

# High Court On Its Own Motion ( In The ... vs Bhiwandi Nizampur Municipal ... on 26 February, 2022

**Author: G.S.Kulkarni**

**Bench: Dipankar Datta, G. S. Kulkarni**

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1-SMPILNo.1-

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SUO MOTU PUBLIC INTEREST LITIGATION NO.1 OF 2020

High Court on its own motion  
(In the matter of Jilani Building  
at Bhiwandi)

... Petitioner

Versus

Bhiwandi Nizampur Municipal  
Corporation & Ors.

... Respondents

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Surve, Advocate -  
Amicus Curiae with Mr. Mutahhar Khan, Mr. Priyank Kapadia, Ms. Shradha  
Achliya and Mr. Siddharth Joshi Advocates.

Mr. Aspi Chinoy-Senior Advocate with Mr. A.Y. Sakhare-Senior Advocate Mr.  
Joel Carlos, Mr. Om Suryavanshi, Mr. Rohan Mirpur, Ms. Tupti Puranik  
Mr. Santosh Parad i/b. Aruna Savla for the Municipal Corporation.

Mr. R. S. Apte, Senior Advocate a/w Mr. N. S. Bobade i/by Mr. M.J. Bhat  
respondent No.1-BNMC.

Mr. R. S. Apte, Senior Advocate i/by Mr. Mandar Limaye for respondent N  
TMC.

Ms. Swati Sagvekar for respondent no.6 VVCMC.

Mr. Vijay D. Patil for respondent NO. 4 - UMC.

Mr. A. A. Kumbhakoni-Advocate General with Mr. P. P. Kakade-Government  
Pleader, Mr. B.V. Samant-AGP, Ms. G.R. Golatkar, AAGP and Mr. Manoj Badgu  
for State.

Mr. Sandip Marne for respondent No.8.

Mr. Nitin V. Gangal a/w Mr. Ashok D. Kadam and Ms. Prerana Shukla for respondent No.12-CIDCO.

Ms. Kavita N. Salunke a/w Mr. Mayank Mishra and Mallika Pujari for Respondent No.13 - MMRDA.

Mr. P. G. Lad for respondent-MHADA.

Mr. Sanjog Kabre-Dy.Municipal Commissioner, Mr.Kundan Valvi-Designated Officer (P/N) and Mr. Deepak Sharma-Asstt. Engineer (P/N) present.

CORAM : DIPANKAR DATTA, CJ &  
G. S. KULKARNI, J.

DATE : FEBRUARY 26, 2022

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1-SMPILNo.1-2020 F-25-2-22.do

JUDGMENT :

(Per G.S.KULKARNI, J.) PRELUDE

1. Alarmed and deeply pained by incidents of collapse of buildings resulting in loss of lives, we had initiated this suo motu PIL on September 24, 2020. The incident then was a collapse of a building known as "Jilani Building" at Bhiwandi, taking away 38 lives. Added to this incident, was an incident of collapse of another structure on 9 June, 2021, this time being a slum structure situated at "Malwani Slums" in which 12 persons lost their lives. The situation is such that different categories of structures, either private or in slums, old or comparatively recent, are vulnerable to a collapse posing constant threat to the lives of innocent people. The past incidents have shown a spree of human lives being lost which has continued unabated. Being confronted with such collapse, by our order dated June 11, 2021 we appointed a commission headed by Justice Mr J.P. Devdhar (Retd.) to make a report on the questions as set out in our order, to be submitted to this court. We ponder as to how long this unending cycle of sustaining buildings in ruinous state, uncontrolled illegal and unauthorized constructions, and amongst them the ghost of countless number of dilapidated buildings, would haunt innocent people. The deeper we dive into these issues, the scene gets murkier.

2. What possessed us was a poignant hope and optimism that things would improve and drastic steps would be taken by the concerned authorities to prevent building collapses. In the deepest of our hearts, we were concerned for the human lives being lost in these building collapses. We believed, with certainty, that the strong arms of law were required to be used firmly, not only to punish the disorderly, but also, to save the lives of those who become victims of unscrupulous elements in the society, who indulge in illegal constructions at the cost of human lives. When we say so, we are not only referring about those persons who undertake unauthorized constructions, but also about those public authorities who knowingly shut their eyes to their official duties and bring about a situation, where innocent people lose their lives, due to brazen dereliction in discharge of their public duties and/or by their contemptuous inactions.

3. We are informed by the Corporation that a vast portion of the scarce land in the city is under slums, which includes all kinds of lands, namely, the State Government lands, land belonging to public bodies as also to a small extent, private lands. The percentage of population in Mumbai and outskirts is also too large. We wonder, that when slums are openly allowed to proliferate on scarce and valuable public land, whether the well established principles under the "rule of law" at all prevails in relation to the rules, to transfer ownership of such lands from the "State" to the private parties. Something which possibly does not happen elsewhere in the country, is what has pained us, namely, that sustained encroachment on valuable government land in this city is encouraged to the benefit of encroachers and developers and becomes available for commercial exploitation. It cannot be expected, that on executive instructions and subordinate legislation, the State's ownership of land stands divested. The severity is such that when this land is being taken away by these forces, the owner of the land, namely, the Government or a public body and sometimes the private owner (if fails to assert his rights), has no say whatsoever. It becomes a situation of fait accompli. Is this the manner in which the law would require scarce public largesse or private land to be siphoned off, merely because it has the garb of a slum? Whether or not the doctrine of public trust applies when the government land is taken away in a manner not known to the Constitution? Whether the might of the unscrupulous forces is so strong that even the law makers would turn a blind eye to such Constitutional requirements ? These are some of the issues raising a deeper concern when we think about collapse of structures in the slum areas.

#### ABOUT THIS PIL

4. Be it so, at the relevant time with a ray of hope, and our mind filled with expectations from the municipal bodies of an urgent meticulous response, we framed the following questions in our order dated September 24, 2020:

- (i) As to whether the municipal bodies are completely helpless to prevent such collapses and prevent loss of lives?
- (ii) Is there not any machinery available with such municipal bodies to prevent such occurrences?
- (iii) Apart from old buildings, are newly constructed buildings (say, thirty/forty years old) too collapsing?
- (iv) Is there any procedure to identify such buildings which are likely to collapse?
- (v) Is there a mechanism in place for structural audit of the buildings?
- (vi) Isn't there a need for a uniform mechanism in this regard applicable to these Municipal Corporations?
- (vii) Is there a mechanism to fix accountability on the concerned persons, for not taking any action against illegal construction?

(viii) Has any survey been conducted regarding unauthorized structures/buildings in each of the Municipal Corporation areas and what steps are contemplated to raze the same?

(ix) Whether or not, there is need for setting up a public grievance cell where citizens can take their complaints?"

5. After the municipal corporations appeared and filed their replies to this petition, we were informed of the directions issued by a coordinate Bench of this Court in an order dated June 4/5, 2018 passed in Writ Petition No.8243 of 2017 (Bilal Salahuddin Shaikh vs. Commissioner, Bhiwandi Nizampur Municipal Corporation & Ors.) wherein comprehensive directions were issued by the Court in regard to the illegal constructions within the areas of Bhiwandi Nizampur Municipal Corporation (for short "BNMC"). In paragraph 2 of such order, the Court noted that a large number of writ petitions are being filed complaining about the BNMC not taking any action against large number of illegal structures which were required to be demolished. It was observed that though the municipal officers were fully aware about such constructions, no steps were taken to stop illegal constructions. While referring to an order dated August 3, 2017 passed in Writ Petition No. 11466 of 2016, the Court observed that a judicial notice was being taken, of the fact that although large number of illegal constructions have come up in the city, no action was being taken by the municipal corporation. Notably in the said order, the Court had ordered the Deputy Commissioner (Encroachment) on the establishment of the Corporation to be held responsible for prevention of illegal structures within the limits of the Corporation and for taking prompt action for the same. We also referred to another order dated October 4, 2018 of a coordinate Bench of this Court, passed in suo motu PIL No.2 of 2018, of which one of us (G.S. Kulkarni, J.) was a member, observing that an avalanche of cases were coming to the Court on illegal constructions and encroachments on the limited land available in the island city of Mumbai. The Court observed that a mechanism was required to be evolved to remove such illegal constructions. It was observed that there was an absolute lack of data in regard to the compliance of the directions given by this Court in its order dated October 4, 2018, by a ward-wise exercise of a survey and verification of the illegal structures and dilapidated buildings. The Court recorded that such an exercise, as expected from the Corporations, was not undertaken. In this context, in paragraphs 11 to 13, leading to the directions in para 14, this Court observed thus:-

"11. There can be no two opinions that proper planning of the municipal areas of the Municipal Corporations before us which include the developed and developing Corporations, can never be achieved if the persons who by law are vested to govern the affairs of the Corporation either by virtue of their employment or election as Corporators (who assumed such position by their volition) have no will to weed out such lawlessness of illegal constructions, dilapidated buildings and perpetration of encroachments. We have the ideal laws staring at us which expects us to administer and maintain our cities with high standards of municipal governance. The reasons as to why there is a gross failure to achieve such goals and ideals, reflecting very poorly on the municipal administration are not too far to be noticed. It can certainly be said that there is failure of long-long years in preventing illegal constructions,

encroachments and having such buildings which are dilapidated and which may lead to collapse, resulting in loss of innocent human lives. In *M.C. Mehta vs. Union of India*, reported in (2006) 3 SCC 399, the Supreme Court has echoed such pain in so many words, as under:

61. Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementations of the orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, *prima facie*, such large-scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser."

12. Some basic questions which ponder us are:

(i) Is it not that every municipal corporation has adopted such nebulous approach to such important facets touching the lives of the citizens, who are residents of such municipal areas?

(ii) Is it not that those citizens who have legal/authorized premises and who pay municipal taxes have a legitimate expectation that their city is encroachment free, that there are legal and authorized constructions, that they are provided with good urban infrastructure facilities and planning, and of a quality life in such urban cities?

(iii) Whether the elected representatives (Corporators), who are an integral part of the Corporation, would not have an obligation and accountability qua their constituencies and the citizens of the respective wards in regard to illegal constructions, encroachments, lack of planning etc.? Should they not be held accountable on the principle that every public position a person holds is accompanied with duties, obligations and responsibilities?

13. On every occasion it cannot be that the officers, who are either Government employees or of the Municipal Corporation, are to be held responsible for lawlessness and loss of human lives. Any dereliction of such basic municipal duties by all such stakeholders needs to be deprecated and recourse to the process of law, civil and criminal, is required to be taken to its logical conclusion in

the event such illegalities are noticed, much less sustaining and perpetrating such illegalities.

14. In view of the above discussion, we are constrained to pass following further orders:

(i) The Municipal Corporations are directed to place on record ward-

wise data of illegal constructions which can be classified into constructions of the following categories:

(a) constructions without permission (illegal constructions);

(b) construction of additional area/floor(s) beyond permission;

(c) constructions of a nature amounting to major deviation affecting the structural stability of the buildings;

(ii) The Municipal Corporations are also directed to place on record details of actions so far taken in regard to such illegal constructions as specified in (i) above;

(iii) The Municipal Corporations are also directed to indicate as to whether any litigations are pending along with the details of the forum where such proceedings are pending and the orders passed therein;

(iv) The Municipal Corporations shall also set out the details in regard to the compliance, as sought by the Municipal officers, of the requirements of Section 265A and 267A of the Maharashtra Municipal Corporations Act, 1949 and to Section 152A and Section 353B of the Mumbai Municipal Corporation Act, 1888;

(v) The State Government is also directed to place on record compliance of the order dated October 4, 2018 passed in Suo Motu PIL 2 of 2018;

(vi) All such reply affidavits be filed within six weeks from today.

Copies of the affidavits be served on the learned amicus curiae, who would assist the Court on such affidavits. The learned amicus curiae shall thereafter have further two weeks time to go through such affidavit and make his comments. The proceedings accordingly stand adjourned to March 10, 2021." (emphasis supplied)

6. In our subsequent order dated March 10, 2021, we observed that the BNMC was remiss in discharge of its statutory duties and that this ought not to be the fate of the other municipal corporations. In regard to the Municipal Corporation of Greater Mumbai (for short "the MCGM"), considering the affidavit filed by the MCGM, we observed in paragraph 5 of the said order, that necessary data of illegal constructions, was not placed on record by the MCGM. Considering that such building collapses were not unprecedented incidents in the Mumbai Metropolitan Region, we

had initiated this suo motu PIL with a view to finding out ways and means to put an end to the menace that unauthorized and dilapidated buildings pose to the humankind. We observed that proactive work needs to be effected with the requisite good intention, with an object to uproot the menace to the extent it can be achieved. We also expressed our shock and dismay at the apathy and indifference of the respondent-municipal corporations, to our directions in not placing on record the particulars of unauthorized construction. We were constrained to observe the manner in which municipal corporations and the Urban Development Department conducted themselves and had exhibited extreme lack of solicitude for the Court's order; we hence, observed that by not bringing such data before the Court, the municipal corporations have been indulging in dilatory tactics so that the PIL petition is not taken to its logical conclusion with promptitude, which also amounted to a direct interference in the administration of justice. It was thus observed that initiating action for contempt was one of the options, that we would bear in mind. With an extreme sense of displeasure and disapproval of the conduct of the municipal corporations, while granting extension of time to file affidavits, we made the following observations:

"8. Insofar as the UDD is concerned, we are surprised not a little that it has failed to live up to our expectations. There was an order passed by the coordinate bench on October 4, 2018 in suo motu PIL No.2 of 2018, reference of which was made in our earlier order dated January 13, 2021. The UDD was required to throw light on the steps it had taken to constitute an expert committee and a cell so as to have an overall supervisory mechanism on unauthorized and illegal constructions in place and to make a physical survey of the municipal wards to implement and/or support the methodology, and to make periodic reports. Although the expert committee appears to have been constituted soon after the order dated October 4, 2018 was passed, not a single meeting of such committee appears to have been held between March 2019 and February 2021. It is, therefore, clear that the UDD too not only has scant respect for the Court as well as the process of law, but also lacks the necessary intention to ensure that this great city gets rid of the several unauthorized and dilapidated buildings, which have sprouted courtesy the blessings of not only municipal officers but others.

9. We hope and trust that all the municipal corporations and the UDD shall give due importance to the issue raised in these PIL petitions, and lend appropriate cooperation and assistance to the Court for uprooting the menace that has been referred in the first paragraph of this order."

7. In the above paragraphs, we have noted our previous directions only to point out the anxiousness of the Court on the burning issues, with the sole focus of saving human lives so as to bring about a regime of respectable and dependable living in the city by having lawful and authorized structures, only to realize that, for the concerned law enforcing agencies everything mattered, except the mandate of law and the Court's orders. We are seriously concerned about such state of affairs. The common impression that is being created is that municipal officers or those who are concerned with implementing the municipal laws, function on a premise that for such matters, they are, law unto themselves, and the regime of "the rule of law" as set down by the Constitution and the laws, and the

binding effect of the Court orders hardly mattered to them, needs to be completely wiped out. Any power vested with such authorities is coupled with a binding duty towards the society at large. We may observe that the municipal authorities cannot be pawns at the hands of land mafia, elected representatives and their own Corporators who appear to be totally disinterested in taking action against growing slums which is apparent, considering the large number of slums in the city. In fact, there is a clear impression that their action has encouraged slums and encroachments on public lands, obviously such inaction is for extraneous reasons. As far as the civic administration is concerned, in our opinion, primacy has to be given to the strictest implementation of the municipal laws, so as to prevent unauthorized and illegal constructions, prevent land grabbing by slum mafia, protecting government land and land belonging to statutory bodies. Also there is a need to do away with such policies which confer a premium illegality in favour of the encroachers, by granting them a windfall of State largesse, namely, a gift of valuable government land in the form of tenements on Government lands wherever situated. This is nothing but legalizing encroachments on prime public lands, in a manner nullifying the "public trust doctrine" and catering to private gains in the teeth of the well established Constitutional requirements while dealing with State largesse. By such mechanism, valuable public lands are gone forever. Given the financial burden on the public exchequer it is impossible for the government to acquire such prime land for any public requirement except at an unimaginable burden on the public exchequer. If such land acquisition cannot be achieved, in that case, is it not the duty of the State to save these lands from being thrown to the encroachers and private gains? Is it necessary that the encroachers are rehabilitated on the same land, when others who want to purchase a small dwelling unit are required to go miles away from such prime places, where encroachments on public land happen with impunity? There cannot be such an imbalance in the societal position in which the citizens are placed when Article 14 of the Constitution stares at the State. Merely because the slums turn into potential 'vote banks' such policy of rehabilitation on hypothetical cut off dates is being implemented under the garb of slum rehabilitation. This, in our opinion, is a mockery of the public trust doctrine. We were constrained to make these observations, as not only these larger issues stare at us in plethora of litigations reaching the Courts, but also for the reason that the building collapse with which we are concerned has taken place in a purported rehabilitation and/or a slum area.

8. As noted above, our expectations from the municipal authorities in Mumbai and a ray of hope that drastic and wholehearted measures would be taken to save lives, were completely shattered when four incidents of building collapses took place between May 15, 2021 and June 10, 2021. On June 10, 2021 a G+3 storied building on Abdul Hamid Road at Malad, Malwani collapsed in which 12 persons lost their lives, which included 8 innocent children. As noted, we had immediately taken up the matter on June 11, 2021, observing that the officials employed with the respondents have exhibited extreme lack of solicitude for the rule of law and failed to discharge their statutory duties effectively, which could have prevented building collapses and saved lives of inhabitants thereof. Our orders fell on deaf ears and nebulous eyes. We are constrained to observe that there was absolute lack of human sensitivity which was required to be recognized by senior and junior level officers of the municipal corporation and the government officers in dealing with dilapidated, dangerous and unauthorized buildings.



9. Confronted with the situation that the Court orders were followed in breach by such officers, we considered it fit and proper to direct a judicial inquiry into the collapse of the said building by appointing Mr. Justice J. P. Devadhar (Retd.) as the Commissioner of Inquiry to inquire on following issues : -

(a) Did the owner of the said building and/or the person responsible for construction thereof obtain a plan sanctioned by the appropriate Planning Authority or any other competent authority for raising construction?

(b) What is the approximate age of the said building? If the said building was more than 30 years old, was any structural audit report submitted by the owner/occupiers thereof either before the Planning Authority or the Collectorate or any other authority?

(c) Whether the building material used for construction conformed to the prescribed standards of safety?

(d) Had the said building, at any point of time earlier to its collapse, been inspected by the officials of the Planning Authority or the Collectorate or any other authority? And, whether any statutory notices were issued?

(e) If the said building had been constructed without a plan, what was the span of such construction and did the officials of the Planning Authority or the Collectorate not notice commencement and completion of construction?

(f) If the said building was constructed based on a sanctioned plan, did the building conform to the plan?

(g) If there have been statutory violations in construction of the said building, did the Planning Authority or the Collector or any other authority issue any notice or take other action against the owner of the building and/or the person responsible for the construction thereof ?

(h) On whom can responsibility be fixed in the present case who were statutorily responsible to maintain vigil and supervision in respect of unauthorized and illegal buildings/structures in the area where the said building was constructed?

(i) How many other buildings/structures in the area of the said building are illegal/unauthorized?

10. We directed all the authorities to cooperate with the Commissioner, in undertaking such inquiry so as to enable him to submit a preliminary report. We also permitted the assistance of learned Amicus for this task.

## REPORT OF THE LEARNED COMMISSIONER:

11. The learned Commissioner has submitted his report dated June 28, 2021 titled as "Preliminary Report in respect of the Ground + 3 floor structure that collapsed at Malwani Village, Malad (West) on 9 th June, 2021." The learned Commissioner visited the site of the collapse on June 14, 2021 alongwith the officers. He had several meetings with Mr. Sanjog Kabare, Deputy Municipal Commissioner (Special) who was appointed as the Nodal Officer by the Commissioner of Municipal Corporation of Greater Mumbai (MCGM), and Mr. Harshad Pimple, Deputy Law Officer for the MCGM. The learned Commissioner also held meetings with Mr. Milind Borikar, Collector, Mumbai Suburban District (MSD), Mr. Udhav Ghuge, Additional Collector (ENC/Removal), Western Suburbs, Mr. Vikas Gajare, Deputy Collector (MSD), Mr. Ayub Tamboli, Tahasildar (MSD), and Mr. Sambhaji Adkune, Deputy Collector (Encroachment/Removal)-Malad 2. Also statements of Mr. Mohd. Rafiq Mohd. Siddique, the owner, and Mr. Ramzan Nabi Sheikh, the contractor of the collapsed structure are recorded.

## OBSERVATIONS MADE IN THE COMMISSIONER'S REPORT

12. The MCGM is a local Government under the Mumbai Municipal Corporation Act, 1888 (for short "MMC Act") and is a planning authority under the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") in respect of the lands within the jurisdiction of Greater Mumbai i.e. all lands within the Mumbai City, Western and Eastern Suburbs with extended suburban areas, except the area under the Special Planning Authorities. All developments within Greater Mumbai are subject to the MRTP Act with due regard to the development plan and the Development Control Regulations. Within the MCGM area, there are various Government lands and there are various planning authorities such as MMRDA, MHADA, MbPT, etc. The geographical area of MCGM is about 460 square kilometers having population of about 1.24 crores as per census 2011, out of which, nearly 40% i.e. 52 lakh people stay in slums. The total number of households within MCGM may be around 30 lakh, out of which about 12.1 lakh households are slums and about 18 lakh households are planned buildings. There are about 24 wards in MCGM (Ward 'A' to 'T') and there are 227 Councilor Beats. In each Councilor Ward/beat, approximately 55,000 voters are residing i.e. an average of 15,000 households. Some of the beats are having 100% slums such as Ward no. 109, 116 in S Ward and certain other Wards.

13. The Malwani area in which the collapsed building was located is a part of Malwani village falling in the P/N Ward which admeasures about 11.84 square kilometers. This land in the village is owned by MCGM, State Government, private parties and others. Within the Malwani village, the land on which the unfortunate building stood was situated on Survey no. 263(1) which admeasured about 4.04 square kilometers, within which land admeasuring about 2.20 square kilometers belongs to the State Government falling under CTS no. 2841- A. Such State Government land broadly was identified as the land covered under Old Collector Compound/New Collector Compound. In the year 1983-84, land covered under New Collector Compound was divided into 73 plots and on each plot around 125-130 pitches (small plots) (each pitch admeasuring 15 ft. X 10 ft) were earmarked inter alia for allotment to the hutment dwellers, whose hutments in the Bandra- Kurla Complex area were required to be demolished for the purpose of road widening.

14. It is recorded that after the ground + 3 structure on Plot no.72 collapsed on June 9, 2021, the office of the Additional Collector (Encroachment/Removal), Western Suburbs, conducted survey of the structures on New Collector Compound and found that there are about 8485 structures on New Collector Compound. The floor wise particulars of the structures are set out as under: -

Sr.no	Particulars	No. of Structures
1	Only Ground Floor Structures	1072
2	Structures having Ground+One Floor	4494
3	Structures having Ground+Two floors	2382
	Floors	
	Floors	
TOTAL NO. OF STRUCTURES		8485

15. It is observed that the structure which collapsed on June 9, 2021 stood on one of the pitches namely Plot no.72 belonging to the State Government.

16. It is noted that the documents of allotment as to the 'pitch' (on which the collapsed structure stood i.e. Plot no.72), issued by the office of the Additional Collector, (ENC) and Controller of Slums, Bombay, and Bombay Suburban District (BSD), were not traceable, however, illustratively an allotment letter dated September 24, 1984 issued in respect of a similar pitch was available, with the office of the Additional Collector, as issued to a hutment dweller who was also affected by the widening of road at the Bandra-Kurla Complex, and who was required to vacate his structure and moved to the 'pitch' allotted to him by the Collector. The allotment letter, inter alia, was to the effect that the construction at the new site at Malwani should be completed within two months from the date of possession of the pitch, and it should be used for residential purposes only and for no other purpose; the size of the structure was to be 15 ft. X 10 ft. only and the height of the structure should not be more than 9 ft. at the ridge of roof. The other condition was that the allottee should pay monthly compensation to the Tahasildar (ENC), Borivali-I and shall be liable to comply with all conditions of an identity card to be issued by the Tahasildar (ENC), Borivali-I. One of the important conditions in the allotment letter was to the effect that the allottee shall not transfer the pitch or the constructed hut by sale, lease, gift or on leave and license basis or on goodwill basis to any other person, agent, etc. It was also provided that the allottee shall not claim right, title and interest over the structure as also the land; and in case of breach of the condition mentioned in the identity card, the allottee shall be liable to be evicted and the material of the hut forfeited to the Government and the allottee shall not be entitled for any alternate accommodation.

17. It is recorded that although no document was available to show as to when and to whom the pitch in question was originally allotted, from the statement of one Mohd. Rafiq Mohd. Siddique, occupant of collapsed structure, it was noted that in the year 1993-94, he and his brother Mohd. Shafiq purchased the pitch in question with a ground floor structure, for a sum of Rs.16,000/-, and that Mohd. Rafiq did not remember the name of the person from whom the pitch was purchased,

also he was unable to produce the purchase document. He, however, produced the ration card, photo-pass, voter ID and Aadhar card issued by such different authorities to him and his family members. It is stated that in a survey conducted by the office of the Additional Collector, MSD (ENC/Removal) in the year 1999, it was established that the ground floor structure on a pitch of Plot no.72 was constructed prior to 1994 pursuant to an allotment made by the office of the then Tahsildar (ENC), Borivali. Thus, apparently such transfer of the pitch was illegal.

18. It is further recorded that the structure purchased by Mohd. Rafiq and Mohd. Shafiq in the year 1993-94 was only a ground floor structure which was used by him partly for residential purposes and partly for carrying on grocery/sugarcane juice business. A commercial electricity connection for the ground floor structure was obtained on January 8, 2003 which was in the name of Mohd. Shafiq. After Mohd. Rafiq got married, the ground floor structure was divided and in respect of the area used for residential purposes, a separate residential electric connection was obtained in the name of Rayeesabano, wife of Mohd. Rafiq Siddique on October 9, 2006.

19. In his statement, Mohd. Rafiq (owner) has stated that he and his brother Mohd. Shafiq demolished the ground floor structure in the year 2012 and erected a new structure consisting of ground floor + loft + first floor and second floor structure (Ground + 3) at a cost of Rs.8 lakh by appointing Mr.Ramzan Nabi Sheikh as the contractor. It is recorded that neither the owner nor the contractor had sought permission from any authority before or after the construction of the Ground+3 structure. It was not a regular construction in RCC having beams, columns, slabs and foundation, and it appears to have been erected in an unconventional manner with bricks as partition wall, mild steel "I" & "C" (channel) sections with ladi-coba-ladi, just like typical structure in slums. The learned Commissioner has recorded that after putting up such unauthorized construction, the ground floor, loft and part of the second floor were let out to third parties and the first floor was exclusively used by Mohd.Shafiq and his family members. Mohd. Rafiq and his wife-Rayeesabano resided on the remaining part of the second floor premises. Also an application was made by Mohd. Shafiq and several others, for a stand point water connection which was provided just outside the collapsed structure on May 24, 2016 by the Water Works Department of MCGM for residential purposes. On June 9, 2021 at about 11.10 p.m., such ground + 3 structure collapsed and fell on another structure situated across the lane, killing 12 persons and injuring several others, details of which are set out at pages 10 and 11 of the report.

20. In so far as the statutory ambit is concerned, the learned Commissioner has observed that being a planning authority under the MRTP Act, the MCGM was required to ensure that the development and use of land within Greater Mumbai takes place in accordance with the Development Plan prepared by the MCGM. The learned Commissioner has referred to Sections 52 to 58 of the MRTP Act which empowers the MCGM and particularly the Designated Officer to stop/remove unauthorized development and take penal action for unauthorized development taking place in violation of the provisions of the MRTP Act, and more particularly, Section 56A of the MRTP Act which was inserted with effect from February 23, 2012 so as to prescribe penal action against the Designated Officer in case of failure to take action against unauthorized constructions. Reference is also made to Section 58 of the MRTP Act which provides that even if the Government intends to carry out development of any land for the purpose of any of its departments or office or authorities,

the officer in charge is required to inform the same in writing to the MCGM and ensure that the development of land is in accordance with the development plan.

21. Learned Commissioner has further referred to Sections 342 to Section 354 of the MMC Act, which interalia, provide that every person intending to make any addition to a building (which includes a hut) is required to give notice to the Municipal Commissioner of his intention to make additions etc. and proceed with the work only after the Commissioner signifies in writing his approval of the said building or work. In the event of erection of any building or execution of any work undertaken without the requisite approval, the Commissioner is empowered to initiate proceedings against such persons for stopping the work and even order demolition of the construction wherever deemed fit.

22. A reference is also made to Section 50 to Section 54 of the Maharashtra Land Revenue Code, 1966 (for short "MLRC") which interalia empower the Collector to remove encroachments on Government land and also take penal action against unauthorized encroachers. The powers in such regard are vested with the Additional Collector (ENC) by virtue of a Government Resolution dated August 6, 1974 issued in exercise of the powers under Section 50 of the MLRC.

23. The learned Commissioner has also referred to Section 3Z (inserted in the year 2002) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'the Slums Act') which provides that after commencement of such Act, a protected occupier of a dwelling structure (including a hut) having photo-pass issued by the Government shall not be evicted and eviction of such protected persons is permitted subject to relocating and rehabilitating them in accordance with the scheme prepared by the State Government.

24. The learned Commissioner has observed that with a view to tackle the unauthorized developments taking place on vacant lands belonging to State Government and other undertakings like MHADA, MCGM, Western and Central Railways, Airport Authority, Forest Department, etc., the Urban Development Department of the Government of Maharashtra has issued a Government Resolution dated December 15, 2004, thereby constituting a "Permanent Standing Committee (Encroachment Prevention Committee)", under the Chairmanship of the Commissioner, MCGM. The other members of the said Standing Committee are the Police Commissioner, representative of the Principal Secretary (Housing), Chairman/Vice Chairman, MHADA, Additional Collector (ENC/Removal), Mumbai City/Eastern/Western Suburbs, Airport Authority, Dy. Commissioner (Salt Pan), representative of Central Railway, Western Railway and Additional Commissioner, MCGM.

#### MCGM'S CASE BEFORE THE COMMISSIONER

25. The learned Commissioner has recorded the case of the authorities responsible for preventing/demolishing unauthorized developments in Greater Mumbai. In so far as the views of the MCGM are concerned, the report records that the MCGM has stated to have appointed 24 Designated Officers of the rank of Executive Engineer for each of the 24 Administrative Wards of MCGM. The role of the Designated Officer is specifically to take action on unauthorized

developments in his jurisdiction. MCGM stated that as per the notification issued by the then Commissioner, MCGM, on April 4, 2013, an area of slum covered under Section 3Z of the Slums Act does not fall within the purview of the Designated Officer.

26. The MCGM relying on the Government Resolutions dated September 19, 2003, September 7, 2010 and October 19, 2013, submitted that the responsibility of taking action against unauthorized constructions on Government land squarely fell upon the land owning authorities. The collapsed structure was unauthorizedly developed on State Government land and it was the duty of the State Government i.e. Office of the Additional Collector (ENC) to devise its own machinery/ mechanism to maintain vigil and supervision to prevent unauthorized development on Government land and the Municipal Corporation has always been providing manpower and machinery whenever required by any Government department as per availability.

27. The learned Commissioner has recorded that the MCGM referred to the order passed by a co-ordinate Bench of this Court dated August 19, 2019 in O.O.C.J. P.I.L. No.16 of 2019 (Sunil Ram Shinde V/s. MCGM & Ors.), by which the Collector was directed to ensure that the unauthorized constructions on Government land referred to in the P.I.L. are demolished. The MCGM also contended that in Malwani Village (Beat Nos.32, 33, 34 and 48) apart from assisting the office of the Deputy Collector (ENC) in demolishing unauthorized structures on Government land, during the period from March 1, 2016 till date, the MCGM had issued 692 notices for removal of unauthorized structures and demolished 444 unauthorized structures.

#### COLLECTOR'S CASE BEFORE THE COMMISSIONER

28. The Collector, Mumbai Suburban District submitted that the statutory provisions contained in the MLRC for prevention/demolition of the unauthorized development on Government land vest powers and authority in the hands of the Additional Collector (ENC/Removal) to be exercised under the supervision of the Secretary, Housing Department of the State Government. It was contended that a Permanent Standing Committee (Encroachment Prevention Committee) was constituted by the State Government under the Chairmanship of the Commissioner, MCGM. Hence, it was the overall responsibility of the Permanent Standing Committee which was inter alia entrusted with the responsibility of preventing/ demolishing unauthorized constructions on the Government lands within Greater Mumbai. The Collector referred to an order of the Division Bench of this Court dated February 22, 2013 in Writ Petition no.2952 of 2012 (Raghuvir Madhyamik Vidyalaya & Anr Vs. MCGM), wherein the Court had expressed its surprise to hear from the MCGM that the matter regarding unauthorized structures and encroachments will have to be redressed by the Collector, even though the Corporation, indisputably, is the Planning Authority of the concerned area. The Court had also observed that the Collector being the owner of the plot where encroachment had been reported, does not mean that the MCGM is extricated from its responsibility as the Planning Authority. The Court observed that being the Planning Authority, the MCGM alone was competent to initiate action under the provisions of the concerned enactment to undo the illegal constructions and encroachment. It was observed that the MCGM could expect cooperation from the Collector as well as the local police authorities but cannot absolve itself from the responsibility of taking action against such illegal construction, if any.

CASE OF THE ADDITIONAL COLLECTOR (ENC/REMOVAL) WESTERN SUBURB BEFORE THE COMMISSIONER.

29. Endorsing the views of the Collector (MSD), the Additional Collector (ENC/Removal), Western Suburb submitted that from the year 2004 till date, 23,320 unauthorized structures in the Malwani Village have been demolished out of which 794 unauthorized structures were on the New Collector Compound. He submitted that the Malwani Village and 5 other villages at Malad (West) are spread over an area of about 26.64 square kilometers with population of about 3 lakh persons living in approximately 60,000 structures, out of which approximately 49,000 structures at Malwani village were falling within the jurisdiction of the Deputy Collector (ENC), Malad-2. He also submitted that despite inadequate staff, steps have been taken to remove unauthorized constructions from time to time with the assistance of MCGM officials and the Police personnel from the Malwani Police Station.

OBSERVATIONS OF THE COMMISSIONER ON THE DIFFICULTIES FACED BY THE AUTHORITIES:

30. The learned Commissioner has recorded that the slums in Mumbai City are being protected under various Government policies at various stages since 1996. Firstly, by a Government Resolution dated May 16, 1996, unauthorized hutments in Greater Mumbai existing as on January 1, 1995 which were censused or declared as slum, have been protected. Thereafter, a Government Resolution dated May 16, 2015, was issued protecting unauthorized hutments in Greater Mumbai existing as on January 1, 2000. Thereafter, by a Government Resolution dated January 16, 2018 the protection was further extended to the unauthorized hutments in Greater Mumbai, constructed between January 2, 2000 till January 1, 2011.

31. The learned Commissioner has observed that the cut-off date for granting protection to the unauthorized hutments was extended from time to time, based on the representations made by the "elected representatives" and due to the extension of the dates/period for giving protection to the slum dwellers, it was difficult to plan a definite demolition programme of slums. It was observed that in pursuance of the notification of the Commissioner of the MCGM dated April 4, 2013, it was clarified that the jurisdiction of the Designated Officer would not extend to the slums where action under Section 3Z of the Slums Act is contemplated. Although, thereafter by a notification dated March 11, 2019, the jurisdiction of the Designated Officer was extended to the slums covered under Section 3Z of the Slums Act.

32. Learned Commissioner has observed that due to high real estate costs in Mumbai, land mafias are actively involved in unauthorized constructions. The land mafias use their muscle power/threats, political influences to stall the actions against unauthorized structures by pressurizing the lower-level staff working under the Designated Officers, who are under constant fear of assault/attacks by such elements since they do not have regular police protection. He has also observed that there are criminal elements involved in the unauthorized development and it is not possible for the civic staff to take action without proper support of the police department.

33. In this context, the Commissioner has observed that a sympathetic view is always taken by the elected members and the Courts about any demolition action and/or dispossession of citizens during four months of monsoon/epidemic period. However, in the cases where the Court finds that the action initiated by the authorities is faulty and directs the authorities to follow due process of law in initiating demolition action, many a times, it is seen that the organized mafia misuse the ad-interim/ interim orders passed in such matters and carry out unauthorized construction so as to change the status of the structure from an 'ongoing work and unoccupied' to 'completed and occupied' structure. It is recorded that as on date, approximately 10,000 cases are pending in various courts with ad-interim/interim orders, as a result, the unauthorized structures continue to exist for a long period of time and consistent follow up becomes really difficult.

#### FINDINGS OF THE COMMISSIONER:-

34. Learned Commissioner has recorded his finding on each of the terms of reference, as discussed hereunder: -

(a) On the question whether the owner of the said building and/or the person responsible for construction thereof obtained a plan sanctioned by the appropriate Planning Authority or any other competent authority for raising construction, the learned Commissioner has observed that the collapsed ground+3 floor structure was constructed in the year 2012 without getting any building plans approved and it was a totally unauthorized structure.

(b) On the question as to what was the approximate age of the said structure, and if the said structure was more than 30 years old, was any structural audit report submitted by the owner/occupier thereof, either before the Planning Authority or the Collectorate or any other authority, the learned Commissioner has recorded that the G+3 structure which collapsed, was unauthorizedly constructed in the year 2012; as such the structure was 8 to 9 years old and there was no requirement of getting structural audit done for that structure.

(c) On the question as to whether the building material used for construction conformed to the prescribed standards of safety, it is observed that the forensic audit report to ascertain composition and quality of the material used for the said construction, was awaited. The report records that although the State Government Resolution dated June 5, 2002 permitted increase in the height of the rehabilitated ground floor structures from 9 feet to 14 feet with the thickness of the walls to be of 9 inches and in the case of the collapsed structure, the thickness of the wall was 4 ½ inches.

(d) On the question whether the building at any point of time earlier to its collapse, was inspected by the officials of the Planning Authority or the Collectorate or any other authority, and whether any statutory notices were issued, it is recorded that there was nothing on record to show that the structure was at any point of time inspected by the officials of the Planning Authority namely the MCGM or inspected by any officials from the Collector's office. In the absence of any complaint being received from the public, no statutory notices were issued by the concerned authority in



regard to the said structure.

(e) On the question as to whether the building had been constructed without a plan, what was the span of such construction and did the Planning Authority or the Collectorate not notice commencement and completion of construction?, the learned Commissioner has recorded that the officials of the MCGM as also from the Collector's office had not visited the locality in which the G+3 structure was constructed, hence, there was no possibility of them noticing commencement and completion of the said unauthorized structure.

(f) On the question as to whether the building was constructed based on a sanctioned plan, did the building conform to the plan, the Collector observed that there was no sanctioned plan obtained to construct the said structure; hence, the structure being in conformity to the sanctioned plan, did not arise.

(g) On the question whether there was any statutory violation in construction of the said building, and whether the Planning Authority or the Collector or any other authority issue any notice or take other action against the owner of the building and/or the person responsible for the construction thereof, the learned Commissioner answered that although the G+3 structure was constructed unauthorizedly in the year 2012 in gross violation of the statutory provisions, the officials from the office of the Planning Authority (MCGM) or the officials from the office of the Additional Collector (ENC) had neither visited the site at any point of time nor issued any notice or had taken action against the owner of the structure or the person responsible for the said construction.

(h) On the question as to on whom responsibility be fixed in the present case and who were statutorily responsible to maintain vigil and supervision in respect of unauthorized and illegal buildings/ structures in the area where the said building was constructed, the learned Commissioner has observed that the MCGM being the local authority for Greater Mumbai, which includes Malwani village, officials of the MCGM namely Junior Engineer and Building Mukadam attached to the office of the Designated Officer of the MCGM for Malwani village were responsible to maintain vigil and supervision in respect of unauthorized developments at Malwani village. It was also observed that since such unauthorized construction was on the State Government land, officials from the office of the Additional Collector (ENC), Malad 2 viz. the Surveyor in the office of the Deputy Collector (ENC/Removal), Malad 2 were also responsible to maintain vigil and supervision in respect of unauthorized developments on Government land at Malwani village.

(i) In regard to the question as to how many other buildings/structures in the area of the said building are illegal/unauthorized, the learned Commissioner has observed that in a recent survey conducted by the office of the Additional Collector (ENC/Removal), Western Suburb, there are 8485 structures on the New Collector compound land and as per the survey conducted by the Tahsildar, Borivali on June 16, 2021, in the cross lane in which the G+3 structure collapsed, there are in all 246 structures out of which 113 structures are on the left side of the cross lane and 133 structures are on right side of the cross lane, and out of those 246 structures, as to how many structures are unauthorized, is yet to be ascertained.

## RECOMMENDATIONS OF THE COMMISSIONER

35. The learned Commissioner has made recommendations, the gist of which is as under: -

The learned Commissioner has observed that the State Government with a view to give protection to the unauthorized structures/ occupants, from time to time has issued Government Resolutions. The Government Resolution dated May 16, 1996 was issued granting protection to the unauthorized hutments/ occupants in Greater Mumbai which were censused/ declared as slums and were existing as on January 1, 1995. Thereafter, by a Government Resolution dated May 16, 2015, such protection was extended to the structures existing as on January 1, 2000. By a Government Resolution dated May 16, 2018, such protection was again extended to the unauthorized hutments/occupants constructed between January 2, 2000 to January 1, 2011. The learned Commissioner has observed that on one hand, the statutory provisions require the competent authorities to take steps for prevention/ demolition of unauthorized development in Greater Mumbai and on the other hand, the State Government has issued Government Resolutions granting protection to the unauthorized developments that are taking place in Greater Mumbai from time to time. It is observed that such protection has encouraged encroachments and unauthorized development in Greater Mumbai.

36. It is observed that also frequent regularization of unauthorized structures in Greater Mumbai has serious impact on the plans prepared by the competent authority for demolishing the unauthorized structures in Greater Mumbai; hence, some remedial action to strengthen the hands of the competent authority in checking unauthorized development in Greater Mumbai, is necessary.

37. It is next observed that the MCGM (as local authority) and the office of the Additional Collector (ENC/Removal)(being the authority in possession of the Government land) are interalia empowered to prevent/demolish unauthorized constructions on Government lands.

However, where the Government lands are allotted for rehabilitating the protected hutment dwellers with permission to construct ground floor structure and if that hutment dweller, apart from constructing the authorized ground floor structure, undertakes unauthorized construction over and above the ground floor, then the question arises, as to who would initiate action for removing the unauthorized construction. As the ground floor structure on Government land is protected, office of the Additional Collector (ENC/Removal) considers that it is the responsibility of the MCGM to remove the unauthorized additional structure. However, the MCGM considers that since the unauthorized additions are on Government land, office of the Additional Collector (ENC/Removal) is liable to take appropriate action under the Slums Act/ MLRC. It is thus observed that in view of this confusion existing between the two authorities, it would be proper to give appropriate directions so that both the authorities work in tandem.

38. Learned Commissioner has also referred to Section 47(1) of the Slums Act and in such context has observed that the then Commissioner, MCGM had issued a notification on April 4, 2013 to the

effect that the Designated Officer of the MCGM would not be required to take any action in respect of the area declared as slum under the Slums Act. However, the Commissioner has pointed out on noticing Section 47(3) of the Slums Act that such provision permits the MCGM to take action even in respect of the areas declared as slum and the Commissioner, MCGM by a notification dated March 11, 2019 has clarified that the Designated Officer of the MCGM would be entitled to take action even in the area declared as slums under the Slum Act. The learned Commissioner is, thus, of the opinion that harmonious construction of Section 47(1) and 47(3) of the Slums Act would go a long way in removing the anomaly, if any, perceived by the authorities. It is observed that the State Government with a view to resolve such anomaly, in fact issued a Government Resolution dated September 15, 2004 thereby constituting a Permanent Standing Committee (Encroachment Prevention Committee) under the Chairmanship of the Commissioner, MCGM. It is, however, observed that the functioning of the Standing Committee had remained dormant since inception. It is observed that there being lack of coordination among these authorities in checking the unauthorized development in Greater Mumbai, it would be appropriate to entrust the entire task either to the already constituted Standing Committee or to any other independent authority with full powers for preventing/demolishing unauthorized development on all lands in Greater Mumbai. The learned Commissioner has also observed that in view of the Division Bench decision of this Court dated February 22, 2013 in W.P. No.2952 of 2012 (O.O.C.J.), the MCGM, as a Planning Authority, alone is competent to initiate action against the illegal constructions and encroachment on Government lands. However, the Division Bench in the same petition in its subsequent order dated October 7, 2013 has held that the State Government has also to ensure that the land which is under the control of the Collector, being a public property, is not encroached upon. The learned Commissioner also makes a reference to the order of the Division Bench of this Court dated August 19, 2019 (O.O.C.J., P.I.L. No.16 of 2019) wherein the Court has held that the Collector of the district has to ensure removal of the unauthorized constructions on Government lands. The learned Commissioner, thus, observed that it would be proper to set out the true intent of such orders passed by the Court, so that there is no confusion in the minds of the concerned authorities while performing their statutory duties. The learned Commissioner has also observed that while issuing ration card, voter card, Aadhaar Card, Shops and Establishment Certificate and providing essential services like electric connection, water connection, etc., there is no provision requiring the authorities to verify as to whether the applicant is in occupation of authorized structure or not. In the present case, the water connection was given on May 24, 2016 on the basis of the application made by Mohd. Shafiq without noticing that he had unauthorizedly constructed the ground plus three structure in the year 2012.

## SUBMISSIONS

39. We have heard learned counsel for the parties on the report of the Commissioner and orders to be passed thereon, as also on the larger issues involved.

## SUBMISSIONS OF MR. ASPI CHINOY, LEARNED SENIOR ADVOCATE ON BEHALF OF MCGM:

40. Mr. Chinoy with Mr. Sakhare, learned senior counsel have represented the MCGM. Mr. Chinoy has made the following submissions:

(i) The report overlooks the provisions of Chapter I-B of the Slums Act, as introduced by Amendment Act No. 10 of 2002 which provides for protection to the occupants of unauthorized structures in existence on or prior to January 1, 2000 (now extended up to January 1, 2011), as also the implications as brought about by Chapter I-B.

(ii) Referring to Section 3X(b) and (c) read with Section 3Y (1) falling in Chapter I-B of the Slums Act, it is submitted that an occupier of a dwelling structure in existence on or prior to January 1, 2000 (now January 1, 2011), who holds a photo-

pass i.e. an identity card-cum-certificate issued by the Government in the prescribed format is a protected occupier. It is submitted that Section 3Y (1) provides that Government shall maintain an up-to-date register of the photo-passes issued by it and Section 3Z(2) provides that notwithstanding anything contained in the Act, the protected occupier shall not be evicted from his dwelling structure, except as provided in sub-section (2) of Section 3Z. Referring to these provisions, it is submitted that Chapter I-B creates a regime of statutory rights providing for non-eviction of an occupier of a hutment who has a photo-pass issued by the Government or its authorized officer. This right is not conditional upon the area first being declared or notified as a slum under Section 4.

(iii) Chapter I-B also makes comprehensive provisions for the competent authority under the Slums Act, to demolish illegal structures or any illegal additions which have been constructed after the stipulated date and it is for the competent authority to demolish illegal structures or additions which are being constructed within the areas of its jurisdiction. Also, the statement of objects and reasons of the amending Act indicate that it was thought necessary to have provisions in Chapter I-B similar to Section 354(A) of the MMC Act. It is submitted that Chapter I-B makes the construction by the owner/occupant of such illegal structures or any illegal additions to the existing structures an offence and also makes abetment or failure to demolish such illegal structure by the competent authority or its officers an offence.

(iv) Chapter I-B also makes it obligatory on the occupant of a dwelling structure to produce his photo-pass for inspection when demanded by the competent authority. Chapter I-B creates a new statutory right in favour of a protected occupier / photo-pass holder and also makes comprehensive provisions for preventing illegal constructions or illegal additions to the dwelling structures recorded in the photo-pass by the competent authority. Chapter I-B accordingly constitutes a complete Code in respect of protected occupiers/photo-pass holders and the prevention /demolition of illegal structures or illegal additions to structures recorded in the photo-pass. As Chapter I-B is a complete Code in respect of protected occupiers/photo-pass holders and the prevention / demolition of illegal structures /illegal additions to structures recorded in the photo-pass, the provisions of the MRTP Act and the provisions of the MMC Act relating to demolition of illegally constructed structures are necessarily excluded qua such illegal (but statutorily protected) structures recorded in the photo-pass, or illegal additions to such structures, within the area of jurisdiction of the competent authority.

(v) For the above reasons, the provisions of the MRTP Act and the provisions (Sections 351 & 354(A)) of the MMC Act relating to demolition of illegal structures, cannot be invoked for an action

to be taken in view of the statutory protection granted by Section 3Z (1) in the case of such illegal dwelling structure occupied by photo-pass holders, within the area of jurisdiction of the competent authority.

(vi) It is submitted that all such dwelling structures (the occupier of which has been issued a photo-pass) are otherwise illegal, inasmuch as they have all been constructed without the approval of the MCGM as the planning authority under the MRTP Act or under the MMC Act. In fact such structures could never have been approved under the MRTP Act or the MMC Act, as they are all *ex facie* non-compliant with the Development Control Regulations and the Building Bye Laws. Section 3Z (1) and 3Z (2) do not refer to any permission to be sought/obtained from the planning authority under any municipal law.

(vii) Notwithstanding the GRs relied on by the Government, which refers to the permission being sought from the MCGM, as a matter of law, these provisions do not refer to the permission required under the MRTP Act or the MMC Act as such structures / addition to such structures are all necessarily non compliant with the requirements of the Development Control Regulations and the MCGM Building Bye-laws and could never be given permission thereunder.

(viii) It is submitted that in the Malwani Slum Area there has never been a single application for permission for construction / additional construction made by a photo-pass holder to the MCGM under the MRTP Act or under the MMC Act. Accordingly, there has never been any construction permission granted by the MCGM for construction/additional construction made by a photo-pass holder in the area of jurisdiction of the competent authority. The dwelling structures in the slum area have been set up without any application being made to and/or permission being granted by the MCGM under the MRTP Act or the MMC Act and as the MCGM has no record of the photo-passes issued, the MCGM would have no basis for taking action under the MRTP Act, or the MMC Act against any illegally constructed structure or illegal addition to an existing structure as recorded on the photo-pass in a slum area.

(ix) Moreover, in a case of illegal construction undertaken in a slum area or an illegal addition made to the existing structure, as recorded under photo-pass, only the competent authority would be in a position to take action as, firstly, it has the records of the photo-passes issued by the Government/authorized officer [Section 3Y(5)] and secondly, as a competent authority specifically authorized to require the occupant of a dwelling structure to forthwith produce the photo-pass for inspection (Section 3Z-2(9)).

(x) It is next submitted that the MCGM as the planning authority under the MRTP Act and under the MMC Act has till date not taken any action in respect of additions made to a dwelling unit by a protected occupier in the Malwani Slum area under the jurisdiction of the competent authority. It is submitted that by virtue of Chapter I-B of the Slums Act, providing for protection of unauthorized and illegal structures, has prevented the MCGM from taking any action against such structures and it is by operation of law. Such legal position cannot be altered by any Government Resolution issued by the State Government.

(xi) Even Section 47(3) of the Slums Act does not change the position in regard to the non-applicability of the MRTP Act and the MMC Act for the demolition of dwelling structures occupied by the protected occupiers/photo-pass holders in the slum areas within the jurisdiction of the competent authority. It is for the reason that Section 47 only deals with the applicability of provisions of any municipal or other law corresponding to the provisions of the Slums Act for slum improvement or for slum clearance or redevelopment and demolition of buildings to situations arising under Chapter III pertaining to execution of works of improvement in a slum area including by demolition and reconstruction of buildings unfit for human habitation (Sections 5 to 10) and Chapter IV pertaining to slum clearance and development by demolition of buildings (Sections 11 to 13). Section 47(3) *ex facie* does not and cannot apply to Chapter I-B as Section 3Z (1) of the Slum Act, which begins with a non-obstante clause, providing that no protected occupier i.e. occupier of a dwelling unit who has a photo-pass can be evicted from his dwelling structure. Accordingly, the provisions of the MRTP Act and the MMC Act providing for demolition of illegal buildings *ex facie* cannot be made applicable to such (albeit illegal) dwelling structures/protected occupiers.

(xii) It is submitted that in so far as the collapsed structure is concerned, it was situated in the Malwani Slum Area and the occupier thereof had earlier been issued a photo-pass for the original ground floor dwelling unit. Accordingly, it was clearly covered by Chapter I-B and fell within the jurisdiction of the competent authority under the Slum Act. In these circumstances, it is submitted that the MCGM as the local authority/planning authority was not responsible for taking action against the illegal additional construction of the slum dwelling structure and the jurisdiction lies with the competent authority under Section 3Z(1) and 3Z(2) of the Slums Act.

#### SUBMISSIONS OF MR. KUMBHAKONI, ADVOCATE GENERAL ON BEHALF OF STATE:

41. By an order dated July 6, 2021, we had invited an affidavit to be filed by the competent officer of the State Government to place on record whether the slum at Malwani village, where the building collapse occurred on June 10, 2021 was a notified slum under section 4 of the Slums Act. We also recorded a submission of the learned Advocate General that the said slum is a censused slum and if indeed that be so, the relevant documentary evidence in that regard be also incorporated in the affidavit to be filed in terms of the said order. Pursuant to such order, Mr. Kumbhakoni has placed on record an affidavit of Sambhaji Erwantao Adkune, Deputy Collector (Encroachment / Removal), which states that the concerned Malwani area is a censused slum and not a notified slum under Section 4 of the Slums Act. It is stated that in or around the year 2000, a survey was conducted of the slums situated on CTS No. 2841A. Also appropriate forms were filled by the occupants of the slums. The record collected from the actual slum dwellers was then compared with the Voters' list of the said area as on January 1, 1995, and upon verification of the documents of the occupants of the slums, in terms of the relevant GRs, photo-passes were issued. It is stated that as per the record of the office of the Deputy Collector (Encroachment / Removal) Malad 2, Mumbai Suburban District, the survey was conducted in respect of the land at Plot No.72 of the part on which the pitch of the occupant of the collapsed building was situated (Please consider Recasting). Though Census Form was filled in by Mohd. Shafique Salim Sidiqui bearing Sr.No. 1773293, no photo-pass was issued to the said person in respect of the said pitch.

42. Mr. Kumbhakoni, learned Advocate General would, at the outset, submit that there are two aspects involved, firstly, an encroachment on government land and secondly unauthorized construction by the encroachers. He submits that an encroacher cannot obtain a building permission. It is submitted that the person who had constructed G+3 structure is not an allottee, he was hence an encroacher and should have been removed from the unauthorized structure by the Municipal Corporation (MCGM). Referring to the Government Resolution dated June 5, 2002, it is submitted that for a permission to increase the height above 9 ft., an approval of the MCGM ought to have been obtained. This, according to him, was also clear from the proviso to Section 47 of the Slums Act. Referring to several notifications issued under Section 4 of the Slums Act in regard to village Malwani, it is submitted that on a careful consideration of the said notifications, it is abundantly clear that these notifications do not cover and/or relate to CTS No. 2841A on which building / structure was erected. Thus, the slum situated on CTS No. 2841A including the building that collapsed was not notified and/or declared slum, as contemplated by Section 4 of the Slums Act.

#### SUBMISSIONS OF MR. SHARAN JAGTIANI - AMICUS CURIAE:

43. Mr. Jagtiani, learned senior advocate assisted by Mr. Rohan Surve, learned Amici, have made extensive submissions on the factual and legal issues as involved.

(i) The submissions of the learned Amici are in regard to the MCGM's powers, duties and role in respect of unauthorized structures in slum areas vis-à-vis the role of the Collector / State Government under the provisions of the statutes in question, namely, the Slums Act, the MRTP Act and the MMC Act.

Analyzing the contentions as urged on behalf of the MCGM and on behalf of the State Government, Mr. Jagtiani would submit that the following two issues are arising from the report of the learned judicial Commissioner:-

(a) Whether the MCGM has no power or duty to act against unauthorized structures on Government land in a "Slum Area" declared under Section 4 of the Slums Act by reason of the provisions of the Slums Act curtailing its authority and powers under the MMC Act and the MRTP Act?

and

(b) Whether Government Resolution dated September 19, 2003, Government Resolution dated September 7, 2010 and Government Resolution dated October 10, 2013 have the effect of limiting the statutory mandate and obligation of MCGM to initiate action against unauthorized and illegal construction which has come up on lands owned by the State Government?

(ii) Mr. Jagtiani referring to the provisions of Section 2(15) of the MRTP Act, which defines 'local authority' and Section 2(19) which defines 'planning authority', submits that the Slum Rehabilitation Authority (SRA) becomes a planning authority, over an area under Section 3C of Chapter I-A of the Slums Act and it is not the planning authority for all government lands declared

as slum areas under Section 4 of Chapter II of the Slums Act. Mr. Jagtiani has also referred to Section 37(1-B) of the MRTP Act to submit that it empowers the SRA to prepare and submit a proposal for modification of the development plan. Further, Sections 44 and 45 of the MRTP Act empowers the planning authority to receive, consider and approve an application made by any person (not being Central Government, State Government or local authority) for carrying out development on any land. As the planning authority under the MRTP Act, the MCGM has power to grant building permission and deal with the unauthorized structures over the areas where it operates as a planning authority as set out in Sections 52 to 56 of the MRTP Act (corresponding provisions are contained in Sections 351 to 354A of the MMC Act). Such provisions confer powers on the MCGM to require stoppage or removal of unauthorized development.

(iii) Mr. Jagtiani has referred to the MMC Act and more particularly the provisions as contained in Chapter XII titled as "Building Regulations" (Sections 337 to 354X), which, according to him, are required to be complied by a person intending to erect a building by issuance of notice to the Commissioner of the Municipal Corporation in the prescribed form. He has further drawn our attention to Sections 342, 350, 351, 354, 354A and 354AAA of the MMC Act as also to the provisions of Chapter XII-A titled as "City Improvement". Mr. Jagtiani has also drawn our attention to the provisions of the "MLRC" and more particularly the provisions of Section 7 which provides that the Collector is in- charge of the revenue administration of a district and appointed by the State Government under Section 7(1) of the MLRC. Under Section 53 of the MLRC, the Collector is empowered, inter alia, to evict any person who is unauthorizedly or wrongfully occupying any land vested in the State or is acting in violation of the lease agreement by making a summary inquiry in the manner as provided in the MLRC.

(iv) In so far as the MCGM's status as a planning authority and local authority under the MRTP Act and the MMC Act is concerned, Mr. Jagtiani has submitted that both these Acts are primary legislations and are required to be read in conjunction with each other for understanding the MCGM's power and duties as a planning authority and local authority for the City of Greater Mumbai. It is his submission that unless there is a clear and categorical legislative indication to dilute or preclude the exercise of these powers over any area within its territorial jurisdiction, 'exclusion' of MCGM's power under the MRTP Act and the MMC Act ought not to be inferred.

(v) It is submitted that power and duty to deal with unauthorized structures is of fundamental importance as it is an obligatory function of the MCGM within the meaning of Section 61 of the MMC Act. Further, it is an essential function of the MCGM as a planning authority to deal with unauthorized structures under the MRTP Act. It is submitted that, in respect of slum rehabilitation area under Section 3C of Chapter I-A of the Slums Act where the SRA is the planning authority under Section 2(19) (b) of the MRTP Act, the powers of the Municipal Commissioner under Chapter XII (Building Regulations) do not automatically vest in the SRA. The vesting of the powers of the Commissioner under Chapter XII and the powers of the Corporation elsewhere in the MMC Act occurs upon the issuance of a notification in the official gazette by the State Government under Section 354AAA of the MMC Act. Although such provision may not be relevant in respect of Malwani village which is not declared as the slum rehabilitation area under Section 3C of the Slums Act, it is an indication that even where there is an appointment of the SRA as a planning authority



over a slum rehabilitation area, that may not, by itself, divest MCGM of its powers under Chapter XII of the MMC Act in the absence of a State Government notification.

(vi) In so far as the contention as urged on behalf of the MCGM on the applicability of Chapter I-B containing provisions of Section 3X, 3Y, 3Z, 3Z (1) and 3Z(2) inserted by the Amendment Act 2002 with effect from May 18, 2001, Mr. Jagtiani has made elaborate submissions as to a regime introduced by Chapter I-B, the effect, which it brings about and whether such effect is independent of the other provisions of the Slums Act so as to be called as a 'Code' by itself.

(vii) Mr. Jagtiani, answering the two issues as urged by him i.e. firstly, whether the MCGM has power or duty to act against unauthorized structures on government land or in a slum area or such powers are curtailed by the provisions falling under Chapter I-B, Mr. Jagtiani would submit that the answer to such question lies in the interplay between the MRTP Act, the MMC Act and the Slums Act. He would submit that a conjoint reading of Section 3X(b) and (c) defining "protected occupier", "photo-pass" and "dwelling structure" along with Sections 3Y and 3Z indicates that a dwelling structure which existed prior to January 1, 2000 and to those occupiers to whom photo-passes are issued are protected from eviction as per sub-section (1) of Section 3Z and that eviction of occupiers of these protected structures can only be in compliance with Section 3Z-1.

(viii) It is submitted that Section 3Z-1 is a corollary to what is protected under Section 3Z. Its purport is only to state that unauthorized or illegal dwelling structures or parts thereof or any additions to any existing structures as recorded in the photo- passes which have been constructed post January 1, 2000, within the jurisdiction of a competent authority and without obtaining necessary permissions required to be obtained, in that behalf under the relevant laws, can be demolished by the competent authority. The statutory procedure for such demolition is then set out in 3Z-1 in sub-sections i.e. 3Z-1 (2) to (5). He submits that Section 3Z-2 also confers powers on the competent authority upon a complaint being made to interalia demolish any unauthorized or illegal dwelling structure without obtaining necessary permissions under the relevant laws. It is pointed out that Section 3Z-1(1) to 3Z-1(5), 3Z-2 and sub-sections (1), (2) and (6) sets out the procedure for demolition of an existing structure. It is further submitted that neither Section 3Z nor Section 3Z-2 of the Slums Act, exclude, by their plain language, the powers of the MCGM as a planning authority under the MRTP Act or the MMC Act. They are not non-obstante provisions. Their language does not indicate that it overrides any provision of the MRTP Act or the MMC Act. The legislature is deemed to have been conscious of the existence of MCGM's powers and duties under the MRTP and the MMC Act when enacting Chapter I-B in 2001.

(ix) In or about 1996 when Chapter I-A was introduced in the Slums Act, there were corresponding changes made to Section 2(19) and Section 37 of the MRTP Act and by the addition of Section 354AAA to the MMC Act to streamline the provisions of these three connected legislations. It is submitted that interestingly, Section 3Z-1 and 3Z-2 of the Slums Act make a reference to the competent authority having to ascertain if the additional structures are supported by permissions being obtained under relevant law of the concerned statutory authorities. This, in the city of Greater Mumbai, would necessarily mean permissions from the MCGM under the MRTP Act/MMC Act (being the "relevant laws").

(x) Neither Chapter I-B nor any other chapter of the Slums Act deal with the grant of permissions for erecting buildings or structures over slum land. Under Section 8 of Chapter III of the Slums Act, the competent authority may by notification restrict the erection of any building in a Slum Area except with its previous permission. This by itself is an additional requirement to building permissions that may have to be obtained under other laws. The only exception is in cases where the SRA is constituted as a Planning Authority in respect of a Slum Rehabilitation Scheme in respect of a Slum Rehabilitation Area in which situation alone the grant of building permissions for implementation of a Slum Rehabilitation Scheme are issued by the SRA as a planning authority.

(xi) Mr. Jagtiani would thus submit that the question which may arise then is, how can the competent authority and the planning authority i.e MCGM exercise jurisdiction, power and duties concurrently in respect of unauthorized structure on government land in a slum area? His answer would be that there is nothing in law which ipso facto and generally prevents the concurrent exercise of powers and duties between different authorities. The mere introduction and existence of Section 3Z-1 in the absence of any express language and reference to the MRTP or MMC Acts cannot amount to an implied supersession or implied overriding of the provisions dealing with unauthorized structures under those Acts. More specifically, the avoidance of any apparent conflict between the Slums Act and the local municipal laws is adequately dealt with by Section 47 of the Slums Act.

(xii) Mr. Jagtiani's principal contention is that such provision was enacted to avoid a conflicting situation that may have arisen from simultaneous implementation of corresponding provisions and that Section 47 by no means is intended to be a complete or blanket ouster of the applicability of municipal laws to slum areas. According to him a bare reading of the provision makes it clear that it applies to the areas which are declared to be a slum area as specifically provided in Section 47(1), (2) and (3), being the starting point of its applicability. Referring to sub-section (3) of Section 47, it is submitted that such provision highlights the significance and trigger point of exclusion of municipal laws or other laws if an order for demolition of any building or buildings is made under the Slums Act. It goes on to clarify that nothing contained in this section shall affect the provisions of municipal or other law as applicable to a slum clearance area and redevelopment and demolition of buildings. Section 47(3) clarifies that exclusion of municipal and other laws by the preceding parts of Section 47, which should not be understood to affect the provisions of any municipal or other laws for the time being in force for slum clearance and redevelopment and demolition of buildings in the slum area. Thus, according to him, Section 47(3) is yet again a clear reiteration that municipal laws and other laws for slum clearance and redevelopment and demolition will apply to slum areas until an order of demolition under the Slums Act is made.

(xiii) In so far as the 'proviso' to Section 47 is concerned, Mr. Jagtiani would submit that it slightly qualifies the application of municipal or other laws to slum areas as declared under Section 4 of the Slum Act. It says that powers under municipal and other laws which deal with demolition of buildings shall notwithstanding anything contrary in such laws (i.e. MRTP Act, MMC Act) be exercised by them subject to the control of the State Government. It is his submission that in one sense even the provisions of the MRTP Act are subject to the control of the State Government by reason of Section 154 of the MRTP Act. The control of the State Government for such purpose is to

be exercised by the issuance of any general or special directions to any such officers of the MCGM as a planning authority or authorities which shall be complied by them. Thus, according to Mr. Jagtiani, the proviso to Section 47 is not to mean that any prior approval of the State Government is required for exercising powers of demolition under the MRTP Act/MMC Act over slum areas where no order of demolition is made under the Slum Act.

(xiv) Mr. Jagtiani would submit that even the MCGM's conduct supports the above contentions as the MCGM accepting such interpretation that it is empowered to act against unauthorized structures in a slum area, is borne out by MCGM demolishing 444 structures in Malwani Village area, as noted in the report of the learned judicial Commissioner. He has drawn the Court's attention to paragraph 5 of the views of the MCGM as noted by the learned Commissioner, wherein it is recorded that in Malwani village (Beat Nos.32, 33, 34 and 48) apart from assisting the office of the Deputy Collector (ENC), in demolishing unauthorized structures on Government land, during the period from March 1, 2016 till date, MCGM had issued 692 notices for removal of unauthorized structures and demolished 444 unauthorized structures.

According to Mr. Jagtiani this is a clear indication that even the MCGM was aware of its obligation under the MMC Act to take action against the unauthorized and illegal structures.

(xv) In regard to the second issue, whether GRs dated September 19, 2003, September 7, 2010 and October 10, 2013 have the effect of limiting the statutory mandate and obligation of the MCGM to take action against unauthorized and illegal construction which has come up on lands owned by the State Government, Mr. Jagtiani has submitted that Government Resolutions, which are in the nature of executive instructions, cannot prevail over primary legislation or divest an authority of its statutory mandate conferred by law. He has submitted that the GR dated September 19, 2003 is titled "Regarding Initiating action against the unauthorized slums and unauthorized constructions on Government, Semi-Government or Private Lands". It records that it is the primary responsibility of the department which owns the land to protect the land against encroachment. The said GR, according to him, therefore, directs the concerned officers to remove all unauthorized huts/constructions in slum area after January 1, 1995. The GR notes that if the concerned officer ignores or delays the implementation of directions issued under the said GR, appropriate action would be initiated under the Slums Act. Thus, according to him, said GR does not indicate that any other authority is precluded from dealing with unauthorized structures. In so far as GR dated October 10, 2013 is concerned, which is titled "Regarding Prohibition, removal of encroachment on government land, to file complaint", according to Mr. Jagtiani, it sets out directions to be noted by regional officers of the government. Perusal of such GRs, according to him, do not contain any discussion or direction which affects the jurisdiction of the MCGM as a planning authority with respect to areas within its jurisdiction.

(xvi) It is submitted that notification dated April 4, 2013 issued by the Commissioner, MCGM, publishing the appointment of several ward-wise Assistant Engineers as Designated Officers under Section 351 of the MMC Act for their respective wards, such appointment specifically excludes the area for which an authority has been given powers as a special planning authority and areas under the jurisdiction of the competent authority under Section 3Z-2(1) of the Slums Act for which the

competent authority has powers to initiate action. He also refers to the Commissioner, MCGM, notification dated March 11, 2019 referring to the notification dated April 4, 2013, appointing Executive Engineers of respective wards as Designated Officers under Section 351 of the MMC Act. It is submitted that such notice also excludes areas for which authority has been given powers as a special planning authority and there is no exclusion prescribed with respect to areas under the jurisdiction of the competent authority under Section 3Z-2(1) of the Slums Act. It is submitted that the MCGM's notice dated March 11, 2019 indicates that its officers shall exercise jurisdiction over lands owned by the government and the earlier exclusion of slum areas falling within the jurisdiction of the competent authority is discontinued. It is, therefore, his submission that MCGM itself understands its jurisdiction to include lands which are declared as slum areas. The SRA is not a planning authority for slum areas, but only for slum rehabilitation areas. Thus, referring to these notifications issued by the MCGM as also the notification constituting a Permanent Standing Committee (Encroachment Prevention Committee) constituted by GR dated December 15, 2004, Mr. Jagtiani's submission that all statutory stakeholders who are empowered to take action against encroachment are members of the Permanent Standing Committee under the Chairmanship of the Commissioner, MCGM. The objective behind constituting the Committee is to prohibit encroachment on government lands. The Chairmanship of the Commissioner, MCGM shows that the MCGM is vitally concerned with preventing encroachment resulting in the formation of large-scale slums on lands of the State Government.

## ANALYSIS

44. Illegal construction and encroachment on Government land, without fear of law or of public officials have resulted into a loss of twelve lives, due to the collapse of three storeyed structure at Malvani. Therefore, at the first instance, we deal with the issue of encroachment on public lands and illegal constructions thereon.

45. There can be no two opinions that the issues of encroachment on public land, mushrooming of slums on such lands and illegal constructions on such land, as also, on any open land in the city, and the total collapse of the machinery available in law to control these issues, adversely affecting the urban agglomeration, is a sad story of an invited misery and a massive failure on the part of the State Government and the municipal bodies. An overview of these adversities, depicts a sorry and painful state of affairs, having a harmful and an overbearing effect not only on those who are residing in the slums and unauthorized constructions, but also, the hard impact it creates on the infrastructure in cities and the continuous and successive damage to the limited resources. The consequence of all this, is ghastly and harmful. As to what is in store for the future generations cannot be imagined. Admittedly, these are larger issues to be effectively looked into by the policy makers before things further worsen, albeit there appears to be a stage of no return, unless aggressive planning and commitment to the constitutional principles is kept at the forefront by the policy makers. Happening of encroachments, unauthorized and illegal structures being put up and deliberate neglect to these issues, when all this is unpleasantly happening before the open eyes and to the knowledge of the authorities, is not without purpose. From the report of the learned Commissioner, it appears to be a deep rooted menace, perpetrated for years together, which has ruined the cities and its scarce resources. There are vested interests as pointed out by the learned

Commissioner, namely political interest, slumlords and ultimately the cancer of corruption, which is the primary cause, for the authorities not taking action to remove illegal structures which continue to exist for years together.

46. However, it clearly appears that the State Government being aware of the grabbing of Government lands at the hands of these unscrupulous elements, from time to time, issued directives to the Additional Collector (Encroachment), Chief Executive Officer of the Slum Authority and other Chief Officers of the local authorities. Such directives made it incumbent to take all steps to protect the Government lands, by preventing grabbing of lands by encroachment and to register criminal complaints of such encroachment and taking stern action of demolition of the unauthorized constructions and unauthorized hutments. However, it appears that the said directives at all material times have remained to be dead letters. Learned Commissioner has referred to some of the Circulars, which, if were to be implemented in its letter and spirit, the scenario would have been completely different, from what it prevails today. The city would have been a better place to live. Hundreds of Government lands could have been saved, to be utilized for public purposes. The circulars are certainly binding on the Government and its officers, provided the officers had an intention to look at them. The directives as contained in some of the Circulars are required to be noted with particular emphasis of their relevant contents. They read thus:

(I) By Government Circular dated September 19, 2003 issued to the CEO, SRA, Additional Collector (Encroachment & Removal), Mumbai City, Eastern Suburb, Western Suburb and the Director, Mumbai Development Division, on removal of unauthorized constructions and unauthorized hutments on semi-Government and private lands, guidelines were issued stating that day by day encroachment, illegal constructions and illegal hutments are increasing on such category of lands and such activities are required to be controlled and which were sought to be controlled by various circulars as referred in the reference in the said circular. This circular stated that the respective divisions would be primarily responsible to protect such land, however, as the concerned division did not protect the lands, illegal constructions setting up of unauthorized hutments have taken place and have increased. It was directed that the concerned Division to take immediate steps to prepare a scheme to protect the lands.

The circular records that all unauthorized hutments and illegal constructions in the hutment areas put up after 1 January 1995 should immediately be removed. It was also provided that if these instructions are not implemented by the concerned officer or there is negligence or delay in taking such action, in that event the proceedings would be initiated against him as per the provisions of the Slums Act. The officers were also instructed that in regard to the unauthorized constructions, the concerned officer shall meticulously and from time to time adhere to the different directives of the State Government.

(II) By a further Circular dated September 7, 2010, the State Government again issued directives in regard to the prevention of encroachment, demolition of unauthorized construction/hutments and registering of complaints. The Circular stated that from time to time the directives were issued,

however, there was no serious implementation of the said circular at the level of different divisions as noticed by the State Government. As a result of which the Government lands were encroached and are being grabbed. The Circular states that in some instances the persons in the adjoining areas and/or local people are opposing removal of encroachment and demolition of unauthorized structures and force is required to be used to resist such opposition which creates law and order problem. However, in this situation, considering the ownership of the Government in respect of its land, the Government machinery was required to register complaints, as for non-filing of such complaints, the police are not in a position to take action, as informed by the Home Department. Considering such situations, the Government issue the following directives:-

(i) To notify all details of the Government land and which be displayed in the Revenue Office or in the office of the Local bodies at a prominent place alongwith which a clear notice be given that if the Government land is encroached, legal action would be taken in regard to such encroachment.

(ii) If there is any encroachment on the Government land or the land belonging to the local bodies, immediate action be taken to remove the encroachment or to demolish the unauthorized construction.

(iii) To prevent encroachment on the Government land is the responsibility of the respective Division in which the land is situated. For such reasons, the concerned Talathi, Circle Officer, and in respect of the forest land, the authorized officer, Gramsevak in respect of grazing lands and public lands and the Chief Officers of different municipal corporations, and in respect of other land where the Government land is in a particular division, the respective local officers, are under an obligation to immediately file a police complaint. In the event, there is any shifting of responsibilities to register a police complaint, the Senior Officers shall hold such officers responsible and take action.

(III) On similar lines, a further circular dated 10 October 2013 was issued by the State Government in its Revenue and Forest Department, reiterating the directives as issued in the earlier circular dated 7 September 2010."

47. The menace of continued encroachments on Government lands and thereafter, illegal and unauthorized constructions being undertaken post encroachment, are also a result of an unwarranted protection being conferred on the slum dwellers by the policies of the State Government, which protect the interest of the slum dwellers by awarding a premium on such illegality. This merely for the reason that the government machinery failed to take any action to remove such encroachments and with impunity continued these encroachers to remain on government land for years together. The encroachments are of two categories, those who have encroached for commercial purpose (those who have grabbed public land for installing shops etc.) and those who have encroached for putting up structures for residential user. Under the government policies both these encroachers are recognized and rewarded by providing alternate tenements of the nature they were occupying. The government policies issued from time to time to protect such

encroachers, if their names are found in the voters list on a cut-off date being fixed at the ipse dixit of the Government. In our opinion, fixing of such arbitrary dates to protect the illegality of encroachment and ultimately to reward the encroachers with a free of cost permanent structure on the same government land, is certainly not an exercise of power, the constitutional principles would permit. These situations have added to the alarming woes of the city. It is no more a secret that these policies, which appear to be innocuous and intended to primarily protect the slum dwellers, resulted to be also of a political concern, as these large slums also constituted potential vote banks.

48. What can be the logic and any legal sanctity to a policy which rewards encroachment on public land by granting free of cost tenements, on the very same land amounting to a bonanza for its private exploitation? By such modus operandi, public land, merely because of it being encroached, vanishes from the public holding and most astonishingly the basis for the allotment of tenements under the redevelopment process, is identification of an encroacher by his voters ID, on the basis of an arbitrary cut-off date fixed by the government. In fact, such policies create a mechanism being made available to the slum dwellers and thereafter private interest like that of the developers, to obtain a surreptitious allotment of public/government land for commercial exploitation, for profits by a backdoor method, completely contrary to the well settled principles of allotment of State largesse, known to the Constitution. This more particularly, when there is an allotment of a small piece of public land for a lawful purpose, many a times there is a hue and cry. However, when large tracts of public land are being gulped by encroachers, would the legal machinery remain a mute spectator?

49. There are policies as pointed out by learned Advocate General which protect the slum dwellers, despite those slum dwellers encroaching on the Government lands and remaining on such land for a substantial period. This happens purely on account of the inaction of the concerned public officials to remove such encroachments. It is necessary that these directives/Government Resolutions are discussed.

50. As to what are the government policies on encroachment, illegal construction and protection of such illegal structures being the subject matter of these Government Resolutions, is found in a compilation of twenty-two Government Resolutions, as tendered by the learned Advocate General. The first Government Resolution in this regard is dated 10 May 1976 and the last of which is dated 16 May 2018. It would be prolix to discuss each and every Government Resolution, however, some of the relevant Government Resolutions can be usefully discussed hereunder :-

#### GOVERNMENT RESOLUTIONS:

I. GOVERNMENT RESOLUTION DATED 16 MAY 1996 By Government Resolution dated 16 May 1996, the Government provided norms for fixing eligibility of the slum dwellers under the Slum Rehabilitation Scheme when development of slum is being undertaken under the Development Control Regulation No. 33(10) of the Development Control Regulations of the Mumbai Municipal Corporation Act. The Government Resolution records that the Government had accorded permission to make slum dwellers eligible for the purpose of slum redevelopment scheme on the

basis of survey as per the "voters list" of the year 1976 and thereafter of the year 1980 and 1985 and those whose names were in the "voters list" as on 1 January 1995 and residing on the same address. In regard to those slums coming into existence after 1985, it was provided that those slum dwellers whose names were included in the voters list as on 1 January 1995 would be held to be eligible and that those who are not eligible on these norms, their names be accordingly removed.

## II. GOVERNMENT RESOLUTION DATED 11 JULY 2001:

This resolution recorded that it was decided by the Government Resolution dated 9 March 2000 to issue identity cards to the eligible slum dwellers by conducting survey and census of the slum dwellers. It records that it was decided that those cities and towns whose population as per census of 1991 was 50000 or more and those municipal corporation/nagar parishad areas where the Slums Act was made applicable, the State Government was required to take a decision to provide basic facilities to eligible slum dwellers of these cities. The government resolution records that such scheme was not implemented in 11 cities/towns in the State, so as to provide identity cards (photo passes) to eligible slum dweller of those places being the areas of 61 municipal corporations and nagar parishads. The Government Resolution refers to the intention behind issuing identity cards, which is to the effect that the identity card is a proof of the identity card holders, who were residing in a hut which was in existence prior to 1 January 1995. The identity card holders would not be ordinarily removed, however, whenever it is necessary, the Government would be entitled to remove them by making their alternate arrangement. It provides that basic civic facilities be provided to the identity card holders in declared slums on private lands or lands owned by the State Government or State Government undertakings, which are eligible to be declared as slums. The slum dwellers would be required to pay composite charges, service charges, as determined by the Government from time to time. The Government accordingly took a policy decision superseding the Government Resolutions dated 9 March 2000, 17 November 2000 and 28 November 2000, so as to introduce the scheme called as the "Identity Card Scheme for eligible slum dwellers-2001". Such scheme was to be made applicable to those slums situated on the land owned by the State Government, municipal corporations, nagar parishad, MHADA and other Semi-Government Organization and on private lands in 61 municipal corporations/nagar parishad areas, details of which were set out in "Exhibit C". These are all areas where the population was of 50,000 or more as per the Census of 1991 and which have been declared as slum as per the Slums Act.

The said scheme was to be made applicable to the eligible slums in existence prior to 1 January 1995 which were on sports ground, recreation grounds, gardens, lands reserved for public purposes as also non-buildable land owned by State Government and State Government undertaking lands. The scheme was also to be applied to the huts on roads or footpaths. It was set out that such huts would be surveyed however, they will not be given identity cards. It was recorded that if the hutment



dwellers who are residing on road and footpath and who are complying with eligibility conditions of the scheme, are to be removed, they will be entitled for getting alternate accommodation. The scheme was not to be made applicable to 25 or less huts either in the form of being together or spread over. Also the scheme was not to be applicable to the slums for which slum redevelopment scheme has been sanctioned. The scheme was also to be made applicable to slums which are on the lands of State Government and State Government undertaking and on declared private lands and which are affected by Coastal Regulation Zone (CRZ). The scheme sets out the conditions which the slum dwellers are required to comply, to avail the benefits under the scheme. One of the most significant condition to be noted, was to the effect that the names of the slum dwellers should be in the Voters' list of 1 January 1995 and the slum dweller should be residing in the same hut which was in existence at the time when he was residing. As to on what condition the identity cards would be provided to the slum dwellers was also set out in detail in such Government Resolution.

This Government Resolution almost reads like a legislation under which rights are created in favour of slum dwellers who have encroached on the Government land, whose tenements would remain protected and who would also be entitled to alternate tenements at public costs. Glaringly, the huts on public roads and footpaths have also been granted recognition and such hutment dwellers became entitled to alternate premises if such public land was required for any public purpose.

III. GOVERNMENT CIRCULAR DATED 3 MAY 2003 The third such document to be discussed is the Government Circular dated 3 May 2003 by which a revised policy for issuance of identity card (photo-passes) to slum dwellers for the slums which were in existence up to 1 March 1995 was notified. The decision to recover composite charges as per the revised rate from the eligible slum dwellers with effect from 1 January 1995 was modified under the Government Resolution dated 18 September 2001, so as to recover the arrears of charges up to 31 July 2002 which were further modified by this Government Circular, so as to provide that while giving photo-passes to the slum dwellers under the Scheme, arrears in respect of the compensation/ composite charges for residential use huts upto 31 December 2002 was to be forgone and the eligible slum dwellers would be issued identity cards after recovering composite charges and identity card charges from 1 January 2003. The charges were revised depending on the area in their occupation depending on the nature of hutment, viz. residential cultural, social, joint and non-residential.

IV. GOVERNMENT RESOLUTION DATED 15 DECEMBER 2004 (Constitution of Encroachment Prevention Committee) This resolution noted the problems of housing and pressure caused on public amenities in Mumbai due to large scale migration of people from rural and urban areas outside Mumbai and the rampant construction of huts and rapid encroachments on vacant land, more so, on the lands of the state government, state government undertakings, MHADA, Municipal Corporation, Railway Administration, Airport Authority, Forest Department, Defense Department etc. Considering these factors, the government decided to form an "Encroachment Prevention Committee" under the Chairmanship of the Commissioner, Bombay Municipal Corporation. This Committee was to be a permanent committee. The members of the Committee were to be the Police Commissioner, Representative of the Principal Secretary (Housing), Vice Chairman and Chief Executive Officer, MHADA, Additional Collector (Encroachment/ Removal) for Mumbai city, Additional Collector (Encroachment/ Removal) for the western suburbs and Additional Collector

(Encroachment/ Removal) for the eastern suburbs, Deputy Commissioner (Salt pan), Representative of the Central Railway, Representative of the Western Railway and the Additional Commissioner, BMC. The Chairman of the Committee was conferred the authority to hold meetings as and when required and take appropriate actions for removal of unauthorized slums.

V. GOVERNMENT CIRCULAR 19 DECEMBER 2008 This Circular refers to the authority and power conferred on the Additional Collector (Encroachment/ Removal), Deputy Collector (Encroachment/ Removal) and Tahsildar (Encroachment/Removal) for removal of encroachment on the Government land. It states that under Section 50 of the MLRC, the Collector is conferred powers to remove encroachment on lands vested in the Government. It records that the Government lands are also given to MHADA for development, and such lands are also encroached before implementation of any new project. It sets out that the officers other than the Collector like Additional Collector, Deputy Collector do not have power to serve a notice for removing of encroachment and hence, it was thought appropriate that such powers be conferred on these officers who can take action on such encroachments.

VI. GOVERNMENT RESOLUTION DATED 2 MARCH 2009 This Government Resolution provides for measures for controlling and/or removing unauthorized construction and encroachments in urban areas of the State. The preamble of this Government Resolution recites that with increasing urbanization, the problems of unauthorized construction and encroachments in cities was becoming serious every passing day. It records that it was experienced, that the measures taken by the Government and the local bodies from time to time were not effective, hence, it was under consideration of the government to frame a comprehensive scheme for controlling and removing unauthorized construction/encroachments in urban areas. Accordingly, to achieve controlling and removing of unauthorized constructions and encroachments, the State Government decided to interalia take the following effective measures :-

(i) To create dedicated and competent machinery for controlling and removal of unauthorized construction/ encroachments in the local bodies. Under this head, it was provided to form an unauthorized constructions/ encroachments control and removal team which would be created at Head Office level and also at every Ward level. The team was to work under the leadership of Assistant Commissioner/ Ward Officer. Also provision for staff and machinery like trucks, dumpers, JCB machines etc. were to be made available to the teams constituted to take action on unauthorized construction/ encroachment control. It also provided for creation of urban police as authorized under Section 21 of the Bombay Police Act, 1951, and creation of independent and special police station for urban crimes and machinery to deal with such urban offences.

(ii) Another aspect was to clearly set up responsibilities and procedure for action to be taken in respect of unauthorized construction/encroachment at regional level. It comprehensively sets out different actions which would be required to be taken by the different officers.

VII. GOVERNMENT RESOLUTION DATED 16 MAY 2015 This Government Resolution is of significance which provided for determination of existence of huts from 1 January 2000 or prior to it, so that such category of slum dwellers are considered eligible for protection. The government decided to prescribe revised documents and procedure by superseding the earlier orders dated 11 July 2001, 8 November 2011, 12 January 2012 and 22 July 2014, stating that to determine as to whether a hut was in existence from 1 January 2011 or earlier and protected, at least one of the mandatory proofs as set out in the annexure to the said Government Resolution be provided by the slum dweller. The mechanism for such verification was prescribed.

VIII. GOVERNMENT RESOLUTION DATED 16 MAY 2018 By this resolution, the State Government extended the notified date "1 January 2000" for eligibility and protection to slum dwellers, so as to include the protection to the slum dwellers for permanent alternate accommodation and eviction upto 1 January 2011. Consequently, the slum dweller who was in occupation of a slum unit as on 1 January 2011, if he produces the prescribed documents, he would be regarded as protected slum dweller and entitled to all the benefits available to the protected slum dwellers on terms and conditions as specified in such resolution of the State Government.

IX. NOTIFICATION OF THE COMMISSIONER OF MUMBAI MUNICIPAL CORPORATION OF GREATER MUMBAI DATED 11 MARCH 2019.

The Municipal Commissioner, MCGM has issued this notification in exercise of powers conferred under Section 351(1) of the Mumbai Municipal Corporation Act, 1888, modifying his notification dated 4 April 2013 to appoint 'designated officers' in the concerned wards to take action under the provisions of the Mumbai Municipal Corporation Act, against the unauthorized structures/encroachment, or in regard to the change of user of premises without permission in all areas within the Brihanmumbai Municipal planning jurisdiction, however, excluding such areas in respect of which powers are conferred on any other Special Planning Authority. It was provided that in the event the designated officer is on leave or in the event the post is vacant, such powers were to be delegated to the Assistant Commissioner of the concerned Ward for the purpose of implementation as per the provisions of Section 351, 352, 352A and 354A of the MMC Act, for the local area assigned to them. It was also provided that notwithstanding the earlier notifications as set out, all notices/orders/ actions under Section 53 to 56 of the MRTP Act as initiated/ issued by the concerned Competent Authority from 5 March 2019 upto the date of issuing such notification are to be treated as valid.

We may note the relevant extract of the MCGM's notification dated 11 March, 2019 which reads thus: -

" By modifying the said Notification, I, Ajoy Mehta, Municipal Commissioner, Brihanmumbai Municipal Corporation, in exercise of the powers delegated to me under Section 351(1) of the aforesaid Act, hereby appoint the Executive Engineer in the concerned Ward Office as Designated Officer, to take necessary action under the provisions of Brihanmumbai Municipal Corporation Act, 1888, against unauthorised structures / encroachments, use without permission or change in use without

permission, in all other areas in the Brihanmumbai Municipal Planning Areas, excluding such area/premises for which the powers have been conferred upon that Authority, as Special Planning Authority for that area / premises and if the said Designated Officer is on leave or if the post of Designated Officer is vacant then, powers are being delegated to the Assistant Commissioners of the concerned Wards for the purpose of implementation as per the provisions of Section 351, 352, 352 A and 354 A of the said Act, for the local area assigned to them."

51. On the above backdrop, it would be appropriate to recapitulate some of the significant and glaring findings as made by the learned Commissioner, in the above context, which are as under:

a. The cutoff date of unauthorized hutment has been extended from time to time based on the representation made by the elected representatives.

b. Although the municipal corporation is routinely taking action on the unauthorized structures including in the slum areas but due to continuous extending of the cut-off dates by giving protection to the slum dwellers, it is difficult for it to plan definite demolition programme in the slums.

c. Within the MCGM area, there are various Government lands as also and various planning authorities such as MMRDA, MHADA, MBPT etc. d. Due to high real estate costs in Mumbai, land mafias are actively involved in unauthorized constructions. The land mafias use their muscle power/threats, political influences to stall actions against unauthorized structures by pressurizing the lower-level staff working under the Designated Officers.

e. Such members of the municipal staff remain under constant fear of assault/attacks by such unscrupulous elements since they do not have regular police protection.

f. There are criminal elements involved in the unauthorized development, hence, it is not possible for the civic staff to take action without proper support of the police department. It thus becomes difficult to take immediate action on the unauthorized structures once they are erected illegally.

g. A sympathetic view is always taken by the elected members and the Courts about the demolition action and to dislodge such affected persons during four months of monsoon. In cases where the Court finds that the action initiated by the authorities are faulty and directs the authorities to follow due process of law in initiating demolition action, it is seen that in these situations the organized mafia misuses the ad-interim/interim orders passed in such matters and carry out unauthorized constructions, so as to change status of the structure from being 'ongoing work and unoccupied' to 'completed and occupied' structure. As on date, approximately 10,000 cases are pending in various courts with ad-interim/interim orders passed by the Courts, as a result, the unauthorized structures continue to exist for long periods and

consistent follow up becomes really difficult.

52. We are in complete agreement with the above findings as recorded by the learned Commissioner, which in our opinion, can certainly be attributed to be the cause for uncontrolled, illegal structures and the collapse of such structures, claiming innocent human lives. Also in our opinion, in reality these are the causes, which have contributed to the mushrooming of illegal structures and slums, in a city like Mumbai where land is limited. However, the Court cannot be oblivious, to the abundance of powers as conferred on the various officers of the Municipal Corporations, Planning Authorities and the State Government to take prompt action on illegal constructions, encroachments and illegal slums on public lands. Under the provisions of the various enactments, there is an overarching public duty and obligation cast on such authorities to remove encroachments, order demolition and keep the Government land free from encroachment. Such provisions are found under the Maharashtra Land Revenue Code, 1966 (MLRC), Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (Slums Act), Maharashtra Municipal Corporation Act, 1949 (MMC Act), Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), and also various Government Resolutions, which are in the nature of executive instructions as noted by us above.

53. A brief overview of the relevant provisions as contained in the different enactments as also the relevant Government directives, providing substantive powers with the different authorities, to take action on illegal constructions and encroachment on public land, can be noted in the following charts :-

LEGISLATION PROVISIONS PUBLIC PENAL PROVISIONS FOR AUTHORITY  
NON-COMPLIANCE ENTRUSTED WITH (IF ANY) DEMOLITION Maharashtra  
Land Sections 50-54 Collector --

Revenue	Code Of encroachments on land
(MLRC)	<p>Section 50: Removal of encroachments on land vesting in Government; Provisions for penalty and other incidental matters.</p> <p>Section 51: Regularization of encroachments</p> <p>Section 53: Summary eviction of person unauthorized occupying land vesting in Government.</p> <p>Section 54: Forfeiture and removal of property left over after summary eviction.</p> <p>Section 59 : Summary eviction of person unauthorisedly occupying land.</p>

Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971	Section 3Z: Protection, relocation and rehabilitation of protected occupiers	Competent Authority	Section 3Z-2: a penal liability on the Competent Authority for any of its officers or employees aiding or abetting the construction to demolish unauthorized construction
(Slums Act)	Section 3Z-1: Powers to Competent Authority to demolish unauthorized or illegal dwelling structures		On conviction be punished not less than ... which may extend to five years and with fine which may be less than five hundred rupees but which may extend to 500 rupees
	Section 3Z-2: Demolition of unauthorized or illegal dwelling structures and penal liability		
	Section 8: Restriction on buildings etc. in certain cases.		
	Section 9: Power of Competent Authority to order demolition of buildings unfit for human habitation.		On a prima facie view that an offence has been committed by the Competent Authority in any of its officers or employees
	Section 38: Order of demolition of buildings in certain cases	Planning Authority officer may be except when an pending investigation is pending	
Section 47: Cesser of corresponding order of demolition the Disciplinary Authority.			
	laws and power conferred thereunder temporarily	has been made under the Slums Act.	
The Maharashtra Regional Town Planning Act, 1966	Section 52-58 Unauthorized Development	Planning Authority	According to for failure to comply with the provisions of the Act under Section 56, the Designated Officer shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees
(MRTP Act)	Section 52: Penalty for unauthorized development or for use otherwise than in conformity with Development plan		
	Section 53: Power to require removal of unauthorized		

development

thousand rupees, or w  
both.

Section 54: Power to stop  
unauthorized development

Section 55: Removal or  
discontinuance of unauthorized  
temporary development summarily

Section 56A. Punishment for failure  
to take action against unauthorized  
construction.

Section 57: Recovery of expenses  
incurred.

The Mumbai Municipal Corporation Act, 1888  
(MMC Act)

Section 61: Matters to be provided Commissioner  
for by the Corporation

Section 105B: Power to evict person  
from Corporation premises

Section 105C : Power to recover  
rent or damages as arrears of  
property taxes.

152A : Levy of penalty on unlawful  
building

Section 312: Prohibition of  
structures or fixtures which cause  
obstruction in streets

Section 313. Prohibition of deposit,  
etc., of things in streets.

313A: License for sale in public  
places

Section 314: Power to remove  
without notice anything erected,  
deposited or hawked in  
contravention of section 312, 313  
or 313A

Section 342 : Notice to be given to  
the Commissioner of intention to  
make additions, etc., to or change  
of user of, a building

Section : 345 : Building or work  
which is disapproved by the  
Commissioner may be proceeded

with, subject to terms :

Section 347 : When work may be  
commence

Section 350 : Inspection of  
buildings in course of erection,  
alteration, etc.

Section 351: Proceedings to be  
taken in respect of buildings or  
work commenced contrary to  
Section 347

Section 352A : Conferment  
temporarily of summary powers for  
demolition on the Commissioner

Section 354: Removal of  
structures, etc., which are in ruins  
or likely to fall

Section 354A : Power of Designated  
officer to stop erection of building  
or work commenced or carried on  
unlawfully

Section 354 AAA: Empowerment of  
Slum Rehabilitation Authority for  
implementation of Slum  
Rehabilitation Scheme.

Section 378 : Building or rooms in  
buildings unfit for human  
habitation

Section 378B : Power to order  
demolition of insanitary buildings.

**The Maharashtra Section 81B : Power to evict The Commissioner Penalty at such rate  
Municipal persons from Corporation premises decided by Corporation for**



Corporations Act, such unlawful building/ 1949 Section 81C : Power to recover rent construction.

or damages as arrears of property (Section 267-A) tax.

Section 232 : Power to require removal of any structure or fixture erected or set-up before the appointed day.

Section 263-A : Power to require demolition or alteration of lawfully constructed huts or sheds infringing rules or bye-laws.

Section 264 : Removal of structures, etc., which are in ruins or likely to fall.

Section 265-A : Structural Stability Certificate.

Section 267-A : Levy of penalty on unlawful building.

Section 268: Power of  
Commissioner to vacate any  
building in certain circumstances.

Section 298 : Buildings or rooms in  
buildings unfit for human  
habitation.

Section 300 : Power to order  
demolition of insanitary buildings.

#### Government Notifications

#### GOVERNMENT NOTIFICATIONS

#### SUBSTANCE OF THE NOTIFICATIONS

#### OFFICERS EMPOWERED TO TAKE ACTION

Government  
Resolution dated 16  
May 1996

Regarding fixing eligibility to -  
slum dwellers under Slum  
Rehabilitation Scheme

Government  
Notification dated  
11 July 2001

Revised policy for issuance of  
Identity Cards (photo-pass)  
to slum dwellers of slums in  
existence up to 01.01.1995

For the areas in Brihanmumbai  
Mahanagar Palika (BMC):  
Collector Mumbai/ Collector  
Mumbai Suburban

For the remaining 16 areas:  
Municipal Corporation

Commissioner, Collectors, Chief  
Officer of Nagar Palika

Government Circular Pertains to the revised policy Concerned Officers as per dated 3 May 2003 of the government for issuing Notification dated 11 July 2001 Identity Card (photo-pass) to slum dwellers in existence up to 01.01. 1995 Government The notification constituting Chairmanship - Commissioner, Resolution dated a Permanent Standing MCGM.

December 15, 2004

Committee (Encroachment  
Prevention Committee)

Other members - Poli  
Commissioner, representative of  
the Principal Secreta  
(Housing), Chairman/Vice  
Chairman, MHADA, Additional  
Collector (ENC/Removal),  
Mumbai City / Eastern/ Western  
Suburbs, Airport Authority, Dy.  
Commissioner (Salt Pan  
representative of Centr  
Railway, Western Railway and  
Additional Commissioner,  
MCGM.

Government Circular Regarding giving powers to  
dated 19 December the Additional Collector/  
2008 Deputy collector/ Tahsildar  
(Encroachment/ Removal)

In Mumbai City and Mumbai  
Suburban District:

Additional Collector

for removal of encroachments (Encroachment/ Removal) on government land under  
Deputy Collector Section 50 of the (Encroachment/Removal) Maharashtra Land  
Revenue Tahsildar(Encroachment/ Code, 1966 Removal) Government Measures for  
controlling and I. Following authorities are to Beat Inspector/ Resolution dated 2  
removing unauthorized be appointed: Beat Mukadam March 2009 construction/  
encroachments will be held in urban areas of the State. a. In Municipal Corporations/  
responsible for Municipality areas: not recording incidents of encroachment/

i) Deputy Collector at the unauthorized Head Office level constructions.

ii) Assistant Commissioner/ Perso  
Ward Officer at the Ward would be  
level on t  
offi  
b. In Nagar parishad areas: not presc

Chief Officer

Noti

to n

II. Chief Officer and Assistant unauth  
commissioner/Ward Officer constru  
shall appoint Beat Inspector taki  
and Beat Mukadam again

ille

a. Beat Inspector and Beat constructi  
Mukadam would be  
patrolling in regions where  
urban offenses are likely to  
be committed.

b. Beat Inspector to conduct  
enquiries and bring  
unauthorized constructions  
to the notice of the Chief  
Officer/ Ward Officer.

III. An officer would be  
appointed to verify incidents  
and submit his reports to  
the concerned Ward Officer/  
Chief Officer

IV. The Additional Deputy  
Commissioner (head  
Officer) (Unauthorized  
construction Department)  
would supervise the daily  
reports of encroachments  
and and unauthorized  
construction.

V. The daily note of action  
should be submitted to the  
Commissioner.

VI. Creation of Unauthorized  
constructions/  
encroachments control and  
removal team at the Head  
Office Level and Ward level

VII. Creation of an 'Urban Police  
to take cognizance of the  
offenses under the MMC Act  
or MRTP Act

- VIII. On a resolution received by the concerned Municipal Corporation,
- a. Independent and Special Police station for registering and dealing with offenses of unauthorized construction/encroachment
  - b. Special Courts to deal with the offenses under the MMC Act as well as the MRTTP Act

Government Circular Encroachments on dated 7 September government land: Regarding 2010 prevention, removal and filing complaint

Following officers were entrusted with the responsibility of filing complaints with the police:

Concerned Talathi/Circular

officer: for Government land

Local Forest officer: for forest land

Concerned Gram Sevak and Chief Officer of the Nagar Palika: for Gairan and public lands

Local officer: for other areas

Government Certifying that the --

Resolution dated 04 jurisdiction of the Designated April 2013 Officer would not extend to the areas where Section 3Z-1 of the Slums Act is in force Government Circular Prevention, removal and District collector to co-ordinate dated 10 October filing complaint regarding with other officers as mentioned 2013 encroachment on in the Circular dated 7 government land September 2010 Government Regarding the determination Concerned Competent Authority Resolution dated 16 and existence of huts under May 2015 the Slums Act, 1971 Government To determine whether the hut Resolution dated 16 in existence on or before May 2018 01.01.2011 is suitable for paid rehabilitation and to fix the shelter of the actual slum dwellers living in it.

Government The Resolution dated 04 Designated Officer Notification dated April 2013 was supplanted 11 March 2019 and the jurisdiction of the Designated Officer was extended to areas under the purview of Section 3Z-1 of the Slums Act

54. A combined reading of these substantive powers conferred on different municipal officers as also on the government officers show that not only the provisions of law but the various government directives would intend that timely steps are taken to remove unauthorized and illegal

constructions, as also dilapidated and ruinous structures be attended without delay, as there is a likelihood of collapse of such structures resulting into loss of human lives. However, repeated incidents of collapse of buildings and illegal constructions, depicts a sad story of a blatant disregard to such statutory provisions and the government directives by the municipal officers. Such specific obligations on the authorities to exercise powers so conferred under law as also under the Government Resolutions and Circulars, cannot be rendered merely as paper powers and directives.

55. Having noted the statutory canvas in regard to the variety of powers available with the different authorities to take action on illegal construction and dilapidated buildings, we now examine the primary contentions as advanced by the learned Counsel for the parties. The contentions can be broadly summarized hereunder:

(i) On behalf of the MCGM, it is contended that the report overlooks the provisions of Chapter I-B of the Slums Act, which according to the MCGM provides protection to the occupants of unauthorized structures considering various cut off dates as prescribed by the State Government, which would preclude the MCGM and/or parties to take action against such unauthorized structures. It is contended that Chapter I-B creates statutory rights of non-eviction in favour of the occupants who have been issued photo-passes by the Government which would preclude the municipal corporation from taking any action even if a slum is not notified as a slum under Section 4 of the Slums Act. The contention is that Chapter I-B also provides for demolition of the illegal structures constructed after the stipulated dates and only the competent authority under the Slums Act can take action to demolish unauthorized structures which are not photo-pass structures. For such purpose Chapter I-B is required to be accepted as a complete Code.

(ii) The MCGM contends that to the extent the provisions of Chapter I-B of the Slums Act operate qua a slum area, the provisions of the MRTP Act as also the provisions of the MMC Act cannot be invoked and cannot be made applicable in regard to the photo-pass structures. There is no question of the photo-pass holders taking permission of the MCGM for putting up construction and the MCGM has no record of the photo-

passes being issued to slum dwellers. Hence, the MCGM cannot be expected to take action in regard to any photo-pass structure. Section 47 of the Slums Act also does not change the position in regard to non- applicability of the provisions of the MRTP Act and the MMC Act in respect of the slum areas.

(iii) The State Government has contended that in so far as the slum areas are concerned, the MCGM being a planning authority certainly can exercise powers, as available to the planning authority under the provisions of the MRTP Act read with provisions of the MMC Act. According to the State Government, this position is also clear from the provisions of Section 47 of the Slums Act. According to the State Government, there is no embargo under Chapter I-B on the MCGM to apply all provisions, available to the MCGM as a planning authority under the MRTP Act read with the MMC

Act, even when the land belongs to the State Government, and on which the Collector for other purposes would have jurisdiction.

#### DISCUSSION ON THE SUBMISSIONS AS ADVANCED AT THE BAR:

56. Having noted the issue of law as urged on behalf of the MCGM, the State Government and the submissions as made by the learned Amicus, we now proceed to examine the same.

57. Mr. Chinoy's first submission is to the effect that Chapter I-B of the Slums Act is a complete code in itself, which comprehensively covers the protection granted to an occupier of a slum structure, hence, in regard to any illegal structures in the slum areas, only the Competent Authority under the Slums Act can take action. He has submitted that the provisions of Chapter I-B would divest the authority of the MCGM under the MRTP Act and the MMC Act. Mr. Chinoy's further submission is that Section 47 which provides for cesser of corresponding laws and powers conferred thereunder temporarily does not apply to Chapter I-B and it applies to only Chapters III and IV of the Slums Act.

58. To appreciate these submissions, it would be necessary to consider the scheme of Chapter I-B of the Slums Act. Chapter I-B deals with protected occupiers, their relocation and rehabilitation. Section 3X is the definition clause which defines 'dwelling structure' [Section 3X(a)], 'photo pass' [3X(b)], 'protected occupier' [3X(c)] and 'scheme' [3X(d)].

Section 3Y ordains issuance of photo passes and maintenance register. It provides that the actual occupier of a dwelling structure in existence on or prior to 1st January 2000, would be issued a photo pass which would be an identity card-cum-certificate, issued by the Government certifying a slum dweller to be an actual occupier of the dwelling structure in existence on the cut of date i.e. 1 st January 2000. A photo pass holder becomes a protected occupier as defined under Section 3X(c).

59. Section 3Z is a vital provision which provides for 'protection, relocation and rehabilitation of protected occupiers.' The provision begins with a non-obstante clause in sub-section (1) to ordain that notwithstanding anything contained in the Slums Act, on and after the commencement of the 2014 Amendment Act, no protected occupier except as provided under sub-section (2) be evicted from his dwelling structure. Thus, the protection is only from eviction. However, subject to the exceptions in sub-section (2) of Section 3Z which is to the effect that, when in the opinion of the State Government, it is necessary in the larger public interest to evict the protected occupier from the dwelling structure occupied by him. The State Government in that event, may subject to a condition of relocating and rehabilitating such slum dwellers in accordance with the scheme of relocation and rehabilitation, in accordance with such scheme evict the slum dwellers from their dwelling structures. The scheme referred in sub-section (2) of Section 3Z is the scheme as defined under Section 3X(d) to mean any arrangement or plan prepared and declared by the State Government for the protection, relocation and rehabilitation of the protected occupiers. It is thus

seen that a protected occupier would enjoy an immunity in so far as the structure is concerned, from being evicted from his dwelling structure, except when the eviction is required for the purpose of relocation and rehabilitation, in the larger public interest.

60. The next provision is Section 3Z-1 and is a significant provision, which confers powers on competent authority to demolish unauthorized or illegal dwelling structures. Sub-section (1) of Section 3Z-1 provides that where a competent authority, upon a complaint from any person or report from its officer or police or any other record or information in its possession, is satisfied that any unauthorized or illegal dwelling structure or part thereof has been constructed or any addition to the existing structure as recorded on photo-pass had been erected after the cut-off date of 1st January 2000, without obtaining necessary permissions required to be obtained in that behalf under the relevant laws, a written notice to show cause can be issued by the competent authority to such person who has put up such unauthorized or illegal dwelling structures. It provides that such notice be replied within 24 hours as to why an order of demolition of the structure be not made. Sub-section (3) of Section 3Z-1 is also quite significant, which provides that a person upon whom such notice has been served under sub-section (1) or (2), as the case may be, shall within 24 hours appear before the competent authority and produce through his agent or representative, the necessary documents to prove that the requisite statutory permission for construction, reconstruction, addition or extension, as the case may be, has been duly obtained by him and that the construction, re- construction, addition, extension is not unauthorized or illegal. Sub- section (5) of Section 3Z-1 provides for an order of demolition to be passed on any unauthorized or illegal dwelling structure, if such person fails to demolish such structure within the time the competent authority had directed.

61. Section 3Z-2 provides for demolition of unauthorized or illegal dwelling structures and for penal liability. Even this provision inter alia confers powers on the competent authority to take action against unauthorized or illegal dwelling structures which are constructed without obtaining necessary permissions required to be obtained in that behalf under the "relevant laws" from the concerned statutory authorities under sub-section (1) of Section 3Z-2. In such case, a written show cause notice can be issued by the competent authority calling upon the person who has put up such structure to show cause as to why an order of demolition be not made. Sub-section (6) of Section 3Z-2 provides for penal action to be taken, so to provide, that notwithstanding anything contained in the Slums Act, the owner of unauthorized or illegal dwelling structure referred to in sub-section (1) of Section 3Z(2) or any other person responsible for construction of such unauthorized structure or even such person who has aided or abetted the construction of such unauthorized or illegal structure or the person who is in occupation of such structure, with the knowledge, that such structure is unauthorized or is illegally constructed, shall be guilty of an offence under this section and shall on conviction be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than two thousand five hundred rupees but which may extend to five thousand rupees.

Sub-section (7) of Section 3Z-2 is further a very drastic provision, which provides that notwithstanding anything contained in the Slums Act, the competent authority or any of its officer who has aided or abetted the construction of illegal or unauthorized structure or who has failed to

demolish such structure as provided in sub-section (5) of Section 3Z-2 without any sufficient reason, such act of commission or omission on their part shall constitute an offence under this section and shall on conviction be punished with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which shall not be less than two thousand five hundred rupees but which may extend to five thousand rupees. Sub-section (8) of Section 3Z-2 provides that the offences punishable under sub-section (6) of Section 3Z-2 shall be cognizable and non-bailable.

62. On a holistic reading of the above provisions as contained in Chapter I-B of the Slums Act, it becomes clear that on one hand it confers protection on protected occupiers [Section 3X(c)] and further, it confers powers on the competent authority to demolish unauthorized or illegal dwelling structures, (Section 3Z-1) and also makes construction of unauthorized and illegal dwelling structures an offence punishable under sub-section (6) and (7) of Section 3Z-2. In our opinion, Mr. Chinoy would not be correct in his contention, that when it comes to ascertaining as to whether the construction set up in slums is unauthorized or illegal, it is only the competent authority who would be the only officer responsible to take an action, for the reasons we discuss hereunder.

63. A plain reading of sub-section (3) of Section 3Z-1, clearly recognizes that although the competent authority is permitted to initiate an action of demolition, however, the competent authority is required to verify as to whether the construction which has been put up complies with requisite statutory permissions for construction, reconstruction, addition or an extension has been obtained by a person, who is alleged to have put up such construction. Similar is the position under sub-section (3) of Section 3Z-2. An authority to grant construction permission of any nature may it be for putting up a new construction or making any addition, alteration, etc. would be with the Planning Authority, unless such authority is expressly taken away and vested with any other authority as the law may provide. We are thus of the opinion that even in respect of slum structures although the competent authority has been empowered to take action against unauthorized or illegal dwelling structures of demolition and/or lodging of prosecution, however, at the same time the provisions of Section 3Z-1 and 3Z-2 recognizes the role of the planning authority.

64. As far as the city of Mumbai is concerned, the MCGM is the custodian in regard to all affairs in relation to planning of the areas within its municipal jurisdiction, which includes its powers to grant requisite statutory permissions for construction, reconstruction, addition or extension so as to bring about a regime that unauthorized and illegal structures are not put up. Granting of such construction permissions are matters which are required to be dealt with by the planning authority and in the event unauthorized structure is put up, it also becomes not only an obligation of the MCGM (planning authority) but also of the competent authority under the provisions of Section 3Z-1 and 3Z-2 of the Slums Act to take action, including lodging of prosecution against such persons who have put up the illegal construction and even against the competent authority or any officer who has aided or abetted the construction of illegal and unauthorized structures and had failed to demolish such structures as provided in sub-section (5) of Section 3Z-2 without any sufficient reason.



65. In view of the above discussion on the provisions of the Slums Act falling in Chapter I-B, we are in complete agreement with Mr. Kumbhakoni and Mr. Jagtiani that Chapter I-B of the Slums Act is no bar for the planning authority to exercise its powers under the MRTTP Act and the MMC Act and for that matter also under the Maharashtra Municipal Corporation Act.

66. Now we come to the next limb of Mr. Chinoy's argument that Section 47 of the Slums Act operates so as to take away the authority and powers of the MCGM in regard to slum areas. In this context, it would be appropriate to first note as to what such provision ordains. Section 47 of the Slums Act reads thus:

"Section 47. Cesser of corresponding laws and powers conferred thereunder temporarily - (1) Where any area is declared to be slum area under this Act, then as from the date of such declaration, the provisions of any municipal or other law corresponding to the provisions of this Act for slum improvement in relation to the slum area in force immediately before the said date shall, save as otherwise provided in this Act, cease to be in force in the slum area, but so long only as the said declaration remains in force.

(2) Where any area is declared to be a slum area, and any building or buildings are ordered to be demolished, under this Act, then as from the date of such order, the provisions of any municipal or other law corresponding to the provisions of this Act for slum clearance and redevelopment and demolition of buildings in force immediately before the said date shall not, save as otherwise provided in this Act, apply in relation to such building or buildings, but so long as the building or buildings, as the case may be, are redeveloped.

(3) Even though any area is declared to be a slum area, as long as the order for demolition of any building or buildings is not made under this Act, nothing contained in this section shall affect the provisions of any municipal or other law for the time being in force for slum clearance and redevelopment and demolition of buildings in the slum area:

Provided that, after any area is declared to be a slum area till the date of the order is made for demolition of any building or buildings under this Act, the powers of demolition of building conferred on the Municipal Commissioner or Chief Officer or any other officers or authorities under any such law shall, notwithstanding anything contained in any such law, be exercised by them subject to the control of the State Government. For this purpose, the State Government may, from time to time issue any general or special directions to any such officers or authorities which shall be complied by them."

67. Having noted Section 47, we proceed to examine the effect Section 47 of the Slums Act brings about. Section 47 provides for cesser of corresponding laws and powers conferred thereunder temporarily. It provides that where any area is declared to be slum area under the Slums Act, then as

from the date of such declaration, the provisions of any municipal or other laws corresponding to the provisions of this Act for slum improvement in relation to the slum area in force immediately before the said date shall, save as otherwise provided under the Slums Act, cease to be in force in the slum area. It can thus be seen that by virtue of Section 47, once any area is declared to be a slum area under the Slums Act, then from the date of such declaration, the provisions of any municipal or other laws corresponding to the provisions of the Slums Act for "slum improvement" in relation to the slum area, in force, immediately before the date of such declaration, save as otherwise provided under the Slums Act, cease to be in force in the slum area, but only so long as the said declaration remains in force. Thus, simultaneous with declaration of an area to be a slum area, sub-section (1) of Section 47 exempts operation of any municipal or other law corresponding to the provisions of Slums Act "for slum improvement". Further sub-section (2) would provide that where any area is declared to be a slum area, and any building or buildings are ordered to be demolished under the Slums Act, then from the date of such order, the provisions of any municipal or other law corresponding to the provisions of the Slums Act for slum clearance and redevelopment and demolition of buildings in force immediately before the said date shall not, save as otherwise provided in the Slums Act, apply in relation to such building or buildings, but so long as the building or buildings, as the case may be, are redeveloped.

Sub-section (3) of Section 47 is a vital provision which ordains that even though any area is declared to be a slum area, as long as "an order for demolition" of any building or buildings "is not made" under the Slums Act, nothing contained in this provision, shall affect the provisions of any municipal or other law for the time being in force for slum clearance and redevelopment and demolition of buildings in the slum area. The proviso incorporated below sub-section (3) states that after any area is declared to be a slum area, till the date an order is made for demolition of any building or buildings under the Slums Act, the powers of demolition of building conferred on the Municipal Commissioner or Chief Officer or any other officers or authorities under any such law shall, notwithstanding anything contained in any such law, be exercised by them subject to the control of the State Government and for such purpose, the State Government may, from time to time, issue any general or special directions to any such officers or authorities which shall be complied by them.

68. A harmonious reading of Section 47 needs to be undertaken to gather the legislative intent, which we discuss hereafter :-

Sub-section (1) operates in a situation only when any area is declared as a 'slum area' under the Slums Act, and only from the date of such declaration the provisions inter alia of the municipal or other laws for "slum improvement" in relation to the slum area shall cease to be in force. Sub-section (2) again pertains to a 'slum area' to provide that when any building is ordered to be demolished under the Slums Act then from the date of such order, the provisions of the municipal laws would not be applicable save as provided under the Slums Act. Sub-section (3) of Section 47 of the Slums Act is in the nature of an exception to sub-sections (1) and (2). Sub-section (3) clarifies as to what sub-section (2) would envisage when it comes to an exercise of authority, in the event a demolition order is not passed under the Slums Act. It

clearly provides that even though an area is declared to be slum area, so long as, an order for demolition of any building or buildings is not made by the competent authority under the Slums Act, nothing contained in Section 47 of Slums Act, shall affect the provisions of any municipal or other law for the time being in force for slum clearance and redevelopment and demolition of buildings in the slum area. Thus, it recognizes the obligation of the municipal authorities to exercise powers even in respect of slum areas to initiate action of demolition if the structures are not authorized and/or are illegal. Such power can be exercised by them when the competent authority has not passed any order of demolition. The object being, that there cannot be simultaneous and parallel actions for demolition of the structures, at the hands of different authorities. The provision thus mandates that once the Competent Authority under the Slums Act issues an order of demolition, it would be obligatory on the part of the competent authority to take such action to its logical conclusion and when the competent authority does not pass any order of demolition, it is for the municipal authorities to take action on unauthorized and illegal construction even in the slum areas. There cannot be any other reading of sub-section (3) of Section 47 of the Slums Act.

The proviso to sub-section (3) further amplifies the said position when it ordains that after any area is declared to be a slum area, till the date an order is made for demolition of any building or buildings under the Slums Act, the powers of demolition of building conferred on the Municipal Commissioner or Chief Officer or any other officers or authorities under any such law shall, notwithstanding anything contained in any such law, be exercised by them and/or shall be subject to the control of the State Government, and for that purpose it authorizes the State Government to issue general or special directions to any such officers or authorities which shall be complied by them. Thus, the proviso below sub-section (3) compounds the position that the authority of the Municipal Commissioner or of the Chief Officer or such municipal authorities shall always remain intact, unless there is an order made by the competent authority, ordering demolition of any building/buildings under the Slums Act. Thus on one hand, in regard to the slums under the Slums Act, the slums authority is permitted to initiate action of demolition and at the same time, sub-section (3) of Section 47 read with its proviso also confers powers on the Municipal Commissioner and other Municipal Officer to take action against unauthorized and illegal structures even in the slum areas. The only embargo on the Municipal Commissioner and the Municipal Officer to exercise such powers, is in the event, when there is demolition order passed by the competent authority and which the competent authority would execute in a manner as provided for under the Slums Act. In the light of this discussion, Mr. Chinoy's contention that Section 47 of the Slums Act constitutes a bar on the municipal authorities not to take any action in regard to slum areas is required to be rejected.

69. In any event, it appears from the submission as made by the Mr. Kumbhakoni that the slum in question as situated in the Malwani area was not notified and/or declared a slum under Section 4 of the Slums Act although, the Malwani area in question is akin to a slum colony and it has been referred as a 'censused slums' in the official records of the State Government. In fact, the Malwani slum appears to be a total creation of the State Government, as unauthorized hutment obstructing

the development of Bandra-Kurla Complex area, were removed and a slum was created at Malwani by undertaking an unorganized rehabilitation and which has become so uncontrolled as discussed by us.

70. As discussed above, there are provisions under the MMC Act as also under the MRTP Act and the MLRC which confer several powers on the authorities to take action against illegal constructions. We may, however, clarify that a protection which has been conferred by Section 3Z of the Slums Act, to the protected occupiers, cannot be confused or interpreted to mean that the protected occupier enjoys and is granted a complete immunity from putting up unauthorized construction or structure and/or can make illegal additions or alterations. The protection which is granted is to a basic slum structure as may be recognized in the photo-pass. If mere issuance of a photo-pass is interpreted to be a blanket and an unfettered permission to put up any illegal construction, additions or alterations, it would lead to an abuse of the provisions of Section 3Z read with Section 3X-(a)(b)(c). Such can never be the intention of the legislature that the municipal authorities cannot take any action against the unauthorized structures merely because a photo-pass is issued.

71. It is also not correct for Mr. Chinoy to contend that merely because no applications were received from the occupants of the structures to the Municipal Corporation for either putting up constructions or additions/alterations, was itself indicative that the Municipal Corporation and its officers do not have any obligation to verify as to whether the structures are unauthorized and/or illegal. Such submission in fact militates against the clear provisions of sub-section (3) of Section 47 of the Slums Act. In our clear opinion, it is a mandatory obligation on municipal officers to regularly and meticulously verify the structures which are put up within the jurisdiction of the planning authority and in the event the structures are illegal, then an immediate action would be required to be taken against such structures in accordance with law, failing which they are acting in breach of the public trust reposed in them. It is clear that Section 47 of the Slums Act applies to a 'slum area' which is defined under Section 2(ga) of the Slums Act. We are thus in agreement with the submissions as made by Mr. Jagtiani that the Municipal Corporation was duty bound to take action against unauthorized structures not only under the Slums Act, but also the provisions of the MMC Act, the MRTP Act read with the Government Resolutions and Circulars issued from time to time. We are also in agreement with Mr. Jagtiani, that when it comes to government lands, it is equally the duty of the Collector under Section 53 of the MLRC to evict such persons, who are unauthorizedly occupying lands vested with the State. We find that there is no legislative intent to denude the MCGM or the Collector to take appropriate action in regard to unauthorized and illegal structures wherever they are situated, either it may be on government lands or on municipal lands. The dereliction to discharge the lawful duties by the Municipal officers and the officers of the State Government has caused an irreparable damage not only to the innocent slum dwellers, but also to the valuable public lands. Such dereliction of public duties as reposed in the officials has also been counter-productive and in fact has aided in proliferation of slums and grabbing of government/public lands, apart from adding to the woes of the citizens, who have no alternative, but to take shelter in slums, in the absence of any provision for mass public housing.

72. We are in fact surprised at the submissions advanced on behalf of the MCGM that the officers of the Municipal Corporation are not authorized in law i.e. under the MMC Act or MRTP Act and/or also under the Slums Act to take action against the illegal structures in slum areas. Such submission is, in fact, in the teeth of the notification dated 11th March 2019 issued by the Commissioner of the MCGM, as noted by us above, clarifying that the jurisdiction of the Designated Officer would now stand extended to all the areas which would include areas covered under Section 3Z of the Slums Act, 1971. Such observations have also been made by the learned Commissioner in his report, wherein in paragraph 3 at page 22, the following observations are made :-

"3. Pursuant to the 2012 amendment to Section 351 of the MMC Act, 24 Designated Officers have been appointed for each of the 24 Administrative Wards of MCGM. Although, jurisdiction of the Designated Officers extend to all lands within Greater Mumbai, in view of Section 3Z read with Section 47(1) of the Slum Act 1971, a Notification was issued by the then Commissioner, MCGM, on 4th April 2013 clarifying that jurisdiction of the Designated Officer would not extend to the slums where action under Section 3Z of the Slum Act 1971, is contemplated. Later on, probably in view of Section 47 (3) of the Slum Act 1971, by Notification dated 11th March 2019 jurisdiction of the Designated Officer was extended to the slums covered under Section 3Z of the Slum Act, 1971."

(emphasis supplied)

73. This apart, the Commissioner has also referred to an order passed by the co-ordinate Bench of this Court in Writ Petition No. 2952 of 2012. In such case, the Court was dealing with a situation wherein the Corporation insisted that it should be the Collector who should be taking an action on unauthorized constructions and encroachments. In the context of such stand taken by the Corporation, the Court held that the Corporation being the Planning Authority, it is the Corporation alone which is competent to initiate action to undo the illegal constructions and encroachments by taking cooperation from the Collector to remove encroachment on the Collector's plot of land. The situation is not different in the present case concerning the Malwani land. The order of the co-ordinate Bench needs to be noted which reads thus :

"1. Heard Counsel for the parties.

2. We are appalled to hear from the Corporation that the matter regarding unauthorised structures and encroachments will have to be redressed by the Collector, even though the Corporation, indisputably, is the Planning Authority of the concerned area. The fact that the Collector is the owner of the plot where the encroachment has been reported, does not mean that the Corporation is extricated from its responsibility of the Planning Authority. Being the Planning Authority, the Corporation alone is competent to initiate action under the provisions of the concerned enactment to undo the illegal constructions and encroachment. Indeed, the Corporation can expect cooperation from the Collector as well as the local police authorities but cannot absolve itself of the responsibility of taking action against such

illegal construction, if any.

3. We hope and trust that the grievance made by the petitioner in the present petition receives attention at the highest level in the Corporation. We are inclined to make this observation as we find that the Officer of the rank of Assistant Municipal Commissioner is of the opinion that he cannot initiate any action in the matter which, in our opinion, is preposterous.

4. We, therefore, expect that the Official not below the rank of Deputy Municipal Commissioner, in the first place, should examine the grievance of the petitioner and take action and issue directions, as may be necessary in the fact situation of the present case.

5. For the time being, we defer the hearing of this petition till 11 th March, 2013 with a hope that the Corporation would discharge its statutory obligations by that date and report compliance.

6. Copy of this order be forwarded to the Municipal Commissioner for information and necessary action, forthwith emphasis supplied"

74. We are, thus, of the clear opinion that the MCGM being a Planning Authority for the entire Greater Mumbai area (excluding those areas in which by law other planning authorities are appointed), the MCGM has jurisdiction to exercise all powers under the MMC Act as also the MRTP Act and the Slums Act, to take action against illegal structures as permissible in law, not only in regard to all such areas within its jurisdiction, but also the slum areas falling under the Slums Act, except when a demolition order has been made under the Slums Act. We find that even Section 4 of the Slums Act would cast no embargo on the MCGM to take appropriate action in regard to any buildings which are unauthorized and/or dilapidated. Per se, Section 4 does not prohibit the planning authority to exercise any of its authority in regard to the structures of the nature Section 4 would contemplate either before the area is declared as a "slum area" or after it is declared as a "slum area". It is nobody's case that prior to an area being declared as slum, the planning authority namely the MCGM would not have any authority under the MMC Act and the MRTP Act to take action against unauthorized construction in such areas in regard to structures in these areas. From a holistic reading of the provisions of the Slums Act as discussed above, it is difficult to conceive that merely because an area is declared to be a slum under Section 4, the planning authority would lose its control and authority to regulate the structure by implementing the provisions of the MMC Act and the MRTP Act in the event the structures are dilapidated and/or in any manner unauthorized.

75. The above discussion would lead us to conclude that Chapter I-B of the Slums Act imposes no embargo on the powers of the Municipal Corporation(s) to take action against unauthorised structures in the slum areas, including the slums declared under Section 4 of the Slums Act which may include slums on the State Government's land or land belonging to any other public authority, under the provisions of the MMC Act, Maharashtra Municipal Corporations Act and the MRTP Act. Such statutory mandate cannot be curtailed by any executive fiat including the Government

Circulars dated 7 September 2010 and 10 October 2013, which we have discussed above in paragraph 46. We accordingly answer questions (i)(a) and (i)(b) as posed by Mr.Jagtiani and as noted by us in paragraph 43, to hold that the MCGM and/or Municipal Corporations would wield all powers and authority to take actions against any structure beyond the photo-pass structure found to be unauthorized which is situated in such slums.

76. In the present case, despite the clear notification of the Municipal Corporation dated 11th March 2019, the Designated Officers of the Municipal Corporation have failed to take any action against the illegal structures in the Malwani area which has resulted in the fatal collapse of a building claiming 12 lives. If the Designated Officer along with the other officers of the Corporation and the Collectorate were to take timely action, the mishap could have been averted. The officers of the MCGM as also the Collectorate for not having taken action deserve to be held responsible in accordance with the provisions of law.

77. Be that as it may, it is never too late. It is high time that the concerned officials from the MCGM as also the Collectorate become conscious and immediately start taking action on illegal structures and restore a regime of only lawful construction prevailing in the city. In taking such action, the Municipal Officers ought to overcome any extraneous pressures and other obstructive considerations which may be created by certain undesirable elements preventing them from discharging public duties of taking action against such constructions. The iron hands of the Municipal Officers cannot be tied down by such pressures and they need to work relentlessly, as the law would mandate.

#### ROLE OF THE CIVIL COURT :

78. We also caution the Civil Courts which might be approached with civil suits/proceedings when the Municipal Corporations/Planning Authority/Competent Authority commence action against illegal and unauthorized constructions or actions being taken against dilapidated buildings. The Civil Court needs to be extremely cautious and ought to have a well considered approach in dealing with such suits. When applications for temporary injunction are moved in civil suits which are filed assailing any action being taken by the municipal officers on unauthorized/illegal constructions or actions being taken against dilapidated buildings, the injunction applications ought to be decided without any delay and not later than one week from the date of its presentation, so that in legitimate cases, the actions against illegal structures being taken by the Municipal Officers, are not delayed by any undeserving judicial intervention. In this context, we may usefully refer to a decision of the Division Bench of this Court in Mohd. Talib Habib Shaikh v. Mohammad Siddaqui Haji and Others<sup>1</sup>. Justice G.S.Patel speaking for the Bench, made the following observations on the role of the Civil Courts in considering matters arising from unauthorized and illegal construction, also referring to the previous orders passed by the Division Bench: -

"6. We are surprised that when the demolition was scheduled, the persons concerned promptly approached a Civil Court. The Civil Court in Regular Civil Suit No. 716 of 2018 passed an ex parte ad-interim order dated 31st December 2018. That order was served on the Municipal Corporation. That is taken to be a handicap and an obstacle.

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7. We are shocked and surprised firstly at the approach of the Municipal Corporation, which by now through its officials is experienced enough to pre-empt the passing of such ex parte orders. The officials should be aware that those constructing buildings unauthorisedly and illegally are bound to go to every Court right up to the highest Court in the country to stall the inevitable. Therefore, a caveat should have been filed and entered. That was not done. That possibly indicates that the Municipal Corporation is giving its blessing to such construction activity within its limits. If the order of this Court can be neutralised or set at naught and the directions therein set at naught in this manner, then we are equally disturbed by the approach of the Civil Court.

9. We would only invite the attention of the Civil Court to several judgments of this Court as also of the Supreme Court particularly in the case of Shiv Kumar Chadha v Municipal Corporation of Delhi [(1993) 3 SCC 161] wherein the Hon'ble Supreme Court has highlighted the element of public interest which is paramount in matters of this nature and particularly while considering an application for interlocutory orders, including prohibitory directions and injunctions restraining public bodies from demolishing unauthorised constructions or removing obstacles in implementation of a public project.

10. If public interest is not to be considered a vital element as highlighted in this judgment, then possibly everything would be subsidiary. The civil court must be mindful that an illegal construction poses a threat to the public at large and that there is good reason for the statutory requirement that every construction has to be authorised so that it conforms inter alia to safety and other norms."

79. In the case of Malwani collapse, it is clear that the pitch holder had exceeded all permissible limits of putting up a legitimate structure and had put up an illegal construction of ground plus three floors. It cannot be overlooked that none of the authorities either the Collector, who was the owner and custodian of the public land or the municipal authorities could be helpless under law to take any action against any illegal construction. It is their negligence, carelessness and /or willful neglect, for the reasons best known to them, which has resulted in the tragic death of 12 persons in the Malwani collapse. Such state of affairs cannot go unattended, more so when the law does not overlook and/or condone and/or pardon such lapses on the part of those responsible to implement the provisions of Slums Act, as also the planning laws.

80. At this stage, it would be appropriate for us to acknowledge the consciousness on the part of the State Government in issuing time to time directives in an attempt to control encroachment on pavement/public lands and unauthorized constructions, albeit not realizing that the implementation of these directives were in weak and shaky hands. In particular, we appreciate the issuance of Government Resolution dated 15th December, 2004 whereby the State Government constituted permanent Standing Committee (Encroachment, Prevention Committee) which was supposed to



undertake action so as to prohibit encroachment on government lands. This was certainly with a good foresight, however, failed by those who are in-charge of governance who were oblivious to their public accountability, as most unfortunately, the said Committee was still born and had remained a paper Committee. This is the sad state of affairs, as despite good intentions and thoughtful schemes designed in public interest by the State Government, the executive machinery had failed to take actions, under such initiatives and for extraneous reasons refusing to act under such policies. The consequence being that majority of the government lands and municipal lands have suffered mass encroachments, resultantly under the purported beneficial policies of the State Government, such valuable government lands have fallen to redevelopment at the hands of private developers under the garb of rehabilitation of slum dwellers. Such is the gloomy state of affairs.

81. Illegal encroachments and unauthorized structures are a menace and a potential danger not only to the city of Mumbai, which is being ruined by encroachments and illegal constructions, but also to the other bigger cities. These factors also depict a picture of absolute lawlessness in implementation of the municipal laws. This for more than one reason. Firstly, as seen from the State policies, it creates two categories of citizens, the first category is of those citizens who are law abiding, who would put up lawful construction and possess buildings/structures which are lawfully constructed thereby enjoying only the legitimate and permissible benefits therefrom. The second category is of those persons who brazenly violate law and put up illegal and unlawful constructions and enjoy with impunity such illegal structures, under the blessings of municipal and government officers. There is yet another category of persons, who illegally enter and encroach on public lands, construct unauthorized structures, they continue to reside in such structures for long periods with the blessings of all the authorities, and yet get rewarded under the government policies which offer them a premium on such illegality of encroachment, in entitling them with a free of cost accommodation, under the garb of slum redevelopment as made permissible under the State policies as discussed above. There cannot be a bigger unconstitutionality and breach of the public trust doctrine in such mechanism, under which valuable public largess is siphoned off from the pool of public assets to reward encroachers as also for private benefits.

82. In the context of preventing illegal construction and those who occupy illegal structures/premises, the provisions of Section 152 A of the MMC Act and the provisions of Section 267A of the Maharashtra Municipal Corporations Act deserve a specific reference. These are the provisions which would entitle the municipal corporations to levy a penalty on unlawful buildings. Such provisions were incorporated by an amendment as brought about to the MMC Act by Maharashtra Act No.11 of 2009 brought into effect from 1 April 2010, and in so far as the Maharashtra Municipal Corporation Act is concerned, by an amendment incorporated by Maharashtra Act 2 of 2008 dated 4 January 2008. Both the provisions are similar in its purport namely that the municipal corporations are empowered to levy a penalty at such rate as may be decided by the Corporation, so long as the construction remains to be unlawful, which may be on private land or the land belonging to, or leased by, the Corporation, or the Central or State Government as provided therefor. Such action can be taken by the Corporation without prejudice to any proceedings which may be instituted against the persons undertaking such unlawful construction. The provisions are required to be noted which read thus:-

Maharashtra Municipal Corporations Act "152A. Levy of penalty on unlawful building

(1) Whoever unlawfully constructs or reconstructs any building or part of a building,-

(a) on his land without obtaining permission under this Act or any other law for the time being in force or in contravention of any condition attached to such permission;

(b) on a site belonging to him which is formed without approval under the relevant law relating to Regional and Town planning;

(c) on his land in breach of any provision of this Act or any rule or bye-

law made thereunder or any direction or requisition lawfully given or made under this Act or such rule or bye-law; or

(d) on any land, belonging to, or leased by, the Corporation, or the Central or State Government, or any statutory corporation or organization or company set up by any such Government, in breach of any provision of this Act or of any other law for the time being in force and the rules or bye-laws made thereunder, shall be liable to pay a penalty, at such rate as may be decided by the corporation, on such building which shall be equal to twice the property tax leviable on such building, so long as it remains as unlawful construction without prejudice to any proceedings which may be instituted against him in respect of such unlawful construction:

Provided that, such levy and collection of tax and penalty shall not be construed as regularization of such unlawful construction or reconstruction for any period whatsoever of its such unlawful existence. Provided further that, the rates decided by the Corporation under this sub-section shall be deemed to have come into effect from the 1st April 2010, being the date of commencement of the Mumbai Municipal Corporation (Third Amendment) Act, 2006.

(2) Penalty payable under sub-section (1) shall be determined and collected under the provisions of this Act, as if the amount thereof were a property tax due by such person."

"267A. Levy of penalty on unlawful building. -

(1) Whoever unlawfully constructs or reconstructs any building or part of a building, -

(a) on his land without obtaining permission under this Act or any other law for the time being in force or in contravention of any condition attached to such permission;

(b) on a site belonging to him which is formed without approval under the relevant law relating to Regional and Town Planning;

(c) on his land in breach of any provision of this Act or any rule or bye-

law made thereunder or any direction or requisition lawfully given or made under this Act or such rule or bye-law; or

(d) on any land, belonging to, or leased by, the Corporation, or the Central or State Government, or any statutory corporation or organization or company set up by any such Government, in breach of any provision of this Act or of any other law for the time being in force and the rules or bye-laws made thereunder, shall be liable to pay a penalty, at such rate as may be decided by the corporation, on such building, so long as it, remains as unlawful construction, without prejudice to any proceedings which may be instituted against him in respect of such unlawful construction:

Provided that, such levy and collection of tax and penalty shall not be construed as regularization of such unlawful construction or reconstruction for any period whatsoever of its such unlawful existence.

Provided further that, the rates decided by the Corporation under this sub-section shall be deemed to have come into effect from the 4th January 2008, being the date of commencement of the Bombay Provincial Municipal Corporations, the City of Nagpur Corporation and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2007.

(2) Penalty payable under sub-section (1) shall be determined and collected under the provisions of this Act, as if the amount thereof were a property tax due by such person."

83. In our opinion, a scrupulous and determined implementation of the above provision(s) would achieve two fold objects; firstly that it would deter persons from putting up unlawful, illegal and unauthorized constructions; secondly, the machinery of the municipal corporations to take action against the unlawful and unauthorized constructions would get activated, so as to recover maximum revenue for the municipal corporation, which would certainly be a step in larger public interest. We are not informed by the municipal corporations as to whether so far any action has been initiated under these provisions, so that the legislative object and intent in incorporating such provision, is achieved. If the municipal corporations are not effectively utilizing these provisions and no action is being taken, it is high time that the municipal corporations implement these provisions with full diligence and rigour. This would certainly aid and assist the municipal corporations in reducing the menace of unauthorized constructions, which has engulfed the important cities in the State. Today, it is seen that the municipal corporations and its officers are struggling with the evil of illegal and unauthorized constructions, despite the law providing wide ranging powers to deal with such menace. An undeterred and bonafide will in these public officials to take stern actions as per law, is the need of the hour.

84. None can accept and/or believe that the municipal authorities or the government officers are not aware of the provisions of law under which they are duty bound to take action against illegal and unauthorized structures wherever situated. In so far as the principles of law in regard to demolition of illegal and unauthorized constructions are concerned, we may refer to some of the decisions of the

Supreme Court. We discuss some of the decisions on the subject.

85. In Friends Colony Development Committee V/s State of Orissa 2, the Court was concerned with an unauthorized construction being undertaken by the builder, as instead of sanction of a four storeyed building, he had constructed a 5th floor and for which an action came to be initiated against him. On the plea of the builder being accepted by the High Court that he be permitted to make a fresh application and (2006) 3 SCC 581.

submit a revised plan for approval qua the construction he had already undertaken, the appellant had moved the Supreme Court. It is in such context the Supreme Court made significant observations in regard to the threat to the society, illegal and unauthorized constructions pose. These observations are important not only in the context of unauthorized and illegal constructions but also in the context of the plight of those who purchase premises in unauthorized buildings. The relevant observations are required to be noted, which reads thus:

"20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.

22. .... It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the state. The exercise of such governmental power is justified on account of its being reasonably

necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter- meddling with the private ownership of the property may not be justified."

(emphasis supplied)

86. Apart from the above observations, what is significant is that the Supreme Court also observed that if the High Court feels that the illegal/unauthorized building activities are so rampant, so as to be noticed judicially, it may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability. Such observations are required to be noted, which reads thus:

"(7) The High Court, if it feels that illegal/unauthorized building activities in Cuttack are so rampant as to be noticed judicially, may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability."

(emphasis supplied)

87. In *Dipak Kumar Mukherjee v Kolkata Municipal Corporation and Ors.*<sup>3</sup>, again the Supreme Court was concerned with an illegal and unauthorized construction of buildings and other structures put up by respondent no. 7 in the said proceedings, who had undertaken construction in violation of the sanctioned plans. An order was passed by the Municipal Corporation ordering demolition of the disputed construction. Respondent no. 7 having approached the High Court, an order came to be passed by the High Court directing the competent authority to pass an appropriate order after giving an opportunity of a hearing to respondent no. 7. The Supreme Court held that such an order could not be sustained, as the construction undertaken by respondent no. 7 was in clear violation of the sanctioned plans and for which a notice was issued by the competent authority of the Corporation and more so because an application for regularization was made by respondent no. 7 after completion of the construction. It is in such context, the Supreme Court considering the position in law as laid down in the earlier decisions emphasized that illegal and unauthorized constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the (2013) 3 SCC (Civ.) 72.

particular area but also affect various fundamental and constitutional rights of other persons. It was observed that the common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. In commenting on the menace of illegal and unauthorized constructions, the Supreme Court considering its decisions in *K. Ramadas Shenoy V. Town Municipal Council, Udipi*<sup>4</sup>, *Pratibha Coop. Housing Society Ltd. v. State of Maharashtra*<sup>5</sup>, *Friends Colony Development Committee v. State of Orissa* (supra), *Shanti Sports Club v. Union of India*<sup>6</sup> and *Priyanka Estates International (P) Ltd. v. State of Assam*<sup>7</sup>. the Supreme Court made the following observations:

"29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer."

(emphasis supplied) DILAPIDATED/RUINOUS BUILDINGS.

88. People losing their lives in building collapses, is required to be completely obliterated. The right to livelihood, in our opinion, includes the right to live in safe buildings and houses. Whosoever is the owner of the building, may it be of private ownership or of the ownership of a public body, as also whosoever is occupying the building, it is the constitutional obligation of such persons, that the safety of the building/ premises is paramount so that the lives of the residents of the buildings (1974) 2 SCC506 (1991) 3 SCC 341 (2009) 15 SCC 705 (2010) 2 SCC 27 are safe and not endangered by a likely collapse. In the event of an unfortunate collapse not only the owners but also the occupants for their negligence would be required to be held responsible for consequences which may arise from a collapse.

89. We have noted the provisions of law which recognize an obligation of the owners/occupants to maintain the premises so that they are safe for human living. In the event the structure/building is dangerous, strict enforcement of the provisions of law is expected from the municipal authorities against the owners and the occupants of such structures/building. It is clear that variety of powers are available with such authorities to enforce such obligations. It is also a lawful duty of these officers not to turn a blind eye to the ruinous buildings, and by their inaction, bring about a situation that the building/structure collapses and residents lose their lives. In such event, not only the persons who own the building but also those who permit ruinous buildings to stand, become accountable and responsible for the consequence of such collapses. The tendency of those who knowingly permit occupation of ruinous buildings/structures is also required to be commented upon. If there is resistance of the occupants to vacate the buildings which are ruinous, then necessarily, not only in the interest of the residents of such building but also those who occupy the adjoining premises and those who are likely to be affected in the event of unfortunate collapse, becomes a matter of serious concern. In such situations, it is expected that the authorities take all forcible measures against such occupants as permissible in law. If such occupants in this situation resist the action being taken and approach the Civil Court, the Civil Court in such a situation needs to be extremely slow as noted by the Co-ordinate Bench of this Court in Mohd. Talib Habib Shaikh (supra) as any interference by the Civil Court may endanger the lives of others.

90. In our considered opinion, there is an urgent need of a collective social consciousness to be inculcated in our fellow citizens living in unsafe buildings. The adamant attitude of residents to

vacate the buildings which are declared to be ruinous needs to be strictly dealt. The municipal machinery needs to enforce the mandatory compliance of structural audits to be submitted by the owners of the buildings as per the requirement of law, failing which, actions need to be taken against such owners who do not undertake structural audit of old buildings. This is the need of the hour. There is yet another aspect, also there is no guarantee that the new buildings (less than 30 years old) are safe and would not collapse as the experience has shown. In regard to such buildings, the municipal authorities are required to take all precautions also of securing an undertaking from the developer/builder or from whosoever is constructing the building, that the entire structure of the building would be safe for its occupants on all aspects of its user, for the stipulated period as the law may require, and as to a declaration as to the safe life of the building in normal circumstances. In our opinion, in the absence of such guarantee and assurance of safety, the lives of the occupants can certainly be said to be unsafe to occupy the building, where such assurance has been compromised. Thus, all provisions under the law and the D.C. Regulations need to be strictly enforced on this front.

91. We also note from the current statistics which are made available by the Mumbai Municipal Corporation on its website that there are 407 dilapidated buildings in Mumbai. There may be similar structures within the Municipal jurisdiction of Corporations in the vicinity of Mumbai and other places. The planning authorities, therefore, are required to take emergent actions in regard to such ruinous structures and save innocent lives being lost in possible building collapse. Various enactments conferring powers with the Municipal Corporation are replete with provisions strengthening the hands of the municipal officers to take action against such dilapidated buildings. The concerned officers not only need to be vigilant but also inculcate a willingness to take actions, and that too, by overcoming all odds and possible interferences/hindrances which may be created by unscrupulous, unconscionable and corrupt elements, in obstructing their lawful discharge of duties. There may be extraneous forces which may operate in this situation and derail any action to be taken in respect of a dilapidated building. However, as it would be the ultimate accountability and responsibility on the municipal officers, in the event of an unfortunate building collapse, the officers need to overcome all such pressures and discharge their duties with utmost accountability as obligated in law.

92. As noted by us above, the Municipal Commissioners are expected to frame a mechanism so that the concerned designated officers of every ward would enforce an audit of the buildings as required by law, so that the buildings which are notified to be ruinous can be vacated and incidence of a collapse averted. We may also note that there may be category of buildings which in no time from the year of their construction become dangerous due to the inferior quality of the construction material and/or for other reasons. Experience has shown that there are certain buildings of recent origin, which were constructed with sub-standard materials and/or on account of their rank defective construction, were hazardous for occupation and ultimately collapsed. This was a case of a building which collapsed on 4 April, 2013 in Mumbra, now a suburb of Thane. It was one of the most ghastly collapses in which 74 people died, and of which there were 18 children, 33 men and 23 women. Such building was an illegal building. A serious question in such situation would arise, as to how such illegal buildings could come up and people occupy such buildings? Is it not in connivance with the municipal and the State officers ? It is for such reason, and with the sense of concern for

our fellow citizens, we have impressed the important role of the municipal and the State officers in the scheme of affairs, to be extraordinarily vigilant and prevent building collapses. A comparatively new building becoming dangerous is also required to be brought to the notice of the municipal authorities by all the concerned including the occupants, as these situations cannot remain hidden.

93. We also cannot forget the role of the municipal officers and its law officers in not showing promptness and/or in delaying to move the Courts for vacating any orders passed on illegal constructions and dilapidated buildings. They cannot remain mute spectators in the event the situation requires a stay or injunction, warranting to be urgently vacated. The Municipal Commissioner needs to take appropriate actions on the concerned officials, if it is found that prompt actions are intentionally not being taken or are delayed for extraneous purposes and for unexplainable reasons.

94. Now, we note in some detail the relevant provisions of law on actions to be taken under the MMC Act, the Maharashtra Municipal Corporations Act and the Maharashtra Rent Control Act in relation to removal of buildings/structures which are in ruinous condition and which are likely to fall. These provisions are Section 354 of the MMC Act, Section 264 of the Maharashtra Municipal Corporations Act and Section 14 of the Maharashtra Rent Control Act, which read thus:-

#### MMC Act, 1888

354. Removal of structures, etc., which are in ruins or likely to fall. - (1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, [subject to the provi-

sions of section 342] and to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.



(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the inter se rights of the owners or tenants or occupiers, including right of re- occupation in any manner.

Explanation.- For the purposes of this section, "the tenant" shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999."

#### Maharashtra Municipal Corporations Act, 1949

264. Removal of structures, etc., which are in ruins or likely to fall. - (1) If it shall at any time appear to [the Designated Officer] that any structure (including under this expression any building, wall, parapet, pavement, floor, steps, railings, door or window frames or shutter or roof or other structure and anything affixed to or projecting from or resting on any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, [the Designated Officer] may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair such structure or thing or do one or more of such things and to prevent all cause of danger therefrom.

(2) [The Designated Officer] may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith or before proceeding to pull down, secure, remove or repair the said structure or thing, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and hand-rail if there be room enough for the same and [the Designated Officer] shall think the same desirable to serve as a footway for passengers outside of such hoard or fence.

(3) If it appears to [the Designated Officer] that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by [the Designated Officer] under sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) Where [the Designated Officer] is of opinion, whether on receipt of an application or otherwise, that the only or the most convenient mean by which the owner or occupier of a structure such as is referred to in sub-section (1) can pull down, secure, remove or repair such structure, is by entering any of the adjoining premises belonging to some other person [the Designated Officer] after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing authorise the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of [the Designated Officer] shall be a sufficient authority to the person in whose favour it is made, or to any agent or person employed by him for this purpose, after giving to the owner of the premises reasonable written notice of his intention so to do, to enter upon the said premises with assistants and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing any work under this section, as little damage as can be, shall be done to the adjoining owner's property and the owner or occupier of premises for the benefit of which the work is done, shall-

(i) cause the work to be executed with the least practicable delay;

(ii) pay compensation to any person who sustains damage by the execution of the said work."

Maharashtra Rent Control Act, 1999 "Section 14 Landlords' duty to keep premises in good repair.

(1) Notwithstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.

(2) If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord.

Provided that, where the repairs are jointly made by the tenants the amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs together with simple interest at fifteen per cent per annum on such amount:

Provided further that, the amount so deducted or recoverable in any year shall not exceed one-fourth of the rent payable by the tenant for that year. (3) For the purposes of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord."

95. Even the Development Control And Promotion Regulations For Greater Mumbai, 2034 (DCPR) in Regulation 2(IV)(17)(vi)(q) defines "Unsafe building". Regulation 12(3) provides for inspection of unsafe buildings which also needs to be noted and reads thus:-

2.(IV)(17)(vi)(q). "Unsafe building" means a building which -

- (i) is structurally unsafe,
- (ii) is insanitary,
- (iii) is not provided with adequate means of egress,
- (iv) constitutes a fire hazard,
- (v) is dangerous to human life,
- (vi) in relation to its existing use, constitutes a hazard to safety or health or public welfare by reasons of inadequate maintenance, dilapidation or abandonment."

... ..

## 12. Inspection-

(1) .....

(2) .....

(3) Unsafe building:- All unsafe buildings shall be considered to constitute danger to public safety, hygiene and sanitation and shall be restored by repairs or demolished or as otherwise directed by the Commissioner."

96. It is clear from the reading of the above provisions that it obligates the Commissioner/Designated Officer to take action in regard to such ruinous structures not only in the interest of the residents but also in the interest of the neighbourhood, passersby etc. so as to protect human life and property. The obligation cast on such officers under these provisions are obligations to be discharged in public interest and become enforceable as they fall under the realm of public law. An obligation on the Municipal Commissioner/Designated Officer is to call upon the owners or the occupiers to pull down the ruinous structures, and to take all measures for protection of those who are likely to be affected by collapse of such ruinous buildings. Section 354 of the MMC Act is pari materia to Section 264 of the Maharashtra Municipal Corporation Act. This apart, even Section 14 of the Maharashtra Rent Control Act would create an obligation on the landlord to keep the premises in good repair. Section 14 has overriding effect over any other law for the time being in force, which casts a duty on the landlord that he shall keep the premises in good and tenantable repair. Sub-section (2) of Section 14 provides that if the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant(s) may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover the amounts from the landlord.

97. In the context of Section 354 of the MMC Act, a decision of the Division Bench of this Court in 1959 in *Nathubai Dhulaji Versus the Municipal Corporation, Bombay*<sup>8</sup> needs to be noted. In this case, the Court was considering an appeal arising from a decree passed by the City Civil Court, at Bombay, dismissing the appellant's suit. The suit was instituted in regard to a structure in respect of which a notice was issued under Section 354 of the Bombay Municipal Corporation Act, asking the petitioner to pull down the building. It is in these circumstances, the appellant/plaintiff approached the Court by filing an appeal. It is in the context interpreting Section 354 of the Act, the Division Bench observed that there can be no question that what was primarily intended by the enactment of Section 354 of the MMC Act was securing of public safety. It would also be appropriate to note the telling observations of the coordinate Bench of this Court in *Vivek Shantaram Kokate & Ors. Vs. Municipal Corporation of Gr.Mumbai & Ors.*<sup>9</sup> concerning the risk to the lives of those residing in ruinous buildings, in the context of a notice under Section 354 of the Mumbai Municipal Corporation Act issued by the municipal corporation, which was the subject matter of challenge AIR 1959 Bombay 332 2019 SCC OnLine Bom 1613 before the Court. The Division Bench in paragraph 21 observed thus:-

"21. We have said this before, and we will say it again, and yet again, as often as we must: this Court will always err on the side of caution. For human lives matters. Buildings can be recon- structed. A life lost is lost forever. The alternative is unimaginable:

'the building was not demolished because of a stay granted by the Court. The building collapsed. People died. Therefore, people died because the Court granted a stay.' This is the conclusion devoutly to be avoided. A built structure is, in many ways, like the human body. Both require routine care and maintenance, and early inter- vention when serious problems are detected. Without this, both ail. To say then, as Mr.Murthy says today, 'that the building can be repaired' is very like saying a life can be artificially prolonged for a little while. Whether or not to keep a life going may pose an ethi- cal, legal or moral dilemma. A building presents no such chal- lenge. On the contrary, it is the lives in the building that are our paramount, primary, and, perhaps, only concern. .... "

(emphasis supplied)

98. It is thus clear from the scheme of the provisions of the above legislations that, in matters of dilapidated and ruinous buildings, there is no scope whatsoever to accept a situation that the occupants of such structures live in uncertainty and risk their lives.

99. In the scheme of Constitutional governance, it is not possible for us to assume that a public official, howsoever high, or mighty or low, can remain without public accountability to "We the People". Failure of accountability and discharge of public duties and responsibilities which the law would mandate them to discharge, in our opinion, are anathema not only to the expectations of lawful governance, but would also bring about a colossal case of derailment of the Constitutional and legal machinery, resulting into patent societal injustice and a civic regime opposed to the rule of

law. The issues, which we have discussed above, certainly cast a serious doubt as to whether the above expectations of the rule of law are at all fulfilled and/or are followed in breach. It is for such reason, when there is a glaring and an apparent failure on the part of the statutory authorities to comply their lawful duties and Constitutional expectations, and/or when there is a dent or a breach in enforcement of the laws, the Courts unhesitantly are required to step in, so as to correct those who are failing in the discharge of their lawful duties, of not only to remind them of such duties and obligations but use the strong arm of law to set the same enforced and restore the confidence and expectations of the citizens, in the rule of law. This would also certainly require the Court to strictly deal with such officials, as the law would mandate the Court to so deal with them. They ought not to be under any impression that they can evade law with impunity. The famous quote of Lord Acton that "power corrupts and absolute power corrupts absolutely" ought to be realized to be untrue and something of the past, in its applicability in public governance. This, more particularly, when the aim is to compete with the other countries of the world where not only the building laws are stringently followed but also the aesthetics in relation to constructions and building designs are given a great impetus, so that the cities do not become eye sores of brick and mortar. This apart, as echoed in every public policy, corruption in municipal governance should be brought to the books by establishing multiple layers of anti-corruption mechanism within and outside the organization and achieve strict application of the provisions of the Prevention of Corruption Act, 1988. This ought to be implemented with immediate urgency by keeping a vigil on those officers who in the absence of any hurdles are deliberately not taking actions against illegal and unauthorized constructions. It is only then that there can be a ray of hope and sunshine for the future generations.

100. In view of the aforesaid discussion, we are of the clear opinion that the following directions would meet the ends of justice to prevent dilapidated buildings falling down and lives being lost, in times to come, as also the menace of unauthorised and illegal construction is arrested, illegal buildings and structures are identified and prompt action on such buildings/constructions is undertaken. Our directions would also pertain to actions to be taken against officers who are negligent in their duties and by whose inaction and illegal conduct not only human lives are lost, but also large government lands and large public lands vanish from the government's treasure.

101. It is with the above parting words, we close the present proceedings by the following orders:

#### ORDERS

- i) We accept the report of the learned Commissioner on the questions as framed by us in terms of the findings as recorded by the learned Commissioner qua each of such questions.
- ii) In particular we accept the following findings of the learned Commissioner in regard to question no. (h) and direct the Principal Secretary to initiate action against the Municipal and State Government officials and Employees in the manner as directed in the subsequent part of this order:-

"MCGM being the local authority for Greater Mumbai, which includes Malwani Village, Officials of the MCGM viz. Junior Engineer and Building Mukadam attached to the Office of the Designated Officer of MCGM for Malwani Village were responsible to maintain vigil and supervision in respect of unauthorized developments at Malwani Village. Similarly, since the said unauthorized construction was on the State Government land, Officials from the Office of the Additional Collector (ENC), Malad 2 viz. the Surveyor in the Office of the Deputy Collector (ENC / Removal), Malad 2 was responsible to maintain vigil and supervision in respect of unauthorized developments on Government land at Malwani Village."

iii) The planning authorities through its Competent Officers shall keep informed the Urban Development Department of the Government of Maharashtra on the numbers of illegal constructions in the respective municipal and jurisdictional areas and the action being taken in regard to such illegal constructions, which shall be notified on the website of the planning authority.

iv) The names and designations of the officers/Municipal Officers and employees in charge of the respective municipal and jurisdictional areas, reposed with the authority to initiate action in regard to the illegal, unauthorized and ruinous structures, shall be notified by the planning authorities/Municipal Corporations ward-wise on its official websites, so that accountability can be attributed and fixed in deciding complaints which may be filed by the aggrieved persons.

v) Municipal Commissioner and/or the competent authority of a designated planning authority, is directed to take a review of the illegal buildings/structures in every ward and actions taken thereon, periodically between the 25 th to 30th day of every month.

vi) Except for an acceptable and lawful reason, if an illegal and unauthorized construction is found to have subsisted and/or its non-removal is aided and/or abetted by the municipal officers or its employees for a substantial time of more than six months, the Municipal Commissioner shall take penal action against such erring municipal officers including lodging of prosecution under the Municipal laws, in addition to the relevant provisions of the Indian Penal Code, apart from initiating disciplinary proceedings.

vii) In so far as the notified slum areas are concerned, in respect of all illegal and unauthorized constructions, in accordance with the provisions of Section 3Z-2 (7) of the Slums Act, the State Government is directed to lodge prosecution including against the competent authority and the other officers of the SRA for having aided or abetted the construction of unauthorized or illegal structures and also against the persons responsible for putting up these structures. In the event there is a collapse of a structure/building in the slum area, the direction in (vi) above shall be applicable against the competent authority and other officers who are in-charge of supervising and taking actions on illegal constructions in slum areas.

viii) In the event of a building collapse resulting in loss of lives, the Principal Secretary (UDD) and/or the Municipal Commissioner, as the case may be, shall immediately conduct an enquiry to be completed within a period of fifteen days from such collapse, so to determine the responsibility of

the concerned Municipal and Government Officials failing to discharge their duties, and after so ascertaining, institute criminal proceedings against the concerned officers and employees in-charge of the Ward and those who were responsible to take action on the dilapidated buildings, as also against the higher officials under whom such ward officer/designated officer would immediately work. Such criminal prosecution not only shall be under the provisions of the municipal laws but also under the relevant provisions of the Indian Penal Code.

ix) The persons who put up illegal or unauthorized constructions cannot claim any immunity by undertaking such illegal acts. The Municipal Commissioner apart from taking action for demolition of such illegal structures, shall also institute criminal proceedings against such persons, who are found to have violated municipal laws and constructed unauthorized or illegal structures apart from taking action for demolition of such structures in a manner known to law. This apart those who are victims of a building collapse, in the absence of any fault on their part, would also be entitled to seek reliefs in appropriate civil and criminal proceedings against the owners of the building and the municipal officers, notwithstanding their right in law to claim compensation from such parties.

x) The concerned Municipal Commissioners are directed to give effect to the provisions of Section 152A of the MMC Act and Section 267A of the Maharashtra Municipal Corporations Act to levy penalty which shall be equal to twice the property taxes leviable on such building, so long as it remains unlawful and recover such amounts as arrears of property taxes.

xi) The Permanent Standing Committee (Encroachment Prevention Committee) as constituted under the Government Resolution dated 15th December 2004, shall forthwith be made functional by the State Government so as to commence its functioning with effect 15 th March 2022. Such committee shall hold periodical sittings twice every month so as to take account of the actions on illegal structures in Mumbai. Such Committee shall also be constituted in respect of other cities in Maharashtra and it shall hold sittings accordingly.

xii) In so far as the State Government's land and/or other public lands in respect of which, till date no slums schemes are approved by the Slum Rehabilitation Authority, such lands shall not be redeveloped under slum redevelopment schemes, unless the State Government or the concerned public authority gives a 'no objection', to be published, in at least two local newspapers, that in future it does not require such public lands for any of its purposes, or for the public purposes of any other public bodies under the State or the Central Government. Unless, such no objection is received from the State Government or the Central Government or any other public body, the development of any slum scheme or private utilization of such land shall stand freed.

xiii) The State Government and the public bodies shall take appropriate steps as permissible in law, to remove the encroachments of the public lands as described in (xii) above, so that land is made encroachment free, to be utilized for public purpose.

xiv) In the event the encroached lands are required by the State Government or by any public body, steps be taken to remove the encroachment and make the land encroachment-free within one year, by rehabilitating the slum dwellers of such lands, if they are protected occupiers. Such eligible slum

dwellers be rehabilitated in any other part of the city or in the municipal jurisdiction of the adjoining municipal corporation as the State Government may decide.

#### NEED FOR MASS PUBLIC HOUSING :

102. On our way towards conclusion, we may note that a chaotic state of affairs of mushrooming of slums and unauthorized and illegal constructions in every possible pocket of open land could have been avoided, provided there was a desire to have a proper vision and an effort to make an effective plan for mass public housing, which would cater to the housing needs, for a large percentage of population in a city like Mumbai. It cannot be overlooked that for a city as large as Mumbai or any other comparable city in the State, large work force and which may be migrant workforce is indispensable and perennially required, who cater to the various manpower requirements the city consumes. However, we find that in contemporary times, there is not much thought been given by the policy makers to such vital issues of affordable mass public housing, to be created to accommodate such large work force either temporarily or permanently. Moreover, the entire focus is on putting up skyscrapers on slum lands. It cannot be a situation that people from all parts of the country come to work in urban areas and there is no alternative to them but to encroach on government/public lands or private open lands and reside in filthy surroundings and in illegal structures. Such is the sorry state of affairs. Even such persons have a right to live with dignity and in appropriate humane and pleasant livable surroundings.

103. The policy makers appear to have turned a complete blind eye to these requirements of legitimate housing for such workforce, without whom the basic activities in the city would collapse. This is not only the requirement as would emerge from the constitutional guarantee as enshrined under Article 21 of the Constitution, but also what the Universal Declaration of Human Rights (1948) would provide wherein housing rights are recognized, as a part of economic and socio-cultural rights, which would guarantee a right to a standard of living adequate for health and well-being of citizens, and include the right to food, clothing, housing and medical care along with provisions for necessary social services etc. Further the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is ratified by 160 States including our country also includes recognition of housing rights as a part of the broader right to adequate living conditions as seen from Article 11(1) thereof.

104. We may usefully refer to mass housing facilities and/or affordable housing plans being adopted by some of the countries like Singapore, United States of America, United Kingdom and Hong Kong as gathered from the Articles as referred by us.

1. Singapore It is stated that 80% of the population is currently living in publicly governed and developed housing. 10 The small City State of Singapore is highly praised for the way it has promoted housing for all through state leadership in the land market. The success of Singapore's policy is attributed to the joint efforts of the unique governance structure of the Housing and Development Board (HDB), the implementation of the Land Acquisition Act and the funding mechanism of the Central Provident Fund (CPF). The HDB-CPF framework was established in the 1960's and has transformed the urban form of Singapore with more than one million high-rise



housing units being built since 1961, accommodating 90% of the population, and still operates today. There are Low-income subsidies which are made available for Family housing and Elderly housing which can be availed under proper financial schemes as promoted by the State.

2. United States of America Post World War II, USA introduced a system of affordable housing for the poor members of its population through public housing. Public Housing has a unique administrative structure that pairs local See Dr.Nicholas Falk and Jonah Rudlin, "Learning from International Examples of Affordable Housing", Shelter, Urbed Trust, available at [https://assets.ctfassets.net/6sxvmndnpnos/1byrK8fEQut88x9kk4w6cP/od3452ab160bfa27c832f1e1ae83f8e/International\\_examples\\_of\\_affordable\\_housing\\_-\\_Shelter\\_URBED\\_Trust.pdf](https://assets.ctfassets.net/6sxvmndnpnos/1byrK8fEQut88x9kk4w6cP/od3452ab160bfa27c832f1e1ae83f8e/International_examples_of_affordable_housing_-_Shelter_URBED_Trust.pdf) administration and local discretion with federal funding and federal regulations. Public housing properties are owned and managed by quasi governmental local public housing authorities (PHAs). PHAs have contracts called annual contribution contracts, with the federal government. Under the terms of their contracts, PHAs agree to administer their properties according to federal rules and regulations, and in exchange they receive federal funding in the form of operating in capital grants.<sup>11</sup>

3. United Kingdom The United Kingdom passed a number of laws in the late 19 th century to enable the government to clear unhealthy areas within cities for public health purposes. However the Housing, Town Planning etc. Act of 1909 was the first to give local governments in the UK the power to develop land and build housing. There is an emphasis in the UK on promoting home ownership. In tandem with schemes like the Right to Buy scheme, UK introduced low cost home ownership initiatives, most notably shared ownership. Shared ownership allows low income families who aspire to own homes to buy a determined amount of equity (usually 25%) of a dwelling unit, while incrementally 'staircasing' remaining payments through instalments in the form of rent.<sup>12</sup>

4. Hong Kong In Hong Kong public housing is based on government policy and implemented by the housing authority. Hong Kong's public housing system is articulated mainly through two different schemes, the Public Rental Housing (PRH) where houses are rented out on discounted rates to low income residents while in (HOS) which is the Home Ownership See Maggie McCarty, "Introduction to Public Housing", available at <https://sgp.fas.org/crs/misc/R41654.pdf> See Sanga, Naganika (2020). "Public Housing in Two Liberal Welfare Regimes: A Comparison between the United States and the United Kingdom," *Agora Journal of Urban Planning and Design*, 134-147.

Scheme, housing estates are sold to low income residents at subsidized prices.<sup>13</sup> It is observed that 45.7% of Hong Kong's total population lives in public housing of which 29.1% live under the PRH scheme and 16.5% live in the HOS scheme.

105. Considering the progressive steps being taken by many other countries, we feel that our policies also ought not to lag behind, so as to achieve the goals for creating ideal and slum free cities keeping in mind the interest of the generations to come. Can we have a myopic vision and forget that the generations to come would also need playgrounds, open spaces, gardens, clean and hygiene surroundings. This considering the scenario that people go on putting constructions and more so, at the behest of vested interest, wherever there are open lands. There is a need of a fundamental

thinking on these vital issues of planning. A vision on these issues needs more attention in contemporary planning. If timely attention is not devoted to such issues, it is quite likely, that for the future years, things would worsen and may create insurmountable suffering, of every kind, affecting human lives who live in such cities. Thus, a serious endeavour of the policy makers, as an emergent need, ought to be, to have well-planned cities which would cater to every possible facet of human life and not merely to create unplanned and chaotic towns. Any lack of vision on these issues would be fatal for times to come.

106. We thus cannot expect citizens to languish in filthy and unhygienic slums. The right to livelihood includes a right of decent living and not an animal existence. It would include a right to live with dignity and implicit in it, is a right to live in decent houses, opposed to filthy living conditions. This ought to be an issue of prime concern for See Oriol Caudevilla, "A Comparison of the System of Public Housing in Hong Kong with the System of Public Housing in Spain", available at [https://www.researchgate.net/publication/317384213\\_A\\_Comparison\\_of\\_the\\_System\\_of\\_Public\\_Housing\\_in\\_Hong\\_Kong\\_with\\_the\\_System\\_of\\_Public\\_Housing\\_in\\_Spain](https://www.researchgate.net/publication/317384213_A_Comparison_of_the_System_of_Public_Housing_in_Hong_Kong_with_the_System_of_Public_Housing_in_Spain) the State, so to devise means to create mass housing facilities for the poor and for the economically weaker sections of the society, who are forced to live in slums in bigger cities so as to earn their livelihood and whose need for the city is perhaps indispensable. An endeavour ought to be made to bring about an era to have cities with no slums. If such ideals are achieved, it would be a pride and glory for the generations to come who would then would be the beneficiaries of dignified and ideal cities.

107. Before parting, we may observe that the State Government and Municipal Corporation would be well advised to have a scheme to reward those officers and employees who achieve civic excellence by their devoted and exemplary efforts in discharge of their duties in achieving societal welfare.

108. This Suo Motu Public Interest Litigation is accordingly disposed of leaving the citizens to espouse their concern with the different statutory authorities and adopt appropriate legal proceedings for redressal of their grievances.

109. In the parting, we heartily appreciate the strenuous efforts taken by Mr. Sharan Jagtiani and Mr. Rohan Surve, the learned Amici along with their colleague Advocates, for the erudite and valuable assistance provided to the Court, in deciding the present proceedings.

(G.S. KULKARNI, J.) PER DIPANKAR DATTA, CHIEF JUSTICE (Concurring)

110. In Lewis Carroll's classic "Alice in Wonderland", Alice was so surprised after entering the rabbit hole that she exclaimed "curiouser, curiouser". Although 'curiouser' is no part of English vocabulary, Alice's utter surprise was sought to be highlighted by the author by preferring an unconventional 'curiouser' to the grammatically correct 'more curious'. Alice would have certainly exclaimed "curiouser, curiouser", had she descended in this wonder city, Mumbai, and noticed the stark urban inequalities resulting from the exceedingly sharp contrast between the wealthy and the poor, the opulent and the frugal. While the affluent enjoy lavish life-styles and show-off their new expensive

acquisitions, the whole lot struggling day long for securing their daily share of meal lack proper housing facilities and even the basic of civic amenities. The gap between the "haves" and the "have nots" is so pronounced that no matter whatever welfare measures are thought of by social, political and economic reforms, it may not be possible in the near future to achieve even a token equality. No wonder, as far back as in 1956, a melodious duet of two extremely popular voices of Bollywood cautioned that it was difficult (mushkil) to live in (erstwhile) Bombay and that one would have to try hard to find a heart (dil) here.

111. Erstwhile Bombay, now Mumbai, is home to people coming from across the country in search of livelihood. This migration has not only added to the dense population making Mumbai the most populous Indian city, it has immensely burdened the housing sector so much so that 41.3% of the population live in slums. Any one taking an aerial view of Mumbai, also called the city of dreams, would be fascinated by the swanky sky-scrappers but disheartened by the structures at the foot of such sky-scrappers covered mostly by blue tarpaulin covers. These are the densely populated single storey or double storied slums accommodating almost a half of the population, which co-exist as neighbours with real estate developments of extravagance. Despite these pronounced inequalities, people here seem to have accepted that this is the way life should go on. Mumbai happens to be the financial capital of this great nation and the extent of developments that one can see having taken place in Maharashtra, are significant. The annual budget of the Municipal Corporation of Greater Mumbai is more than several mid- sized States of India. It is, therefore, not unreasonable to assume that sufficient financial resources are at its disposal, and one would have expected the Government and the Corporation, whoever was at their helm, to adequately plan development by making appropriate budgetary provisions for affordable housing projects for the not so fortunate working class of people living in slums. Regrettably, instead of moving in the direction to have a planned and sustainable development, the successive Governments together with the Corporation seem to have unabashedly allowed mushrooming of slums at the instance of squatters by encouraging them not only to encroach more and more of public property but, simultaneously, by enacting laws to protect such unauthorized occupation. Enacting laws to further the interests of the weaker sections of the society is the obligation of every State in terms of Part IV of the Constitution and any move in that behalf ought to and must be welcomed. People living in slums do equally have a right of decent living conditions, which can be ensured by relocating them with proper housing facilities. However, a vicious nexus involving high profile personalities, bureaucrats, builders and slum lords have created a situation where public property is first encroached without resistance being provided by the law enforcing agency, followed by a declaration of slum gradually progressing to redevelopment by builders ostensibly for slum dwellers but really to further the interests of the "haves". In the garb of legislation, in a novel manner, a fraction of the population including holders of public offices have continued to prosper by achieving their goals through impure means which are nothing short of betrayal of the trust that the people of this region have reposed in those responsible for an able governance. While it was the need of the hour to make housing projects a reality more effectively and with empathy, what has been laid bare is the apathy and indifference to cater to the needs of the hapless coupled with a complete lack of sensitivity. The reasons are not far to seek. Quite contrary to the ideals and values embodied in the Constitution which lay down the basic framework of the social and political structure of the country and sets out the objectives and goals to be pursued by the people in a common endeavor to secure happiness and welfare of every member of the society and

despite taking oath to uphold the laws, actions of those in power and authority are now invariably driven by political motivations or other oblique considerations. No wonder, the casualty is the compassionate Constitution of ours.

112. I felt 'curiouser, curiouser' as the hearing of this matter progressed. Much of the reason therefor has been captured in the well thought of and well-crafted judgment of brother Justice Kulkarni, which has my full concurrence. The directions contained therein, ought to arouse the feelings of the civil as well as the municipal administration to take ameliorative measures to prevent recurring incidents of building collapses leading to untimely and unnecessary deaths.

113. Initially I decided to be reticent; however, in view of the importance of the matter, I introspected and considered it appropriate to pen a few words mainly by way of emphasis with the expectation that the civil as well as the municipal administration would implement the directions contained in the judgment of brother Justice Kulkarni. We part with the hope and trust that the respondents, remaining alive to the duty cast upon them by law, would not precipitate any further cause of action and thereby necessitate the intervention of this Court with more stringent directions.

(CHIEF JUSTICE)