IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5130 OF 2022

1. Raj M. Ahuja
2. Jain M. Ahuja … Petitioners

Versus

1. The Municipal Corporation of Gr.Mumbai through the Municipal Commissioner.
2. The Executive Engineer (Building Proposals), Municipal Corporation of Gr.Mumbai. …Respondents

WRIT PETITION (LODG) NO.8486 OF 2022
with
INTERIM APPLICATION (L) NO.1929 OF 2023
with
INTERIM APPLICATION (L) NO.1323 OF 2023

M/s.Mangal Buildhome Pvt.Ltd. ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

Mr.Ashish Kamat, Senior Advocate with Mr.Mayur Khandeparkar with Ms.Pooja Kane-Kshirsagar, Mr.Jitendra Jain, Mr.Laxman Jain, Rohit Bamne i/b. Yogesh Adhia, for Petitioners in WP 5130/22

Mr. Mayur Khandeparkar a/w Mr. Rajesh Sharma, Ms.Tehashree Paraz i/ b Rajesh Sharma & Associates for Petitioner in WPL/8486/2022

Mr.Amarendra Mishra for Respondent Nos.3 to 9 in WP 5130/22.

Mr. S. K. Pise with Shahin K. Sayed for Applicant in IAL/1929/2023 and 1323/2023 and for R. No. 7 and 9 in WPL/8486/2022.

Mr.Sukanta Karmakar, AGP for Respondent No.1 State in WPL 8486/22.

Mr. A. Y. Sakhare, Senior Advocate a/w Ms. Vandana Mahadik for

MCGM in WPL/8486/2022

Mr.Dharmesh Vyas with Ms.Vandana Mahadik, for MCGM in WP 5130/22.

CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.

Reserved on: MARCH 15, 2023

Pronounced on : MARCH 20, 2023

JUDGMENT: (Per G.S.Kulkarni, J.)

1. These are petitions under Article 226 of the Constitution of India, concerning redevelopment or construction of new buildings. The existing buildings were demolished, after being declared dilapidated and dangerous, and were facing action for their demolition under Section 354 of the Mumbai Municipal Corporation Act,1888 (for short 'the **MMC Act**').

2. A short question of contemporary importance, which arises for determination in these petitions is as to whether the Municipal Corporation for Greater Mumbai (for short '**MCGM**') would be justified in imposing a condition that the owner/landlord who intends to undertake redevelopment of a demolished building, is required to obtain

100% consent of all the erstwhile tenants/occupants, by submitting to the MCGM, 'permanent alternate accommodation agreements', executed with all the tenants, as a condition for issuance of a commencement certificate (CC), stated to be mandated by Clause 1.15 of the "*Guidelines issued by the MCGM for declaring private and municipal buildings as 'C-1' category (Dangerous, Unsafe)"* (for short "**the 2018 Guidelines**") and a similar consequential condition in the Intimation of Disapproval (IOD).

3. For convenience, we refer to the facts in the first Petition (Raj M. Ahuja & Anr. Vs. The Municipal Corporation of Gr.Mumbai & Ors.).

4. The petitioners are owners of land bearing Survey No.113(part) and Survey No.114(part) and bearing CTS No.89/A, 89/A 1 to 13 of Village Pahadi Eksar, Taluka Goregaon, situated at Jay Prakash Nagar Road No.2, Goregaon (East), Mumbai. There was an existing building on such land, having ground plus one upper floor known as 'Madhu Estate' having an industrial user. It housed 39 industrial units. There were 17 tenants on the ground floor. Respondent Nos. 3 to 9 are some of the tenants out of the 17 tenants.

5. It is not in dispute that on 22 July 2017, MCGM had issued a notice to the petitioners under Section 354[1] of the MMC Act. Also the Technical Advisory Committee (TAC) of the MCGM had inspected the petitioners' building and had declared the same to be dangerous falling within 'C-1' category. Consequent to such notice, the petitioners requested the occupants / tenants to vacate the subject building. On 26 December 2017 the MCGM had prepared a list of tenants/occupants/owners occupying the units, alongwith the carpet area statement, of each of the units, in the building, which forms part of the record of the MCGM. After all the formalities were completed, in December 2017, the MCGM demolished the building.

6. Out of the 39 units housed in the building, 22 units were on the first floor which were owned by the erstwhile owners of the building and some of which were let out on leave and licence to third parties. There is no dispute in regard to any rights being claimed by any third parties in respect of those 22 units. The remaining 17 units which were on the ground floor, were in occupation of the tenants. Out of said 17 units, two tenants surrendered their rights in favour of the petitioners. There is an eviction decree passed against four tenants, the proceedings

1 **Sec.354. Removal of structures, etc., which are in ruins or likely to fall.**

in that regard are sub-judice before the Small Causes Court at Mumbai. Out of the 17 units, in regard to 5 units the petitioners have entered into agreements/consent terms for permanent alternate accommodation. A suit for eviction has been filed by the petitioners against one of the tenants on the ground of sub-letting, which is pending before the Small Causes Court. Also, there are suits filed by the petitioners against the tenants in respect of 6 units, which are stated to be pending before the Small Causes Court. Thus, there are only 7 occupants (Respondent Nos.3 to 9) who are the disputing occupants, who are not ready and willing to enter into a permanent alternate accommodation agreement (for short "**PAAA**"). They are stated to be the non-consenting members.

7. The case of the respondent Nos.3 to 9 is to the effect that they are entitled for a permanent alternate accommodation only in an industrial building which they contend would be in accordance with the guidelines laid down by a Division Bench of this Court in Writ Petition (L) No.1135 of 2014 (finally numbered as Writ Petition No.1080 of 2015). In short, such respondents, are not consenting to the petitioners undertaking a redevelopment, unless the nature of the rights being asserted by them are recognized by the petitioners. These respondents have also filed a civil suit before the City Civil Court at Mumbai, on 4 September 2018

asserting such rights being Long Cause Suit No.2601 of 2018 interalia praying for the following reliefs:-

> "a) That this Hon'ble Court be pleased to declare/direct that the Plaintiffs are entitle for Permanent Alternate Accommodation, free of cost on the Suit Plot, in accordance/compliance of the guidelines laid down by the Hon'ble High Court in W.P. (L) 1135 of 2014.
>
> b) That this Hon'ble Court be pleased to declare that the Reply Notice dt. 09/05/2018 addressed by the Defendant No.1 & 2's Advocate, disputing the rights of the Plaintiffs for Permanent Alternate Accommodation on the Suit Plot, is non-est, illegal, bad-in-law and is contrary to the guidelines laid down by the Hon'ble High Court in W.P. (L) 1135 of 2014.
>
> c) That this Hon'ble Court be pleased to grant Permanent Injunction against the Defendant No. 1 to 7 and/or their servants, agents, persons, body, associations, company or attorney, claiming through them, be restrained from making any construction/ development/redevelopment of the Suit Plot in any manner, whatsoever, without written consent of the Plaintiffs as envisaged by the Hon'ble High Court in W.P.(L) No.1135 of 2014.
>
> d) That this Hon'ble Court be pleased to grant Permanent Injunction, thereby restraining the Defendant No.8 Corporation from issuing any development/redevelopment permissions of the Suit Plot, in favour of the Defendant no.1 to 7 or any persons/associations claiming through them, without following the due process of law, more particularly, without written consent of the Plaintiffs, as envisaged by the Hon'ble High Court in W.P.(L) No.1135 of 2014.
>
> e) That this Hon'ble Court be pleased to grant Temporary Injunction against the Defendant No. 1 to 7 and/or their servants, agents, persons, body, associations, company or attorney, claiming through them, be restrained from making any construction/ development/redevelopment of the Suit Plot in any manner, whatsoever, without written consent of the Plaintiffs as envisaged by the Hon'ble High Court in W.P.(l)

No.1135 of 2014.

f) That this Hon'ble Court be pleased to grant Temporary Injunction, thereby restraining the Defendant No.8 Corporation from issuing any development/ redevelopment permissions of the Suit Plot, in favour of the Defendant No.1 to 7 or any persons/associations claiming through them, without following the due process of law, more particularly, without written consent of the Plaintiffs, as envisaged by the Hon'ble High Court in W.P.(L) No.1135 of 2014.

g) That pending the hearing and final disposal. of the present Suit, the Defendant No. 1 to 8 be directed to maintain 'Status-Quo' in respect of the Suit Plot.

h) Ad-interim or interim reliefs in terms of prayer clause (e), (f) & (g) be granted.

i) For the cost of the Suit."

8. These respondents, however, could not get any interim orders in such civil suit, so as to restrain the petitioners and the MCGM from granting any IOD/commencement certificate in favour of the petitioners.

9. The petitioners have contended that, being confronted with a situation that in the redevelopment being undertaken by them, construction of a 'industrial building', on the said land was not economically viable under the prevailing Development Control and Promotion Regulations-2034 (for short '**the DCPR-2034**'). This for the reason that the DCPR-2034, does not provide for utilization of either "additional FSI" or "admissible TDR" in the industrial zone as per the

DCPR Regulation 30 – Table 12. The petitioners state that it was thus not economically viable to construct one building for industrial user and another for residential user, and the only method under which the redevelopment project was viable, was to construct a single residential building, in which the erstwhile eligible occupants/tenants could be offered an alternative residential accommodation of an equal size / area on tenancy basis, subject to the outcome of the eviction suits filed by the petitioners. The petitioners accordingly approached the MCGM for change of the zone from 'industrial' to 'residential' which was granted in favour of the petitioners by the MCGM on 21 April 2022. It is petitioners case that they have also made a provision for accommodating the non-consenting tenants, by reserving for them a residential alternate accommodation, in lieu of the units occupied by them in the building to be constructed.

10. In the above circumstances, the petitioners submitted plans for the proposed redevelopment with the MCGM. In pursuance thereto, on 16 June 2022, the MCGM issued to the petitioners an Intimation of Disapproval (IOD), however, with Condition No.39 and Note Nos. 20 and 21 which are objected by the petitioners. As the controversy in the present proceedings interalia revolves around these conditions, which

are based on the 2018 Guidelines as issued by the MCGM, it would be appropriate to note Condition No.39 alongwith Notes 20 and 21, which read thus:-

> "Conditions
> … … …
> 39. Existing structure proposed to be demolished shall not be demolished or necessary Phase Programme with agreement will not be submitted & got approved before C.C."
>
> Notes
> ….. …..
> 20) The Intimation of Disapproval is given exclusively for the purpose of enabling you to proceeds further with the arrangements of obtaining No Objection Certificate from the Housing Commissioner under Section 13 (h) (H) of the Rent Act and in the event of your proceeding with the work either without an intimation about commencing the work under Section 347(1) (aa) or your starting the work without removing the structures proposed to be removed the act shall be taken as a severe breach of the conditions under which this Intimation of Disapproval is issued and the sanctioned will be revoked and the commencement certificate granted under Section 45 of the Maharashtra Regional and Town Planning Act 1966, (12 of the Town Planning Act), will be withdrawn.
>
> 21. If it is proposed to demolish the existing structures after the negotiations with the tenant, under the circumstances, the work as per approved plans should not be taken up in hand unless the City Engineer is satisfied with the following:-
>
> i. Specific plans in respect of evicting or rehousing the existing tenants on hour stating their number and the areas in occupation of each.
>
> ii. Specifically signed agreement between you and the existing tenants that they are willing to avail or the alternative accommodation in the proposed structure at standard rent.
>
> Iii. Plans showing the phased programme of constructions has to be duly approved by this office before starting the work so as not to contravene at any

> stage of construction, the Development Control Rules regarding open spaces, light and ventilation of existing structure."
>
> (emphasis supplied)

11. It is the petitioner's case that after issuance of the IOD, although respondent Nos.3 to 9 were minority unit-holders in the building which was demolished, and who were not consenting for residential redevelopment, the petitioners offered them an equivalent area of residential accommodation. However, respondent Nos.3 to 9 did not respond to such offer of the petitioners. In these circumstances, the petitioners by their letter dated 28 June 2022, as addressed to the MCGM requested that a commencement certificate be issued, *interalia* pointing out that out of 32 unit-holders who were 82% of the unit-holders/tenants, and who were having about 77% of the carpet area occupied in the subject building, were agreeable to accept the petitioners' offer of an alternate residential accommodation being provided, in lieu of their service industrial units. The petitioners also recorded that respondent Nos.3 to 9 were not agreeable to similar offers made by the petitioners. The petitioners also recorded that a provision was made for accommodating these non-consenting unit-holders by reserving for them, equivalent alternate accommodation in the proposed residential building, in lieu of the units occupied by them in the

demolished building. The petitioners also forwarded to the MCGM a legal opinion dated 25 July 2022, to the effect that in view of the majority of the occupants having consented for the proposal, the MCGM was required to proceed to issue a commencement certificate (CC), without insisting on a condition of 100% of the tenants agreeing, and/or permanent alternate accommodation agreements being entered with all the tenants. As there was no response to the petitioners' request for issuance of commencement certificate, the petitioners have approached this Court by the present proceedings, which were filed on 10 August 2022. The petitioners have prayed for the following reliefs:-

> "(a) This Hon'ble Court be pleased to declare that Clause 1.15 of the Impugned Guidelines (being Exhibit L hereto) requiring consents/agreements from all the tenants/occupants, is illegal and bad in law, also violative of Article 14 of the Constitution of India, being arbitrary, unreasonable, capricious, impracticable and discriminatory, and this Hon'ble Court be pleased to strike down the same.
>
> (b) This Honourable Court be pleased to issue a Writ of Mandamus, or any other Writ or Order in the nature of Mandamus, ordering and directing the Respondent Nos.1 and 2 to treat the consents of 32 unit holders/occupiers as a sufficient compliance of Condition No. A - 39 and Notes 20 and 21 of Intimation of Disapproval bearing No. CHE/WSII/5566/P/S/337 (NEW)/IOD/1/New dated 16" June 2022;
>
> (c) Pending the hearing and final disposal of the present petition, the Respondent Nos.1 and 2 be directed to issue further permissions, including Commencement Certificate to the Petitioners for redevelopment of the said property, namely, plot of land or ground bearing CTS No.89/A, 89 A 1 to 13 of Village Pahadi Eksar, Taluka Goregaon and admeasuring about 3333.6 sq. yards equivalent to 2,787.32 Sq. mtrs. in the registration District and Sub District of Mumbai City and Mumbai Suburban;
> (d) Pending the hearing and final disposal of the present

> Petition, this Honourable Court be pleased to issue a mandatory interim order directing the Respondent Nos.1 and 2 to not to insist upon the consents of/agreements with all the tenants/occupants as a precondition for grant of development permissions including Commencement Certificate to the Petitioners for redevelopment of the said property, namely, plot of land or ground bearing CTS No.89/A, 89/A 1 to 13 of Village Pahadi Eksar, Taluka Goregaon and admeasuring about 3333.6 sq. yards equivalent to 2,787.32 Sq. mts. in the registration District and Sub District of Mumbai City and Mumbai Suburban;
>
> (e) Ad-interim reliefs in terms of prayer clauses (c) and (d) be granted to the Petitioners;
>
> (f) For the costs of the present Petition; and
>
> (g) For such other and further reliefs, as the nature and circumstances of the case may require and this Hon'ble Court may deem appropriate.

12. As seen from the petition, the primary grievance of the petitioner is in regard to Clause 1.15 of the 2018-Guidelines issued by the MCGM and the effect of such clause as incorporated in clause 39, and Condition 21(ii) of the Notes as contained in the IOD. The contention of the petitioners is that the MCGM is interpreting these clauses to mean that the petitioner is required to have a permanent alternate accommodation agreement (PAAA) with 100% of the tenants and only after such agreements are entered between the petitioners and the tenants, a commencement certificate would be issued.

13. The petitioners contend that the basis for incorporating Condition 21(ii) in the IOD are the 2018-Guidelines *("Guidelines issued by the*

MCGM for declaring private and municipal buildings as C-1 category"), under which, clause No.1.15 stands incorporated to provide that the MCGM while granting a sanction to the redevelopment, the zonal building proposal department shall include a condition in the 'Intimation of Disapproval (IOD)' that unless and until an agreement either providing a permanent alternate accommodation in the newly constructed building or a settlement is arrived at by and between the tenants and /or occupiers and landlord, no Commencement Certificate (C.C.) will be issued under Section 45 of the MRTP Act. Clause 1.15 in the 2018-Guidelines reads thus:-

> "1.15) The corporation shall, while granting the sanction for redevelopment, the zonal building proposal department shall include a condition in intimation of Disapproval (IOD) that "unless and until an agreement either providing a permanent alternate accommodation in newly constructed building or a settlement is arrived at by and between the tenants and / or occupier and the landlord, no Commencement Certificate (C.C) will be issued under section 45 of M.R&T.P Act 1966."

14. It is the legality of Clause 1.15 which is challenged by the petitioners *interalia* contending that the same is arbitrary, unreasonable, impracticable, discriminatory and being violative of Article 14 of the Constitution. In making such prayer, the petitioners contend that it may not be always conceivable that 100% tenants agree for the redevelopment being undertaken by the owners of the land, or it is

likely that the tenants/occupants impose a counter condition and/or for some other reasons they are not agreeable to enter into a permanent alternate accommodation agreement. It is thus submitted that to have a pre- condition of the owners/developers requiring to enter into PAAA with 100% of the tenants for grant of a commencement certificate, would create serious consequences *interalia* of the project itself being brought to a stand-still by a minority/minuscule number of tenants or members of a co-operative society. It is submitted that merely because there is an opposition on some issues, by some tenants, it cannot result in the project being delayed, causing a serious prejudice to the other occupants of the building, the owners and other stakeholders. It is thus the petitioners' case that such condition as interpreted by the MCGM in clause 1.15 of the 2018-Guidelines and the impugned conditions as incorporated in the IOD issued to the petitioners, are required to be held to be arbitrary and illegal.

15. On the other hand, on behalf of the MCGM, the impugned conditions as incorporated in the IOD as also Condition No.1.15 of the 2018 Guidelines, are sought to be justified on the ground that it is incumbent on the Corporation to safeguard the interest of the tenants. This more particularly, considering the orders dated 23 June 2014

passed by the Division Bench of this Court in Writ Petition (lodg) No.1135 of 2014 (**Municipal Corporation for Gr. Mumbai vs. State of Maharashtra & Ors.**) whereby in the absence of any policy guidelines the Division Bench by an interim order had formulated guidelines which are now incorporated by the MCGM in the 2018-Guidelines. It is submitted that in the present case all the tenants have not submitted their consent as respondent Nos.3 to 9 have not consented to the redevelopment, as also a permanent alternate accommodation agreement was not entered with them by the petitioners. It is hence submitted that the MCGM was justified in not issuing a commencement certificate to the petitioners.

Analysis

16. On the above conspectus, we have heard learned Counsel for the parties, we have perused the record. As noted by us, Condition 39 of the IOD and Condition Nos.20 and 21(ii) as contained in the Notes under the IOD as also Clause No.1.15 of the 2018 Guidelines, are impugned by the petitioners. On a plain reading of such conditions and of clause 1.15 of the 2018 Guidelines, it is quite clear that the zonal building proposal department, needs to include a condition in the Intimation of Disapproval (IOD), that unless and until an agreement either providing for a permanent alternate accommodation in the newly

constructed building or a settlement is arrived at by and between the tenants and / or occupier and the landlord, no Commencement Certificate (C.C) would be issued under section 45 of M.R&T.P Act 1966. Thus, the MCGM requires consent of 100% tenants to be submitted by the owner/landlord or the developer to the municipal corporation, for the owner/landlord to become eligible for issuance of a commencement certificate.

17. It appears that the basis of such stand as taken by the MCGM is firstly on account of the interim order dated 23 June 2014 passed by a Division Bench of this Court in the case of Municipal Corporation for Gr. Mumbai vs. State of Maharashtra & Ors. (Writ Petition (l) No.1135 of 2014)(supra). The said proceedings were filed by the MCGM making prayers against the State of Maharashtra and the concerned police personnel, to have forcible eviction of the occupants of a building known as “Sohansingh Mansion” as also other buildings which are declared to be dilapidated and dangerous by the MCGM and to issue appropriate guidelines for removal of non-cooperating occupants of dilapidated and dangerous buildings. In the said proceedings, the MCGM had contended that it was necessary that guidelines be issued to the parties so as to avoid any untoward incident of loss of lives of the occupants of the said

buildings, as well as occupants of the adjoining structures and passers-by. It is in such context, considering the provisions of the MMC Act, the Court issued guidelines as contained in paragraph 9(l) to 9(p) of the said order, observing that such guidelines were necessitated essentially to make Section 354 of the MMC Act effective and to ensure that human lives are not in any manner compromised. Such guidelines as contained in paragraph 9(l) and 9(p) of the said order passed by the Division Bench read thus:

> "9. Accordingly, for the present, in the absence of any policy in that behalf, the following guidelines are issued:-
> … … ..
> (l) The rights of the tenants and/or occupiers and/or owners in respect of the said premises/property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building in exercise of the power under section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and/or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation/removal / demolition will not affect the *inter se* rights of owners if there be more than one owner or there is a dispute as to the title of the property.
> …. … …
>
> (p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under section 45 of the MRTP Act,1966 unless and

> until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest."

Thus, the Division Bench in the above order has observed that the rights of the tenants and/ or occupiers and/or the owners in respect of the said premises/property would not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous buildings, in exercise of the power under section 354 of the MMC Act or by virtue of the fact that the Corporation is the owner of the premises. It was *interalia* observed that a tenant/occupier and/or owner will be entitled to re-occupy the premises of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/ or occupiers, with the owner of the building. It was also observed that any action of evacuation /removal / demolition will not affect *inter se* rights of owners if there be more than one owner or there is a dispute as to the title of the property. It was also observed that in case privately owned buildings are demolished by the MCGM in exercise of powers under Section 354, read with the said order passed by the Division

Bench, then the MCGM while granting sanction for redevelopment, shall impose a condition in the Intimation of Disapproval (IOD) that no 'Commencement Certificate' will be issued under section 45 of the MRTP Act,1966 unless and until an Agreement either providing for a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord, in respect of the said demolished premises, and the same is submitted to the Corporation. It is exactly as what has been observed by the Division Bench in paragraph 9 Clause (l) and (p) of its order dated 23 June 2014 finds recognition in Clause 1.15 of the 2018-Guidelines for declaring private and Municipal buildings as C-1 Category (Dangerous, Unsafe).

18. As noted above the 2018-Guidelines were issued under the interim orders dated 23 June 2014 passed by this Court in the "Municipal Corporation for Gr. Mumbai vs. State of Maharashtra & Ors." (supra). The said writ petition was finally disposed of by judgment and order dated 28 February 2018 passed by a Division Bench of this Court. The said judgment in paragraph 3 has observed that an affidavit was filed on behalf of the MCGM dated 8 February 2018, interalia stating that the MCGM had framed guidelines for declaring private and

municipal buildings as falling in 'C-1' category (Dangerous/Unsafe). It was stated that such guidelines were approved by the Municipal Commissioner. The Court observed that at the earlier hearing of the said proceedings, on behalf of the MCGM a note dated 22 February 2018 signed by the Director (E.S.&P) and Chairman of the Technical Advisory Committee (TAC), was tendered across the bar. Such note was also approved by the Municipal Commissioner on 23 February 2018. It was observed that the policy annexed to the said affidavit as filed on behalf of the MCGM, was amended to the extent provided in the said note dated 22 February 2018. The Court observed that in view of the policy guidelines which were placed on record by the said affidavit, it was no longer necessary for the Court to exercise jurisdiction to issue policy guidelines. The operative part of the said order passed by the Division Bench in paragraph 28(9) observes that in view of the policy guidelines which were placed on record, it was also not necessary for the Court to continue interim order dated 23 June 2014, as the Municipal Corporation was bound to follow its own policy guidelines. It was observed that for exercising powers under Section 354 of the MMC Act, from the date of the said judgment, the Municipal Commissioner shall follow its own policy guidelines as the interim directions were no longer operative. The relevant paragraphs of the said order are required

to be noted, which reads thus:

> "4 We have perused the said policy which lays down an elaborate procedure to be followed before issuing a notice under Section 354 of the said Act of 1888. In this Petition, we are not called upon to go into the question of legality and validity of the contents of the said policy. But suffice it to say that policy as amended on 23rd February 2018 by the Municipal Commissioner is binding on the Municipal Corporation.
>
> 5 The necessity of passing interim order dated 23rd June 2014 was the absence of a policy or guidelines. That is very clear from the observations made in the paragraph 8 of the said order. In view of the policy guidelines which are placed on record by the affidavit dated 8th February 2018 as modified on 23rd February 2018 now it is no longer necessary for this Court to exercise Writ Jurisdiction by issuing policy guidelines. … … … … ..
>
> 28 Our conclusions and the final directions are as under :
> … … .. …
> (ix) We make it clear that in view of the policy guidelines which are placed on record, it is not necessary for us to continue interim order dated 23rd June 2014 as the Municipal Corporation is bound to follow its own policy guidelines. Therefore, for exercising powers under Section 354 of the said Act of 1888 from the date of this Judgment, the Municipal Commissioner shall follow its own policy guidelines as the interim directions are not longer operative. We also make it clear that we have not examined the issue of legality and validity of the policy guidelines framed by the Municipal Corporation;"

19. In pursuance of the observations of this Court in "Municipal Corporation for Gr. Mumbai vs. State of Maharashtra & Ors." (supra) the '2018 Guidelines' were issued by the Municipal Corporation on 25 May

2018 (as signed by the Municipal Commissioner on the said date) incorporating impugned clause No.1.15. As noted above, the grievance of the petitioners is in regard to Clause 1.15 of the 2018-Guidelines to the effect that clause 1.15 ought not to mean that consent from all the tenants/occupiers of a dilapidated building is mandated for issuance of a commencement certificate.

20. In our opinion, there is much substance in the contention as urged on behalf of the petitioners, that Clause 1.15 cannot be interpreted to mean that the consent of all the occupants/tenants or 100% consent of the tenants/occupants in the manner as suggested in Clause 1.15 would be necessary for a commencement certificate to be issued. This for more than one reason. Firstly, it cannot be countenanced that once the majority of the occupants / tenants are agreeable to vacate the building and/or to accept the permanent alternate accommodation being offered by the owner, by protecting their occupancy rights as they stood at the time the building was demolished, it cannot be heard from minority of such tenants/occupants, for whatever reasons, that they are not agreeable to a settlement in this regard or resist a permanent alternate accommodation as offered by the owner to the majority of the tenants / occupants, for a reason that a permanent alternate accommodation does

not suit their requirements, or for some other reasons they are not agreeable to enter into a PAAA, as in the present case. This would amount to few tenants/ occupants bringing the entire redevelopment to a standstill, by not consenting to a permanent alternate accommodation or by raising disputes.

21. Certainly, it cannot be the intention of the Division Bench when it passed the order dated 23 June 2014 issuing guidelines in the absence of a policy of the MCGM, that the redevelopment project be put to a standstill untill 100% of the tenants/occupants consent for redevelopment, by accepting a permanent alternate accommodation. Moreover it needs to be noted that the order dated 23 June 2014 was an order in invitum at the behest of the MCGM and the State Government as clear from the following contents of paragraph 3 of the said order which reads thus:-

> "3. Sometimes owners/builders are non-cooperative and fail to take care of their obligations. Sometimes tenants/occupants do not co-operate. Mere initiation of Civil and/or Criminal proceedings for the same is also of no use or effective mechanism to evacuate or evict immediately the non-cooperative tenants/ occupants/ owners. In view of the urgency expressed, we are inclined to pass the following order based upon the draft of minutes of order prepared and submitted by the Senior Counsel for the Petitioner-Corporation and approved by the State Government and MHADA. A copy of the draft of Minutes of Order is taken on record and marked "X" for identification."

22. It also clearly appears that the MCGM incorporated Clause 1.15 in the 2018- Guidelines, pursuant to the same being formulated by the Division Bench of this Court in its order dated 23 June 2014 (supra). In such context, in our opinion, on a holistic reading of the guidelines as formulated in the said order passed by the Division Bench the intention of the Court was to protect the interest of the tenants so that when the building was demolished, in an action resorted under Section 354 of the MMC Act, the rights of the occupants/tenants are protected and do not extinguish. No other intention can be inferred from Clauses 9(l) and 9(p) of the said order passed by the Division Bench as extracted hereinabove. Significantly, such guidelines were issued by the Division Bench, as there was no policy framed by the MCGM on such issues.

23. Be that as it may, in any event when the MCGM issued the 2018-Guidelines it was wholly available to the MCGM to consider all issues form different perspectives. There was no embargo on the MCGM, when it took upon itself to formulate such guidelines from examining the effect its policy guidelines on all aspects of the redevelopment process. Thus, to stretch such directions of the Division Bench as transformed into Clause 1.15 of the 2018 guidelines, to mean that consent of 100% tenants / occupants, to be necessary as a condition for grant of

commencement certificate, certainly brings about unwarranted consequences, of stalling the redevelopment project by some tenants/occupants/members not consenting the redevelopment. To attribute such consequences to Paragraphs 9(l) and (p) of the order dated 23 June 2014 passed by the Division Bench would amount to a wrong reading of such directions. A fortiori, such intention cannot be attributed to Clause 1.15 of the 2018 Guidelines. Significantly, even Clause 1.15 does not use the word *"all the tenants and/or occupiers"*, thus, to read such words or attribute such meaning to Clause 1.15, in our considered opinion would, in fact, render such condition unreasonable, unworkable as also arbitrary, when some of the tenants/occupants/members who are minority in number are not willing to consent to redevelopment and/or are not ready to enter into a PAAA akin to a situation as in the present case.

24. Secondly, such an intention to be attributed to Clause 1.15 as being canvassed on behalf of the MCGM, would not hold good also in terms of what the DCPR-2034 would provide. Regulation 33(6) is a regulation providing for '*Reconstruction of buildings destroyed by fire or which have collapsed or which have been demolished under lawful order*'. Such regulation itself provides that reconstruction would be

subject to agreements by at least 70% of the occupants with the landlord. The said regulation reads thus:

> "**33(6) Reconstruction of buildings destroyed by fire or which have collapsed or which have been demolished under lawful order.**
> Reconstruction of buildings that existed on or after 10th June 1977 and have ceased to exist for reasons cited above, shall be allowed to be reconstructed with FSI as per the Regulation No 30(C).
> Provided that if the area covered under staircase/lift has not been claimed free of FSI as per then prevailing Regulation as per the occupation plan, the area covered under staircases/ lifts shall be considered while arriving protected BUA in such cases the premium for entire staircase lift area in the proposed building as per these Regulations shall be recovered.
> This FSI will be subject to the following conditions: -
> 1. Reconstruction of the new building on the plot should conform to provisions of DP and these Regulations.
> 2. Reconstruction will be subject to an agreement executed by at least 70 per cent of the landlord and occupants each in the original building, within the meaning of the Mumbai Rents, Hotel and Lodging House Rates Control Act, 1947, and such agreement shall make a provision for accommodation and re-accommodate the said landlord/all occupants in the new building on agreed terms and a certificate from a practicing advocate having minimum of 10 years' experience, is submitted confirming that on the date of application, reconstruction, agreements are executed by at least 70% of the landlords and occupants each in the original building with the developer/owner. The Advocate shall also certify that the agreements with occupants are valid and subsisting on the date of application.
> …… ……. …….. …… ……. …….. ……..."
>
> (emphasis supplied)

25. Even other regulations under the DCPR-2034 which concern reconstruction or redevelopment, a consent of 51% of the occupants/tenants is what is mandated. These regulations are Regulations 33(5), 33(7), 33(7A), 33(9), 33(10) which read thus:-

Reg	Name of the Scheme	% Reqd	Related Clause in Scheme about consent
33(5)	Development / Redevelopment of Housing Schemes of Maharashtra Housing Area Development Authority (MHADA)	51%	7) a) In any Redevelopment Scheme where the Cooperative Housing Society/Developer appointed by the Co-operative Housing Society has obtained NOC from the MHADA/Mumbai Board, there by sanctioning additional balance FSI with the consent of 51% of its members and where such NOC holder has made provision for alternative permanent accommodation in the proposed building (including transit accommodation/Rent Compensation), then it shall be obligatory for all the occupiers/members to participate in the Redevelopment Scheme and vacate the existing tenements for the purpose of redevelopment. In case of failure to vacate the existing tenements, the provisions of section 95A of the MHAD Act. mutatis mutandis shall apply for the purpose of getting the tenements vacated from the non-co-operative members.
33(7)	Reconstruction or redevelopment of cessed buildings in the Island City by Co-operative Housing Societies or of old buildings belonging to the Corporation.	51%	(2)1(a) The new building may be permitted to be constructed in pursuance of an irrevocable written consent by not less than 51% of the occupiers of the old building.

33(7A)	Reconstruction or redevelopment of Dilapidated/unsafe existing authorised tenant occupied building in Suburbs and extended Suburbs and existing authorized non-cessed tenant occupied buildings in Mumbai City.	51%	2(a) A new building may be permitted to be constructed in pursuance of an irrevocable written consent by not less than 51 per cent of the tenants of the old building.
33(9)	Reconstruction or redevelopment of Cluster(s) of Buildings under Cluster Development Scheme(s) (CDS)	51%	4. a) Redevelopment or Reconstruction under CDS may be permitted in pursuance of an irrevocable registered written consent by not less than 51 percent of each building or 70 percent overall of the scheme of the eligible tenants/occupiers of all the authorized buildings on each plot involved in the CDS or as provided in MHAD Act, 1976. Consent as aforesaid of such 51 percent of each building and 70% overall of the scheme of tenants/occupiers for reconstruction or redevelopment shall not be required, if MHADA/MCGM undertakes redevelopment, on its own land, directly without any developer.
33(10)	Redevelopment for Rehabilitation of Slum Dwellers	70%	1.15 Where 70 percent or more of the eligible hutment-dwellers in a slum and stretch of road or pavement contiguous to it at one place agree to join a rehabilitation scheme, it may be considered for approval, subject to submission of irrecoverable written agreements of eligible hutment-dwellers before LOI. Provided that nothing contained herein shall apply to Slum Rehabilitation Projects undertaken by the State Government or Public authority or as the case may be a Govt. Company as defined in Sec. 617 of the Companies Act 1956 and being owned & controlled by the State Government.

26. In view of the clear provisions of Regulation 33.6 as also the other

regulations as noted above, which unfold the statutory intention providing for 51% and 70 % of the consent of the tenants / occupants, agreeing to accept permanent alternate accommodation as may be offered by the owner/ landlord would be required to be accepted as an appropriate compliance for an entitlement for a commencement certificate to be issued for the redevelopment or reconstruction to be undertaken under the relevant regulations of the DCPR. Thus, in our clear opinion, it was arbitrary for the MCGM to insist from the petitioners, consent of 100% of the tenants and in its absence withhold the commencement certificate to be issued to the petitioners on respondent Nos.3 to 9 not consenting to accept residential tenements.

27. For the sake of completeness, we may also observe that the MCGM may receive proposals under Regulations 33(5), 33(7), 33(7A), 33(9) and 33(10) of the DCPR-2034. On such proposals being received by the MCGM, there is nothing to suggest that the MCGM would not apply Clause 1.15 of the 2018 Guidelines. In our opinion, the position in regard to such proposals also would not be different and hence, the requirement of 100% consent of tenants entering into a PAAA with the landlord/owner would not be applicable in respect of such any proposal when the DCPR 2034 itself mandates consent of 51% to 70%

respectively of the occupants/ tenants.

28. It is a settled position in law that the interest of the minority occupants/tenants cannot be opposed to the interest of the majority occupants, as also such persons cannot foist on the owners a delay in commencement of the redevelopment work, resulting in the project cost being increased, which would be seriously prejudicial to the owners/developers and above all the majority of the occupants. (**See: Girish Mulchand Mehta & Anr. Vs. Mahesh S. Mehta & Anr.[2]; the judgment of this Court in Kamla Homes and Lifestyle Pvt.Ltd. Vs. Pushp Kamal Co-op. Hsg.Society Ltd. & Ors.[3], Westin Sankalp Developers Vs. Ajay Sikandar Rana & Ors.[4]; Sarthak Developers Vs. Bank of India Amrut Tara Staff Co-op. Hsg. Society Ltd. & Ors.[5]; Choice Developers Vs. Pantnagar Pearl CHS Ltd. & Ors.[6]**

29. In the present context, our attention has also been drawn to an order dated 28 January 2022 passed by a Co-ordinate Bench of this Court in Writ (l) No.1591 of 2022 (**Ratnesh Sheth and Anr. Vs.**

2 2010(2) MhLJ 657
3 2019 SCC OnLine Bom 823.
4 2021 SCC OnLine Bom 421.
5 2012 SCC OnLine Bom 525.
6 2022 SCC OnLine Bom 786.

Municipal Corporation for Gr.Mumbai & Ors) wherein in similar circumstances the Court directed that non-consent of two tenants for redevelopment of the building, would not hold good as the other 9 tenants have given their consent for redevelopment of the building which was already demolished. It was observed that two tenants cannot stall the entire redevelopment by withholding their consent, as it affects rights of all other tenants. The Division Bench hence directed that notwithstanding Condition No.12 of the IOD as issued in the said case, the MCGM was required to be directed to process the building permission of the petitioner – developer.

30. In the light of the above discussion, in our opinion, Writ Petition No.5130 of 2022 is required to be allowed in the following terms:-

ORDER

(i) It is declared that Clause 1.15 of the 2018 Guidelines "*Guidelines issued by the MCGM for declaring private and municipal buildings as 'C-1' category (Dangerous, Unsafe)"* do not mandate consent/agreement to be obtained from all (100%) tenants/ occupants, as consent of 51% to 70% of the occupants/tenants of the building, as applicable to the proposals made under the relevant regulations DCPR-2034 as noted above, shall amount to sufficient compliance for processing

development/ redevelopment proposal, for a commencement certificate to be issued, including in respect of buildings covered under Section 354 of the MMC Act.

(ii) Consequent to the directions in (i) above, the MCGM is directed to accept the consent of 32 unit-holders / occupiers as sufficient compliance of Clause 1.15 of the 2018 Guidelines and Condition No.A-39 and Notes 20 and 21 of the Intimation of Disapproval (IOD) dated 16 June 2022.

(III) The petition is accordingly allowed in the above terms. No costs.

31. In so far as the **Writ Petition (l) No.8486 of 2022** is concerned, the petition shall stand allowed in terms of the orders passed by us in Writ Petition No.5130 of 2022. The MCGM is accordingly directed to process the commencement certificate in favour of the petitioners without insisting for permanent alternate accommodation agreements in respect of 100% of tenants. Mr. Khandeparkar, learned Counsel for the petitioners states that the petitioners shall enter into a permanent alternate accommodation agreement with respondent No.9 within two weeks from today, similar to those executed with the other tenants. He states that in so far as respondent No.7 is concerned, there are

proceedings pending before the Small Causes Court at Mumbai, and as there are dispute inter se between the private parties, his client is ready to enter into a permanent alternate accommodation agreement subject to the outcome of the said proceedings. Statement of Mr.Khandeparkar is accepted.

32. In view of the petition itself being disposed of, Interim Application (l) Nos.1929 of 2023 and Interim Application (l) No.1323 of 2023 in Writ Petition (l) No.8486 of 2022 would not require adjudication and would stand disposed of.

33. Both the writ petitions stand disposed of. No costs.

(R. N. LADDHA, J.) **(G. S. KULKARNI, J.)**