automatic cancellation of Vacant Land Tenure and Leases- If any land or part of any land on which slum is located is under vacant land tenure, the said tenure/lease created by MCGM or

Municipal Commissioner shall stand automatically terminated as soon as letter of Intent is issued by SRA for a SRS, which is a public purpose, on such land is prepared and submitted for approval to the SRA. Any arrears of dues to be collected by MCGM shall not be linked to the issue of any certificate or NOC relating to the Slum Rehabilitation Scheme.

On sanction of SRS, rights of imla malik, municipal tenants or any other tenancy shall stand terminated in respect of the sanctioned SRS."

Extract of Clause 1.12 of Regulation 33(10) of the DCPR 2034 is hereto annexed as **Annexure B**. Even earlier as per DCR 1991, the clause of automatic termination of VLTs always existed upon a slum scheme being sanctioned.

- (xii). By virtue of the provisions of DCPR 2034, the fate of MTs and VLTs is clarified and there is no need for the developers to submit a separate proposal in respect of MTs and VLTs, and upon their eligibility being determined by MCGM they shall be entitled to the benefits of the SR Scheme so implemented. However, *bona fide* but under mistaken understanding of provisions of law, as it always existed, MCGM has been insisting for a separate proposal in respect of these MTs and VLTs, demanding payment of capitalized value and are hesitant in certification of Annexure - II in respect thereof.
- (xiii). As a result of MCGM's mistaken belief and non-cooperation by the MTs and VLTs the developers are facing hurdles in implementing the SR Schemes in a time bound manner. The developers executing the SR Schemes are under a huge distress due to the difficulty in getting approvals from the Municipal Authorities ever after following due process for the speedy implementation of the Schemes.
- (xiv). The developers are unable to get sanction from the Municipal Authorities even after obtaining 70% consent from the slum-dwellers, which is a mandatory requirement for the implementation of the Scheme. One of the major roadblock being faced by the developers is the existence of MTs and VLTs upon municipal lands on which SR Schemes is sanctioned and being implemented.
- (xv). Consequently, a number of SR Schemes are pending implementation for years as the Municipal Authority has not readily been taking any action to decide on the eligibility of such MTs and VLTs. As a consequence, the tenants on the municipal lands are refusing to cooperate despite developers being ready and willing to offer them rehab tenements in the SR Scheme due to uncertainty of their rights. The consequence thereof being that the SR Schemes so initiated for the well-being of the slum dwellers have been pending for years.
- (xvi). SR Schemes are projects affecting a large mass of people who have been waiting in the expectation of a better standard of living, to be

equipped with basic amenities which they are entitled to as human beings. It is thus in the interest of such deprived persons, that the sanctions be accorded in an effective manner to ensure appropriate rehousing of the slum dwellers.

- (xvii). It is therefore most respectfully submitted that in light of the issue of over-crowding faced in the cities like Mumbai, the effective and speedy implementation of the SR Schemes is the need of the hour. It is only with the positive union of the Authority and the developers that the issue of slums can be eradicated, ensuring the slum dwellers a better and a humanitarian standard of living.
3. In view of the submissions made, **we humbly request you to issue necessary directions to** department of the corporation to:
 - (a) Decide eligibility of all MTs and VLTs in all cases where slum schemes are implemented upon municipal lands and accordingly issue Annexure II in respect thereof, and
 - (b) Initiate action to ensure that VLTs and MTs are vacated within 8 weeks of issuance of Annexure II and developers are handed over peaceful and vacant possession of structures occupied by them with due intimation to CEO, SRA.
4. It is only then that we will see a glimmer of light at the end of the tunnel putting to rest the long-drawn battle between the developers and the authorities which will augment expeditious implementation of the SR Scheme.
5. Having stated the aforesaid, we would also like to take this opportunity to appreciate and acknowledge the efforts which are being taken by you towards development of the city and upliftment of the people residing therein. We are extremely thankful to you for your bold and prompt approach towards various initiatives which have been implemented by you such as:
 - (a) providing financial assistance to BEST at such a critical juncture where the BEST is incurring huge losses;
 - (b) the new traffic rule of imposing very hefty penalties for illegal parking resulting in discipline amongst public at large;
 - (c) overseeing the flood relief and rehabilitation work in Sangli, and
 - (d) the active participation towards solid waste management in the city of Mumbai by ensuring the disposal and processing of waste at the ward level.
6. It is evident from the several initiatives undertaken by you under your leadership and supervision that there is a genuine effort by MCGM to work towards the betterment of the city. Such acts on your part have re-

instilled our faith that our concerns will not go unnoticed and reliefs as urged by the developers will be sympathetically granted.

7. As a concluding note, we would like to say that we understand the complexities involved in the implementation of such Schemes involving a large group of people, however it is in the larger public interest that SR Schemes be given priority to ensure timely sanctions for the speedy implementation of the said Schemes.

Thanking You,

Your sincerely,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv Chaudhary MRICS
Chief Operating Officer

Encl.: as above

CC:

Shri Deepak Kapoor (I.A.S.)

Chief Executive Officer

Slum Rehabilitation Authority

Bandra (E), Mumbai - 400051



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the Tribunal is also justified to maintain the order to the effect that 'unless the said post becomes de-reserved', a candidate appointed temporarily on such vacancy of ST/SC category would have only status of 'temporary' candidate.

7. A candidate from the open category cannot claim a right of permanency, on the said reserved post. There is nothing pointed out that such post becomes de-reserved automatically after lapse of time or any other such things. In the circumstances, appellant being open category candidate would have no right to hold the post meant for reserved category candidate. The 'quota' or any action based on the Reservation Policy cannot be disturbed without following the due procedure of law.

8. It needs to be mentioned here that if candidates belonging to the SC/ST category are not available, the petitioner's case may be considered by the Management, if there is still a vacancy and/or the post is still required to be filled in. However, the Management is at liberty to consider this aspect, if a case is made out on merit.

9. In view of this observation, I decline to interfere with the finding recorded by the Presiding Officer, School Tribunal, dated 27th October, 1989, hence termination is upheld.

10. The Writ Petition is accordingly disposed of. No order as to costs.
 Certified copy expedited.

Order accordingly.

MAHARASHTRA SLUM AREAS (IMPROVEMENT, CLEARANCE,
 REDEVELOPMENT) ACT, SECTION 2(e)(v) : RIGHTS OF TRESPASSER
 (Dr. D. Y. Chandrachud, J.)

SHIVAJI KRISHNA ZUNJARE

Petitioner.

vs.

STATE OF MAHARASHTRA and others

Respondents.

Maharashtra Slum Areas (Improvement, Clearance, Re-development) Act (28 of 1971), S. 2(e)(ii), Maharashtra Regional Town Planning Act (37 of 1966), S. 37(2) and Development Control Regulations for Greater Mumbai Reg. 33(10) Appendix IV — Eligibility for slum rehabilitation scheme — Slum Rehabilitation Authority holding that petitioner was ineligible — Maharashtra State Road Transport Corporation was originally allotted plot of land of which some portion was surrendered back to the Municipal Corporation — Respondent who was original allottee departed from the premises — Petitioner was a trespasser and subsequently the Deputy Collector recognised the position of the petitioner as a protected occupier — Petitioner was forcibly evicted from the premises by the police at the instance of respondent — Maharashtra State Road Transport Corporation as the owner of the structure had no right to participate in the Slum Rehabilitation Scheme in view of clear provisions of Regulation 33(10) — Conclusion of authority that petitioner was ineligible was not justified.
 (2001)4 SCC 46, AIR 1997 SC 152, AIR 1996 SC 2151, (1990)1 SCC 520, 1991 Mh.L.J. 263, Ref. (Paras 11, 12 and 16)

W. P. Nos. 1838 and 1936 of 2004 decided on 23-7-2004. (Bombay)

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For petitioner : *M. D. Angal*

For respondent Nos. 1 and 2 : *Pradip Jadhav, AGP*

For respondent No. 3 : *S. G. Surana*

For respondent No. 6 : *G. S. Hegde*

For respondent No. 7 : *P. R. Naidu*

List of cases referred :

1. *Shantistar Builders vs. Narayan Khimalal Totame*, (1990) 1 SCC 520 (Para 4)
2. *J. P. Ravidas vs. Navyuvak Harijan Uthapan Multi Unit Industrial Co-op. Society Ltd.*, AIR 1996 SC 2151 (Para 4)
3. *Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986 SC 180 (Para 4)
4. *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan*, AIR 1997 SC 152 (Para 4)
5. *Government of the Republic of South Africa vs. Grootboom*, (2001) 4 SA 46 (CC) (Para 5)
6. *Taj Mohamed Yakub vs. Abdul Gani Bhikan*, 1991 Mh.LJ. 263 (Paras 10, 13)

ORAL JUDGMENT :— Rule, returnable forthwith. Counsel appearing on behalf of the respondents waive service. By consent taken up for hearing and final disposal.

2. Both these petitions are directed against an order passed by the Slum Rehabilitation Authority on 8th April, 2004, holding that the petitioners were ineligible to participate in a Slum Rehabilitation Scheme. In the circumstances, notices have been issued to the petitioners to vacate the premises. In order to appreciate the controversy which arises in these proceedings, it would at the very outset be instructive to advert to the provisions of the Development Control Regulations for Greater Mumbai, more particularly, Regulation 33(10). By a notification dated 15th October, 1997, in exercise of powers conferred by sub-section (2) of section 37 of the Maharashtra Regional Town Planning Act, 1966, the State Government sanctioned certain modifications in Development Control Regulation 33(10) read with Appendix IV thereto. Clause 1 defines the eligibility for participating in a redevelopment scheme and provides as follows :

“1. *Eligibility for redevelopment Scheme.* — (a) For redevelopment of slums including pavements, whose inhabitants' names and structures appear in the electoral roll prepared with reference to 1st January, 1995 or a date prior thereto, but where the inhabitants stay at present in the structure, the provisions of Appendix IV shall apply on the basis of a tenement in exchange for an independently numbered structure.

(b) Subject to the foregoing provisions, *only the actual occupants of the hutment, shall be held eligible, and the so-called structure-owner other than the actual occupant if any, even if his name is shown in the electoral roll for the structure, shall have no right whatsoever to the reconstructed tenement against that structure.*” (emphasis supplied).

3. From these provisions it is clear that the primary condition which is stipulated for eligibility to participate in a redevelopment scheme is that the name of the inhabitant of a structure situated in a slum must appear in the electoral roll prepared with reference to 1st January, 1995, or a date prior thereto. Secondly, it is necessary that the inhabitant must reside in the structure. Thirdly, only the actual occupants of hutments are eligible and, the right of a structure owner other

than the actual occupant must give way to the right of the occupant even if the name of the owner of the structure is shown in the electoral roll. The owner of the structure, it has been clearly specified, shall have no right whatsoever to the reconstructed tenement against that structure. Clause 1.5 of Appendix IV then provides as follows :

“1.5 A certified extract of the relevant electoral roll shall be considered adequate evidence to establish the eligibility of a person, provided he is found residing in the structure. *This is to avoid the possibility of persons who have left the structure coming back to claim free tenement under the scheme even though they have in the normal course left the slum and gone away into a proper non-slum area or out of Brihan Mumbai.* If hutment dwellers are found resident in the structure, but the names are on the electoral roll on or prior to 1st January, 1995 at another slum/pavement site in Brihan Mumbai, they shall be considered eligible but only at the place of present residence. In case of doubt or dispute, the decision of the Competent Authority to be appointed by the Government in Housing and Special Assistance Department shall be final and binding on all the parties concerned.” (emphasis supplied).

Finally, it would be necessary to refer to clause 1.12, in that it provides an important condition which has a bearing on the present case:

“1.12. Automatic cancellation of Vacant Land Tenure — If any land or part of any land on which slum is located is under vacant land tenure the said tenure/lease created by Brihan Mumbai Municipal Corporation or Municipal Commissioner shall stand automatically terminated as soon as a slum rehabilitation scheme, which is a public purpose, on such land is prepared and submitted for approval to the Slum Rehabilitation Authority. Any arrears of dues to be collected by Brihan Mumbai Municipal Corporation shall not be linked to the issue of any certificate or NOC relating to the Slum Rehabilitation Project.”

Constitutional imperatives :

4. While dealing with the present case, the Court cannot possibly overlook the circumstance that the decision of the Court is inextricably associated with a governmental policy which deals with the provision of housing to the marginalized and the poor. The entitlement to housing constitutes a basic human right and a fundamental right which has been recognized in judicial decisions under Article 21 of the Constitution. In *Shantistar Builders vs. Narayan Khimalal Totame*, (1990) 1 SCC 520 the Supreme Court in a decision of three Learned Judges held that the right to life comprehends the right to shelter; the right to reasonable residential accommodation. The fundamental nature of the right to reside and settle in conditions of dignity was recognized once again in a decision of two Learned Judges of the Supreme Court in *J. P. Ravidas vs. Navyuvak Harijan Uthapan Multi Unit Industrial Co-op. Society Ltd.*, AIR 1996 SC 2151. The Court noted that since the decision in *Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986 SC 180 where the Constitution Bench held that the right to life included the right to residence, that was the position which has been adopted by the Court. In *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan*, AIR 1997 SC 152, the Supreme Court held that the State, including

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its local bodies, constitute an integral part of the implementation of the Directive Principles contained in Part IV of the Constitution. The Court held that it was, therefore, the duty of the appellant before it to enforce schemes in a planned manner by annual budgets to provide a right of residence to the poor.

5. The issue of housing is the subject matter of significant jurisprudence in other developing societies. Section 26 of the Constitution of the Republic of South Africa, 1996 provides that everyone has a right to have access to adequate housing; that the State must take reasonable legislative and other measures within its available resources, to achieve the progressive realization of this right and that no one may be evicted from their home without an order of Court made after considering all the relevant circumstances. There is an embargo against legislation that permits arbitrary evictions. The leading judgment in the area is *Government of the Republic of South Africa vs. Grootboom*, (2001) 4 SA 46 (CC). The Constitutional Court held that though section 26(1) does not expressly say so, there is, at the very least, a negative obligation placed upon the State and all other entities and persons to desist from preventing or impairing the right of access to housing. The Constitutional Court then held thus :

“A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right.... If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test ... The question is whether a housing programme that leaves out of account the immediate amelioration of the circumstances of those in crisis can meet the test of reasonableness established by the section.”

6. There is a significant amount of debate in regard to the justifiability of socio-economic rights. For the purposes of the present case it is not necessary for this Court to enter upon this area. In the present case, there is a clear policy which has been adopted by the State Government in recognition of the right of housing for the marginalized and poverty stricken segment of society which resides in slums. The Court is, therefore, neither called upon to lay down policy not indeed to issue directions in regard to enforcement in an uncharted area. The constitutional imperatives are as strong in India as they are in South Africa. The interpretation which the Court places on legislative and administrative measures adopted by the State in recognition of the right to housing must effectuate and advance the salutary object underlying the adoption of those measures.

7. The facts in these two cases may now be considered in this background. The Municipal Corporation allotted a plot of land viz., Plot No. 75 (Part) admeasuring 66 ft x 30 ft. to the Maharashtra State Road Transport Corporation (MSRTC) on the basis of a Vacant Land Tenure. In June, 1979, half the area of the plot was handed back to the Municipal Corporation. There is no dispute about

the fact that the plot of land has been declared as a slum under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. MSRTC had constructed upon the plot three structures comprising of tin sheets which were originally used as a car garage, but were later on converted to be used as service quarters for the employees. Two sheds out of the three were given to an employee of the MSRTC by the name of Mangesh Krishna Bandekar, while another shed was given to Kamlakar Krishna Zunjare as service quarters. The petitioner in Writ Petition 1838 of 2004, Shivaji Krishna Zunjare, is the brother of the employee of the MSRTC which in turn is impleaded as the seventh respondent. The petitioner in Writ Petition 1936 of 2004 is the daughter of the deceased employee of MSRTC, who in turn was allotted the service quarters. The petitioner in Writ Petition 1838 of 2004 was in occupation of the premises together with his brother since 1982. His name appeared in the electoral roll for the first time in the year 1983 and has consistently thereafter been reflected in the electoral rolls. According to the petitioner, he and his brother continued to reside jointly in the suit premises upto about 1990. As a result of disputes within the family, the seventh respondent left the suit structure and commenced residing at his own residential premises situated at Malad (West) Mumbai 400 064. According to the petitioner, the seventh respondent did not thereafter return to the premises. Insofar as is material to this petition, it is clear that in the voters list that has been prepared with reference to the cut off date of 1st January, 1995, the name of the seventh respondent is shown not in the electoral roll pertaining to the premises in question, but premises which the seventh respondent had acquired at Malad. Therefore, for the purposes of these proceedings, it is evident that the seventh respondent had departed from the premises prior to the cut off date of 1st January, 1995. The petitioner was issued a communication dated 28th February, 1996 by the Deputy Collector (Encroachment), recognizing the status of the petitioner as a protected occupier in pursuance of a survey which was conducted as far back as in September, 1990. The petitioner continued to reside in the premises from 1982 until 17th June, 1997. An electoral identity card was issued to the petitioner with reference to the suit premises in 1995 and on 4th March, 1997 a document styled as Annexure II came to be issued to the petitioner in which he was declared as eligible to participate in the slum rehabilitation scheme, in the meantime, on 6th November, 1997 the Slum Rehabilitation Authority issued a Letter of Intent to the sixth respondent for carrying out development under the Slum Rehabilitation Scheme on the plot in question.

8. The petitioner, it must be noted, had filed a petition being writ petition 1444 of 1998 along with a group of 10 others challenging the Letter of Intent and development permission issued by the Slum Rehabilitation Authority to the sixth respondent. According to the petitioner, the Additional Collector (Encroachment) after carrying out a physical verification, found the petitioner to be eligible on 9th November, 1998. Thereafter, on 25th July, 2002, the petition came to be disposed of in terms of minutes before R. J. Kochar, J. and there was a direction to the Chief Executive Officer of the Slum Rehabilitation Authority to redetermine the eligibility of occupants on the plot in accordance with law. Consequential directions were also issued that after the list of eligible occupants is finalized, those who had not already been enrolled as members of the society shall be

enrolled and those found ineligible shall be deleted. In pursuance thereof a hearing took place before the Chief Executive Officer of the Slum Rehabilitation Authority and by an order dated 16th November, 2002 the petitioner was specifically held to be eligible, for the allotment of accommodation in the Slum Rehabilitation Scheme. The order of the Slum Rehabilitation Authority recorded that in this case the petitioner was occupying the structure as on 1st January, 1995 and that the relevant electoral roll supported his claim.

9. The order passed by the Slum Rehabilitation Authority was challenged by MSRTC in writ petitions before this Court which were disposed of on 3rd September, 2003. While remanding the matter back to the Slum Rehabilitation Authority, this Court directed a reconsideration of the position with reference to the definition of the expression 'occupier' in section 2(e) of the Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Thereupon, by the impugned order dated 8th April, 2004, the Slum Rehabilitation Authority came to the conclusion that the petitioner was not entitled to participate in the Slum Rehabilitation Scheme. According to the Slum Rehabilitation Authority though the petitioner was in fact occupying the structure as on 1st January, 1995, he was doing so in his capacity as a relative of an allottee of MSRTC service accommodation, that possession was taken from the petitioner on 20th June, 1997 in pursuance whereof a Panchanama had been prepared. The Slum Rehabilitation Authority opined that thereafter, forcible possession was taken by the petitioner who had re-entered upon the structure.

10. While assailing the correctness of the order passed by the Slum Rehabilitation Authority, the counsel for the petitioner submitted that the order is directly in the teeth of the relevant provisions of the Development Control Regulations and of the law which has been laid down by this Court. Counsel submitted that Development Control Regulation 33(10) and Appendix IV thereto postulate the recognition of the rights of actual occupants of structures which are situated in slum areas to the exclusion of the rights of the owners of the structures situated thereon. The definition of the expression 'occupier' in section 2(e)(v) of the Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 comprehends a person who is eligible to pay to the owner damages for the use and occupation of any land or building and therefore, specifically comprehends a trespasser. The object of the legislation is to confer protection upon occupants in slum areas who by the very nature of their occupation do not have a right, title or interest and it is the occupation of these persons that is recognized and protected by law. This, it was urged, was also the view which was taken by a Division Bench of this Court in *Taj Mohamed Yakub vs. Abdul Gani Bhikan*, 1991 Mh.L.J. 263. On the other hand, on behalf of MSRTC and the Slum Rehabilitation Authority the order passed by the authority has been sought to be justified by submitting that the claim of the petitioner was entirely as a member of the family of the seventh respondent and that the petitioner himself had no right, title or interest to reside in the premises in his own right. The most vehement opposition in these proceedings has come from the seventh respondent who now seeks to assert a claim to participate in the Rehabilitation Scheme. He has, however, not challenged the order of the Slum Rehabilitation Authority which in any event does not recognize his entitlement.

11. In considering the rival submissions which have been urged on behalf of the parties, it would be necessary to revisit some of the facts on which there is no dispute. MSRTC was originally allotted a plot of land of which some portion was surrendered back to the Municipal Corporation in 1979. On the plot, MSRTC originally constructed a garage which was then converted into three tin structures in which two employees came to be housed. These were initially tin sheds in respect of which makeshift accommodation was provided to the employees. The seventh respondent who was the original allottee departed from the premises sometime prior to 1st January, 1995. According to the petitioner, the seventh respondent left the premises in 1990 and to this averment in the petition there has been no denial in the affidavit that has been filed on behalf of the seventh respondent. The electoral roll of 1st January, 1995 does not contain the name of the seventh respondent as a resident of the structure in dispute and in fact his name appears in the premises which he had purchased at Malad in his own right. Therefore, for the purposes of this petition it would be necessary to proceed on the basis that the petitioner was in fact a trespasser in the premises on 1st January, 1995. On 28th February, 1996, the Deputy Collector (Encroachment) recognized, upon survey, the position of the petitioner, as a protected occupier.

12. What followed thereafter was remarkable, because MSRTC addressed a letter to the police on 17th June, 1997 recording that the petitioner was in unauthorized occupation. The petitioner was forcibly evicted from the premises with the help of the police and under the watchful eye of the seventh respondent, his own brother, who now has staked a claim to participate in the Slum Rehabilitation Scheme. Development Control Regulation 33(10) specifically recognizes the eligibility for participation in a redevelopment scheme of inhabitants whose names and structures appear in the electoral roll prepared with reference to 1st January, 1995 or a date prior thereto. Sub-clause (b) of clause 1 is clear in its terms when it lays down that only the *actual occupants* of the hutments shall be held eligible and the *so called structure owner other than the actual occupant shall have no right whatsoever* to the reconstructed tenement even if his name was in the electoral roll. Clause 1.5 of Appendix IV provides that a certified extract of the relevant electoral roll shall be considered as adequate evidence to establish the eligibility of a person provided he is found to be residing in the structure. This is to avoid the possibility of persons who have left the structure coming back to claim a free tenement under the scheme even though they have in the normal course left the slum. Clause 1.12 of Appendix IV specifically lays down the automatic cancellation of Vacant Land Tenure. The provision is that if any land on which a slum is located is under vacant land tenure, such tenure or lease created by the Municipal Corporation shall stand automatically terminated as soon as a slum rehabilitation scheme, which is a public purpose, on such land is prepared and submitted for approval to the Slum Rehabilitation Authority. This provision is important because it operates to terminate the holding of MSRTC which was admittedly on the basis of a vacant land tenure.

13. Now insofar as the petitioner is concerned, he is a trespasser who initially came into occupation of the structure since 1982. Undoubtedly, the initial character of the occupation of the petitioner may have been in his

capacity" as the brother of the seventh respondent to whom the premises were allotted by the MSRTC. The seventh respondent, however, left the premises and the material date with reference to which the nature of the occupation must be considered is 1st January, 1995. On that date, the petitioner was for all intents and purposes a trespasser. Counsel for the seventh respondent has sought to place reliance on the circumstance that the petitioner had instituted a suit in the City Civil Court for a declaration of his own right, title and interest, but that suit came to be dismissed in default and an injunction was declined therein. But, that is how it is expected to be, because in a suit instituted by the petitioner his claim had to necessarily fail, even if it was heard on merits, because he had no right, title and interest and could claim none. The important position which the Court must, however, recognize is that Development Control Regulation 33(10) confers legal recognition specifically upon a class of occupants who may otherwise not have any right, title or interest in law provided that their structures are situated on notified slums and that their occupation is of a date prior to 1st January, 1995. This issue came up for consideration before a Division Bench of this Court in *Taj Mohamed Yakub vs. Abdul Gani Bhikan*, 1991 Mh.LJ. 263. This Court was called upon to interpret the section 2(e)(v) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 which defines the expression 'occupier' to include any person who is liable to pay to the owner damages for the use and occupation of any land or building. In that context, Mr. Justice M. L. Pendse (as the learned Chief Justice then was) speaking for a Division Bench held that a trespasser in occupation is an occupier within the meaning of section 2(e)(v) and therefore, a decree for possession cannot be executed without securing the permission of the competent authority under section 22. In that context, the Division Bench held thus :

"In our judgment, there is no reason whatsoever to exclude the trespasser from the ambit of section 2(e)(v) of the Act. A trespasser is a person, who is liable to pay to the owner damages for the use or occupation of any land or building. The scheme of the Act also supports the interpretation we have put on section 2(e) and the definition of the expression "occupier". Perusal of various sections of the Act leaves no manner doubt that the Legislature clearly contemplated that the expression "occupier" would take in its sweep every person who is in occupation of the area declared as slum area and irrespective of the character of possession of such person. The provisions were enacted for improvement of the slum areas and it is entirely irrelevant as to who is in occupation of such area and in what capacity."

14. On behalf of MSRTC, it has been sought to be asserted that the Corporation is an occupier within the meaning of section 2(e)(ii) of the Act. Section 2(e) defines the expression 'occupier' thus :

"(e) "occupier" includes, —

- (i) 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;
- (ii) an owner in occupation of, or otherwise using, his land or building;
- (iii) a rent-free tenant of any land or building;

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- (iv) a licensee in occupation of any land or building; and
- (v) any person who is liable to pay to the owner damages for the use and occupation of any land or building.”

15. Clause (ii) of section 2(e) refers to an owner who is in occupation of, or otherwise using, his land or building. Sub-clause (ii) of clause (e) must be read so as to afford a harmonious interpretation of all the sub-clauses in clause (e) and consistent with the object and purpose of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The definition in section 2(e) is an inclusive definition and includes an owner in occupation of or otherwise using his land or building. In sub-clause (v) it includes, as the Division Bench held, a pure trespasser because he is a person who is liable to pay to the owner damages for the use and occupation of any land or building. What the Slum Rehabilitation Scheme has provided for in Development Control Regulation 33(10) read with Appendix IV thereto is to confer a legal recognition on the actual occupant and to the exclusion of the structure owner. Therefore, it is not necessary for the Court to express any conclusive opinion on whether an employer who has allotted service accommodation to an employee can still continue to be regarded as an occupier for the purpose of section 2(e)(ii). Even if the argument as suggested by MSRTC is accepted, what the provisions of Development Control Regulation 33(10) have done is to confer legal recognition only upon a certain category of occupiers viz., those whose names appear in the electoral roll as on 1st January, 1995 or for a prior period and who are *in actual occupation of structures situated on slum lands*. Constructive occupation (if indeed such can be the nature of the right of an employer such as MSRTC in the present case) does not fall for protection under the terms of the Slum Rehabilitation Scheme. Development Control Regulation 33(10) confers legal recognition on the rights of an actual occupant whose occupation dates back at least to 1st January, 1995, to the exclusion of the rights of the structure owner. Even otherwise as already noted earlier, Development Control Regulation 33(10) read with Appendix IV specifically terminates a vacant land tenure. The provisions which have been laid down in Development Control Regulation 33(10) and Appendix IV thereto are manifestly intended to subserve an important purpose of protecting the interest of actual occupants of slum lands provided their occupation is as of 1st January, 1995, or prior thereto.

16. In the circumstances, the conclusion which has been arrived at by the Slum Rehabilitation Authority in holding that the petitioner was ineligible is clearly and manifestly in error. Insofar as the companion petition is concerned, here too it must be held that MSRTC as the owner of the structure has no right to participate in the Slum Rehabilitation Scheme in view of the clear provisions of Development Control Regulation 33(10) which confer such recognition only on the actual occupant and not upon the owner of the structure. In this view of the matter, both the petitions are allowed. The impugned order passed by the Slum Rehabilitation Authority insofar as it holds that the petitioners are not eligible to participate in the Slum Rehabilitation Scheme are quashed and set aside. There shall accordingly be a direction to the effect that both the petitioners shall be eligible to participate in the Slum Rehabilitation Scheme subject to the fulfilment of all the requirements.

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The petitions are disposed of accordingly.

There shall be no order as to costs.

On the request of counsel appearing on behalf of the Slum Rehabilitation Authority, this order shall remain stayed for a period of four weeks.

Parties to act on a copy of this order duly authenticated by the Associate/Personal Secretary of this Court.

Order accordingly.

BOMBAY MUNICIPAL CORPORATION ACT

(F. I. Rebello, J.)

STATE BANK OF INDIA

Petitioner.

vs.

BRIHANMUMBAI MUNICIPAL CORPORATION

OF GREATER BOMBAY and others

Respondents.

(a) **Mumbai Municipal Corporation Act, 1888, SS. 169, 170, Water Charges Rules, R. 5.1 and Sewerage and Waste Removal Rules, R. 7.3 — Levy of tax — Demand for charges which had become due prior to issuance of the bills — That cannot be said to be levying of tax with retrospective effect — There is no provision either under the Act or the Rules by which claim for tax can be anticipated or made in advance.** (Para 7)

(b) **Mumbai Municipal Corporation Act, 1888, S. 169 — Disconnection of water connection — Notice was served on the consumers before disconnecting water supply on ground of being defaulter in payment of water charges — They were aware of the disconnection — Plea that the notice was not given prior to disconnection rejected.** (Paras 8 and 9)

(c) **Mumbai Municipal Corporation Act, 1888, S. 156(f) (as inserted by Maharashtra Act 34 of 1973 and Water Charges Rules, R. 5.1 and Sewerage and Waste Removal Rules, R. 7.3 — By amendment, no fetter on the corporation to charge either water charges/taxes, sewerage taxes/charges — There is no requirement of general rates being provided in the assessment book — If there is power to charge special rates and that power has been exercised then those special rates would have to be shown in the assessment book.** 1946 Vol. XLIX BLR 752, (1976)4 SCC 830, 1988 Mh.L.J. 707, Disting. (Para 10)

(d) **Mumbai Municipal Corporation Act, 1888, SS. 169, 170, Water Charges Rules, R. 5.1.3 and Sewerage and Waste Removal Rules, R. 7.3 — Levy of charges — Matter was not concerned with the assessment of 2000 but the rates prevailing earlier — Plea that higher rate had been charged than prescribed rate not tenable.** (Para 11)

For petitioner : **Narayan Sahu** with **Santosh Pawar** instructed by
Bhave and Co.

For respondents : **Mrs. A. R. Joshi**

List of cases referred :

1. *Municipal Borough Sholapur vs. The Governor General of India in Council*, 1946 Vol. XLIX BLR 752 (Paras 6, 9)
2. *Municipal Corporation of City of Hubli vs. Subha Rao Hanumatharao Prayag and others*, (1976)4 SCC 830 (Paras 6, 9)

Writ Petition No. 2787 of 1999 decided on 28-7-2004. (O.O.C.J., Bombay)

of photo passes that have occurred so far. A photo pass will be given after the new tenement has been occupied.

1.10 Any person who owns a dwelling unit on ownership basis in MCGM area, shall not be held eligible under this scheme. Any person who can be held eligible under more than one SRS, shall be held eligible in only one scheme.

1.11 Premium for ownership and terms of lease-. That part of Government/MCGM/MHADA land on which the rehabilitation component of the SRS will be constructed shall be leased to the Co-operative Housing Society of the slumdwellers on 30 years. Annual lease rent of Rs. 1001 for 4000 per sq. m. of land or part thereof and lease shall be renewable for a further period of 30 years at a time simultaneously land under free sale component shall be leased directly to the Society/Association of the purchasers of the tenement under free sale component. Pending the formation of the Society/Association of the purchasers in the free sale component with a provision for further renewal for a period of 30 years at a time.

The lease rent for the free sale component shall be fixed by SRA. '[In addition to above, the Developer/Co-op. Housing Society shall pay premium at the rate of 25% of ASR of the year of issue of LOI, in respect of SRS proposed to be undertaken on lands owned by Government, Semi-Government undertakings and Local Bodies and premium shall go to land owning authority such as MHADA, MCGM, MMRDA as the case may be as prescribed by the land-owning authority. The premium installment so recovered shall be remitted to concern land owing authority within 30 days from the date of recovery.]

In the case of Govt. land, the premium shall be deposited in Nivara Nidhi.

The amount of premium shall be recovered in installment as may be prescribed by Govt. from time to time. Land owning authority such as MCGM, MMRDA, MHADA shall not recover land premium in any other form. Proposals for SRS on land owned by Central Govt shall not be accepted unless NOC for the scheme is obtained from Central Govt.

1.12 Automatic cancellation of Vacant Land Tenure and leases- If any land or part of any land on which slum is located is under vacant land tenure, the said tenure/lease created by MCGM or Municipal Commissioner shall stand automatically terminated as soon as letter of Intent is issued by SRA for a SRS, which is a public purpose, on such land is prepared and submitted for approval to the SRA. Any arrears of dues to be collected by MCGM shall not be linked to the issue of any certificate or NOC relating to the Slum

1. Amended by Corri. Notification No. TPB-4317/629/C.R.118 (III)/2017/UD-11, Dated - 12/11/2018.

Rehabilitation Scheme. On sanction of SRS, rights of imla malik, municipal tenants or any other tenancy shall stand terminated in respect of the sanctioned SRS.

1.13 Recovery of pending dues such as assessment, compensation, occupational charges, non-agricultural tax/dues etc. pending with public authorities such as State Govt, MHADA, and/or MCGM shall be dealt with separately and not be linked to grant of approval or building permission to the slum rehabilitation projects.

1.14 A Slum Rehabilitation Project shall be considered preferably when submitted through a proposed or registered co-operative housing society of hutment dwellers on site. The said society shall include all the eligible hutment on site while submitting the S.R. Scheme and give an undertaking to that effect to SRA.

1.15 Where 51 percent or more of the eligible hutment-dwellers in a slum and stretch of road or pavement contiguous to it at one place agree to join a rehabilitation scheme, it may be considered for approval, subject to submission of irrecoverable written agreements of eligible hutment-dwellers before LOI.

Provided that nothing contained herein shall apply to Slum Rehabilitation Projects undertaken by the State Government or Public authority or as the case may be a Govt. Company as defined in Sec. 617 of the Companies Act 1956 and being owned & controlled by the State Government.]

1.16 In respect of those eligible hutment-dwellers on site who do not join the Project willingly the following steps shall be taken:

- (i) Provision for all of them shall be made in the rehabilitation component of the scheme.
- (ii) The details of the tenement that would be given to them by way of allotment by drawing lots for them on the same basis as for those who have joined the Project, will be communicated to them in writing by the Managing Committee of the Co-operative Housing Society if it is registered, or the developer. In case of dispute, decision of the CEO/ SRA shall be final and binding on all the parties concerned.
- (iii) The transit tenement that would be allotted to them or rent payable would also be indicated along with those who have joined the Project.
- (iv) If they do not join the scheme within 15 days after the approval has