



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

WRIT PETITION NO. 2997 OF 2021

Moiz Dawoodbhai Palitanawala & Ors. ... Petitioners
Versus
The Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

WITH

WRIT PETITION NO. 4762 OF 2024

Dhanwadi Mohallah Mosque Waqf,
through Mutawallis ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. Sagheer A. Khan a/w Sauda Nachan, Insha Shaikh, Mr. Aqil Khan, Mr. Dawood Khan, Ms. Afsha Khan, Ms. Tasmiya Siddique, Aleze Kodare and Mr. Gufran i/by Judicature Law Associates for Petitioners in both Petitions.

Dr. Milind Sathe, A.G. a/w Ms. Usha Rahi, AGP for Respondent Nos. 1 to 3 in WP/4762/2024.

Dr. Milind Sathe, A.G. a/w Mr. Manish Upadhye, AGP for Respondent Nos. 5 to 9 in WP/2997/2021.

Ms. Pooja Khandeparkar a/w Ms. K. H. Mastakar i/by Ms. Komal Punjabi for Respondent Nos. 4 and 7-BMC in WP/4762/2024.

Ms. K. H. Mastakar for Respondent Nos. 1 and 2-BMC in WP/2997/2021.

Mr. Muralidharan Kalathil i/by P. G. Lad for Respondent No. 5 and 6-MHADA in WP/4762/2024 and for Respondent Nos. 3 and 4 in WP/2997/2021.

Mr. Abdul Hafeez Yakub Kotwala for Respondent No.8 in WP/4762/2024.

Dr. Birendra Saraf, Senior Advocate a/w Mr. Pralhad Paranjpe, Mr. Ammar Faizullahoy, Ms. Fatema Kachwalla, Ms. Maitri Dedhia and H Saifee for Respondent No. 9 in WP/4762/2024 and for Respondent No. 10 in WP/2997/2021.

**CORAM : MANISH PITALE AND
SHREERAM V. SHIRSAT, JJ.**

**RESERVED ON : 5th AUGUST 2026
PRONOUNCED ON : 23rd OCTOBER 2026**

Judgement (Per Manish Pitale, J.) :

. The petitioners are aggrieved by acquisition of the subject properties under a Cluster Development Scheme (CDS) executed by the respondent-Saifee Burhani Upliftment Trust (hereinafter referred to as 'Trust'), as per the Development Control and Promotion Regulations 2034 (DCPR) framed under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). The petitioners challenge the validity of Regulation 33(9)(3)(5) of DCPR, on the ground that it is *ultra vires* MRTP Act and also *ultra vires* the Constitution of India, alleging that the right to property of the petitioners under Article 300A of the Constitution of India has been violated. The notification dated 27.09.2019 issued by the respondent-Collector, Mumbai City, under Section 126(4) of the MRTP Act read with Section 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013), is also challenged. The petitioners also pray for quashing and setting aside of the consequential acquisition award dated 30.12.2019, further challenging notice dated 30.01.2020, for taking possession of the subject property.

2. It is the case of the petitioners that since the subject property

was not located in a land either designated or reserved in the development plan for public purpose, the acquisition of the same was not in accordance with law and that the aforesaid Regulation goes far beyond the provisions of the parent Act i.e. the MRTP Act. It is alleged that if the power is held to be delegated, this is a clear case of excessive delegation, thereby vitiating the entire process of acquisition.

3. The subject property is located in an area called Bhendi Bazaar in Mumbai city and one of the subject properties is called the Lucky Building, with which the petitioners in Writ Petition No. 2997 of 2021 are concerned. Although, it is an admitted position that, as on today, the possession of the property has been already taken and the building has been demolished in the process of execution of the CDS, according to the petitioners, the entire process of acquisition of the subject property, right from its initiation, stood vitiated and that therefore, the writ petitions ought to be allowed. In order to appreciate the rival contentions, it would be necessary to refer to the chronology of events, leading to filing of the present petitions.

4. On 20.02.1991, the Development Control Regulations for Greater Bombay, 1991 (DCR 1991) were approved by the respondent-State Government under the provisions of the MRTP Act. This was preceded by the actions required to be taken under the provisions of the MRTP Act, including publication of the intention to prepare a revised development plan by the Municipal

Corporation in the year 1977, followed by notices being published by the State Government inviting objections and suggestions regarding the draft development control regulations. In the year 1990, an officer was appointed for considering such objections and suggestions, who submitted his report to the State Government. Thereupon, the State Government granted sanction to the said Development Control Regulations under Section 31(1) of the MRTP Act. As per the said DCR 1991, a High Power Committee (HPC) was constituted consisting of members from various departments of the State Government and the Municipal Commissioner of the Municipal Corporation of Greater Mumbai (MCGM) as well as an officer of the Maharashtra Housing and Area Development Authority (MHADA), with the Chief Secretary of the State Government as its Chairman. On 11.06.2009, the said HPC took a decision to consider a proposal for redevelopment of Bhendi Bazaar under the then Regulation 33(9) of DCR 1991, if at all 70% of the residents were ready to shift to transit camps in nearby areas. On 09.02.2010, the respondent-Trust submitted a proposal for redevelopment of the buildings standing on various plots in Bhendi Bazaar, including the subject property. On 03.04.2010, the HPC, while considering the proposal of the respondent-Trust, found that the said Trust had already purchased about 51% of the properties in the proposed redevelopment area and that it was in the process of purchasing the remaining properties. A model of the proposed project for CDS was presented before the HPC. In this process, sometime in March

2011, 80% tenants of the aforesaid building of the petitioners gave their consent for CDS.

5. On 28.03.2011, MHADA issued a warning notice in respect of the said building, stating that since it was in a dangerous and dilapidated condition, the occupants were required to vacate the same. On 07.04.2011, the HPC was informed by the respondent-Trust that it had procured consent of more than 70% owners for CDS under Regulation 33(9) of DCR 1991. The HPC had formed an opinion that the CDS would improve the infrastructure in the area, providing better facilities to the owners and occupants. Various aspects were taken into account, including the proposed width of the roads, location of school and playground, as also proposal for waste water recycling plant. The respondent-Trust, at this stage, submitted a detailed proposal with the Municipal Commissioner of MCGM, for urban renewal through CDS and on 02.05.2011, the MCGM submitted the said proposal of the respondent-Trust before the State Government. On 22.07.2011, the Secretary of the Urban Development Department of the State Government sent a letter to MCGM, granting in principle approval to the Urban Renewal Scheme under Regulation 33(9) of DCR 1991. On 10.08.2011, the MCGM issued a Letter of Intent (LOI) in favour of respondent-Trust for the said scheme. The said LOI was valid for one year, subject to the consent of the owners of the plots being submitted. The LOI was subsequently renewed on an annual basis and thereafter, every two years and it is an admitted position that the same continues till date. The

respondent-Trust submitted necessary documents and affidavit, certifying that the area of the entire cluster of redevelopment under the CDS was 66264.72 sq. mtrs.

6. On 23.04.2012, the next meeting of the HPC was conducted on the said scheme and the proposal was submitted by the respondent-Trust. In the meeting, it was stated by the respondent-Trust that consent of all the owners was difficult to obtain and that the work of redevelopment would have to be commenced. In that light, the respondent-Trust requested for approval of amalgamation, cluster layout and commencement certificate for at least two phases. The respondent-Trust made the aforesaid request on the ground that if the work started immediately, it would generate confidence about the progress of the CDS and that would help in the remaining owners giving their consent for the same. The LOI, in the meanwhile, was extended from time to time.

7. On 09.09.2014, the DCR 1991 was replaced by DCPR. The respondents contended that this was done by following the due process specified in the provisions of the MRTP Act, by issuing necessary notification under Section 37(1AA) thereof, by inviting objections and suggestions. It is the case of the respondents that after the statutory process contemplated under the MRTP Act was duly followed, the said DCPR was brought into force. Regulation 33(9)(3)(5) of DCPR, which is the subject matter of challenge in the present writ petitions, pertains to acquisition of land, if the

promoter or developer like the respondent-Trust in the present case, has already acquired development rights over at least 70% of the land comprised in the cluster development. There are conditions specified in the said clause and it also records that for the purpose of land acquisition, CDS shall be regarded as public purpose.

8. On 24.08.2015, the State Government issued notification delegating power to the District Collector of Mumbai, for issuing notifications under Sections 126(2) and 126(4) of the MRTP Act. On 16.09.2015, the respondent-Trust submitted a representation before the Municipal Commissioner of MCGM and the HPC for recommending acquisition of about 7% of the land forming part of CDS, concerning non-consenting land owners. It was submitted that the respondent-Trust had obtained consent of about 89% of the plot owners and that acquisition was necessary for execution of CDS. On 18.09.2015, the HPC considered the representation of the respondent-Trust and recommended the proposal to the State Government for acquisition of the remaining plots of non-consenting land owners, including the petitioners, as per Regulation 33(9)(3)(5) of DCPR. On 06.01.2016, the State Government granted approval to the said proposal for acquisition of plots of non-consenting land owners for execution of CDS.

9. In this backdrop, the respondent-Trust issued letters to the tenants of the subject building, located on plots of non-consenting owners, with regard to the dangerous nature of the building,

further requesting for their cooperation to take measurements. The tenants of the subject building, except the petitioners, gave their consent. It is not disputed that the subject building of the petitioners was more than 100 years old, being a cessed building.

10. In the years 2017 and 2018, the Competent Authorities of the respondents issued notices, including warning notices, to the occupants of such buildings, including the subject property, to vacate the same immediately, in the light of the dangerous and dilapidated condition of such buildings. Since, the buildings were not being vacated, the respondent-Trust filed Writ Petition (Lodging) No. 1920 of 2018, seeking a direction for demolition of such buildings that were dangerous and falling within the boundaries of the CDS. In the proceedings, this Court took note of the fact that a dangerous and dilapidated building, falling within the scheme, had already collapsed and that officers of the respondent-Trust were even put behind bars for the same. In the said writ petition, this Court passed an order observing that the persons who continued to reside in such dangerous and dilapidated buildings, continued to do so at their own risk and the respondent-Trust would not be held liable for any untoward incident that could occur.

11. On 22.04.2019, the Urban Development Department of the State Government directed the Collector to process the proposal submitted by the respondent-Trust, regarding purchasing lands by private negotiations. On 27.05.2019, the Collector passed an

order under Section 3(c) of the Act of 2013, identifying Deputy Collector (Land Acquisition), Mumbai City, as the Authorized Officer, for undertaking the process of land acquisition. On 30.05.2019, the Deputy Collector (Land Acquisition) issued public notice to purchase the lands/properties of the non-consenting owners, falling within the CDS. Additional 25% compensation was offered to such non-consenting owners of the properties, over and above the compensation that would be paid under the Act of 2013. This notice included the subject property also. Since, the petitioners and some others did not positively respond to the said notice, the Deputy Collector (Land Acquisition) on 04.06.2019, issued a letter, directing the respondent-Trust to provide documents and further directed for a preliminary meeting of such owners to be held on 12.06.2019. On 10.06.2019, the Deputy Collector addressed a letter to the predecessor of the petitioners in Writ Petition No.2997 of 2021, for a meeting on 17.06.2019. The petitioners claim that since the notice was issued to their predecessor, who had already expired, they could not respond to the same.

12. It is in this backdrop that on 27.09.2019, the Collector issued the impugned notification under Section 126(4) of the MRTP Act, read with Section 19(1) of the Act of 2013, stating that the CDS was sanctioned as a scheme for public purpose under Regulation 33(9)(3)(5) of DCPR. Reference was also made to the earlier notification dated 24.08.2015, whereby the State Government had delegated the power to the Collector to issue

such a notification. It was recorded that the Collector i.e. the State Government was satisfied that the lands mentioned in the schedule to the notification were needed for public purpose, which included the subject property of the petitioners. It was further stated that the respondent-Trust would permanently rehabilitate the tenants/occupants of the subject properties, including the property of the petitioners, at the same place and that compensation as per acquisition awards would be deposited. The Collector further delegated the power to perform the functions pertaining to land acquisition, on the Deputy Resident Collector under Section 3(g) of the Act of 2013.

13. In this backdrop, on 29.09.2019, the respondent-Trust deposited an amount of Rs.80,42,10,488/- for acquisition of 21 buildings, towards advance amount of compensation likely to be awarded for acquisition of the lands/ properties of the non-consenting owners like the petitioners. On a letter issued on 10.10.2019 by the City Survey Officer, regarding joint survey and a proposal to visit on 19.10.2019, the petitioners submitted a letter dated 18.10.2019 to the Superintendent of Land Records, objecting to the survey being conducted. On 06.11.2019, the Deputy Collector sent letters to the affected parties, including a letter in the name of the predecessor of the petitioners, under Section 21 of the Act of 2013, reiterating that public notice had been issued in newspapers on 28.09.2019, fixing the date of hearing to be granted to the persons interested in the subject properties on 20.11.2019. It is the case of the respondents that

since the name of the predecessor of the petitioners continued to reflect in the records, the notices were issued in his name. On 16.11.2019, the petitioners approached the Deputy Collector through their Advocate, calling upon the said Officer to give a copy of the notification dated 24.08.2015 and letter dated 27.09.2019 of the respondent-Trust. On the same date, the petitioners through their Advocate, sought rescheduling of the proposed meeting. On 20.11.2019, the petitioners, on their own behalf and on behalf of 7 other land owners covered under the CDS, through their Advocate, raised common objections. The said objections pertained to the power and authority of the concerned officer in taking steps for acquisition of the said properties, but objections were not raised with regard to the quantum of compensation.

14. On 13.12.2019, the Collector addressed a letter to the Competent Authority for carrying out the valuation of the subject property for determining compensation. The valuation report was submitted and on 30.12.2019, the impugned award was passed determining compensation payable to the petitioners for acquisition of the subject property.

15. On 06.01.2020, the Deputy Collector issued a letter in the name of the predecessor of the petitioners, stating the amount of compensation determined under the Act of 2013 at Rs.6,18,71,699/- and made a request to collect a cheque for the said amount on 24.01.2020.

16. On 24.01.2020, the petitioners sent a letter/reply through their Advocate to the Deputy Collector, refusing to hand over the possession of the subject property. On 27.01.2020, the petitioners again sent a letter through their Advocate for a copy of the aforesaid award dated 30.12.2019. On 30.01.2020, the City Survey Officer again addressed a letter for handing over possession of the subject property on 03.02.2020, indicating that if possession was not handed over, unilateral action would be taken for taking possession of the subject property. On 03.02.2020, a *panchanama* and possession receipt were executed, on the basis of which, the respondents claim that the possession of the subject property was taken. The petitioners alleged that this was a high-handed action conducted at about 3:00 a.m. in the morning. On the very same day, the petitioners sent a legal notice through their Advocate, challenging the power delegated to the Deputy Collector. On 07.02.2020, the Collector registered the name of the respondent-Trust on the property card concerning the subject building. It is undisputed that on 28.02.2020, the petitioners filed an application under Section 64 of the Act of 2013, seeking enhancement of compensation before the Competent Authority.

17. Thereafter, in March 2020, the petitioners filed Writ Petition No. 2997 of 2021. Subsequently, Writ Petition No. 4762 of 2024 was filed by the petitioners therein, raising an additional point that the subject property was a waqf property.

18. On 05.11.2020, this Court passed an interim order in Writ

Petition No. 2997 of 2021, to the effect that the petitioners would not be dispossessed, except by following due process of law. The Writ Petition remained pending and the interim order was in operation till the parties were heard on the question of the continuation of the interim order. On 21.07.2023, a Division Bench of this Court passed a detailed reasoned order, vacating the interim relief. The said order was challenged before the Supreme Court. Special Leave Petition (Civil) No. 17997 of 2023, filed by the petitioners in Writ Petition No. 2997 of 2021, was disposed of on 21.08.2023. The Supreme Court recorded that the impugned interim order passed by this Court did not deserve interference. However, all contentions were kept open and it was recorded that the High Court would consider disposing of the writ petition, as expeditiously as possible and in accordance with law. The pleadings in the writ petitions were completed and they were taken up for hearing.

19. Mr. Sagheer Khan, learned counsel appearing for the petitioners in both the writ petitions, submitted that the writ petitions deserve to be allowed, as the entire acquisition process was completely vitiated. It was submitted that Regulation 33(9)(3) (5) of DCPR, concerning Cluster Development Schemes, was *ultra vires* the MRTP Act as well as the Constitution of India. It was submitted that since the process of acquisition was undertaken under the said Regulation, the entire action of initiation and completion of acquisition was vitiated and therefore, it deserved to be quashed. In support of the said submissions, the learned

counsel for the petitioners submitted that acquisition could be undertaken only under Section 126 of the MRTP Act, read with the provisions of the Act of 2013, for lands designated or reserved for public purpose under the said provisions. It was submitted that reservation of the subject land under the development plan was a *sine qua non* for initiating acquisition and since, the subject property was not located in a piece of land reserved for any public purpose under the MRTP Act, the entire action of initiation and completion of acquisition in the present case, was without the authority of law. It was emphasized that a proper reading of the provisions of the MRTP Act, particularly Sections 125 and 126 thereof, would show that acquisition of land could be undertaken only for the planning authority and not for an entity like the respondent-Trust herein, which is nothing but a developer and a private party.

20. In this context, the learned counsel for the petitioners read Sections 125 and 126 of the MRTP Act, to emphasize that such acquisition for the benefit and at the behest of the respondent-Trust goes beyond the aforesaid provisions and hence, it is *ultra vires* the MRTP Act. It was submitted that Regulation 33(9)(3)(5) of DCPR goes well beyond the scheme of MRTP Act and it violates the mandate of Sections 125 and 126 thereof. The said Regulation of DCPR provides for the cluster development schemes, even on lands that are neither designated nor reserved for public purpose in the development plan, thereby indicating that it goes beyond the parent statute. It was submitted that merely

because the said Regulation declares that a cluster development scheme shall be regarded as public purpose for land acquisition, cannot suffice and it certainly cannot substitute the statutory mandate as provided under the parent statute and particularly, under Sections 125 and 126 of the MRTP Act. In this regard, the learned counsel for the petitioners referred to a number of judgements of the Supreme Court, which shall be discussed when the contentions are considered in detail herein below.

21. It was submitted that the MRTP Act is a self-contained code, wherein specific provisions are identifiable for the purpose of acquisition of lands, read with the provisions of the Act of 2013. But, the impugned Regulation 33(9)(3)(5) of DCPR, despite being subordinate legislation, confers power on the State Government to acquire land for a private entity like the respondent-Trust herein. It was submitted that therefore, this was a case of excessive delegation. It was emphasized that the concept of CDS was nowhere envisaged in the MRTP Act and yet, under the subordinate legislation of DCPR, substantive rights stood created in favour of a private entity like the respondent-Trust and corresponding obligations and disabilities have been foisted upon land owners like the petitioners. It was further submitted that the lack of any guideline in such a subordinate legislation for exercise of power, further demonstrates that the impugned Regulation deserves to be quashed.

22. It was further submitted that in the facts of the present case,

it was evident that the manner of giving effect to the impugned Regulation was wholly arbitrary and suffered from violation of principles of natural justice. It was submitted that one of the requirements under the impugned Regulation was that the subject building should be declared as a dangerous building. But, in the present case, no such declaration was made either under the MRTP Act or under the other legislations, such as the Mumbai Municipal Corporation Act or the Maharashtra Housing and Area Development Act, 1976 (MHAD Act). It was submitted that in the facts of the present case, respondent-MCGM was the Competent Authority for issuing such a declaration of the subject building being dangerous. No notice was ever issued to the petitioner in that regard and even in the list of dilapidated buildings maintained by MHADA, the subject building was not included. On this basis, it was contended that the steps undertaken and the decisions rendered by the HPC were wholly arbitrary and it proceeded on a presumption that the subject building was dangerous. This clearly demonstrates manifest arbitrariness on the part of the respondents.

23. It was further submitted that the entire actions of the respondents were malafide and with the intention of benefiting the respondent-Trust, at the expense of the valuable rights of the petitioners and other similarly situated land owners. The learned counsel appearing for the petitioners referred to the chronology of events and submitted that the HPC obviously acted in haste and the proposal of the respondent-Trust for execution of CDS was approved in a hurry by the HPC. A perusal of the impugned

Regulation 33(9)(3)(5) of DCPR shows that the HPC 'after due examination' is supposed to recommend to the State Government, as to which of the lands are required to be acquired for the purpose of CDS. It was alleged that in the present case, the said mandatory requirement of due examination of the proposal was not undertaken and the HPC granted approval under the impugned Regulation in a matter of minutes, thereby vitiating the entire process.

24. It was further submitted that the petitioners were never put to notice regarding the CDS proposed by the respondent-Trust. Letters and notices were all addressed to the predecessor of the petitioners, who had already expired and the respondent-Trust directly set up communication with the tenants of the petitioners in the subject building, thereby showing the malafide manner in which the entire process was undertaken, trampling upon valuable rights of the petitioners.

25. It was further submitted that in the present case, the very initiation of the process of acquisition stood vitiated because the power was illegally delegated by the Collector to the Deputy Collector. This was a clear case of illegal sub-delegation by an officer i.e. the Collector, who was himself a delegate of the State Government. This completely vitiated the entire process, thereby showing that in the anxiety to benefit a private entity like the respondent-Trust, the officers of the State and the MCGM threw all the requirements of law to the wind. It was further submitted

that mandatory statutory requirements such as notice of at least 30 days under Section 21 of the Act of 2013, were violated by the respondents. Notice of only 15 days was given and the hearing given to the petitioners was perfunctory. As a matter of fact, land owners were all assembled in a room and a show of hearing was undertaken, thereby indicating that the mandatory requirement of effective hearing was also violated. It was further submitted that even the process of obtaining valuation report was completed in a lightning speed within one working day and as many as 16 land acquisition awards were passed by the same officer on one particular day. This further indicated manifest arbitrariness on the part of the respondents, while hurriedly undertaking the acquisition of the subject property, only to be handed over to the respondent-Trust.

26. It was submitted that the petitioners found that high level functionaries in the State Government took personal interest in the matter and acted in a manner that betrayed arbitrariness from the very beginning of the proposal being submitted by the respondent-Trust for the CDS and the same being considered and approved by the HPC, leading to the acquisition process being undertaken in a hurried manner, thereby depriving the petitioners of their right to property under Article 300A of the Constitution of India. It was vehemently submitted that the right to property is now recognized as a human right, although it has no longer remained a fundamental right. The Supreme Court in a number of judgements has reiterated the said position of law, which inures to

the benefit of the petitioners.

27. In respect of Writ Petition No. 4762 of 2024, it was submitted that apart from the aforementioned grounds raised to challenge the impugned Regulation and the actions undertaken by the respondents, an additional ground in the said writ petition pertains to the provisions of the Waqf Act, 1995. It was submitted that Section 91 of the Waqf Act clearly provides that if the land acquisition award is passed without an opportunity of hearing to the Waqf Board, when the subject property is a waqf property, the award is rendered void. It was submitted that in the present case, the Waqf Board was never issued notice or granted an opportunity of hearing before passing the impugned award and therefore, on this additional ground also, Writ Petition No. 4762 of 2024 ought to be allowed.

28. Dr. Sathe, learned Advocate General (AG) appearing on behalf of respondent State authorities in these writ petitions submitted that the basic premise on which the arguments of the petitioners are based, arises from a misunderstanding of the provisions of the MRTP Act and the nature of the subject DCPR as a subordinate legislation. It was submitted that the DCPR is framed by following statutory requirements contained in Sections 21 to 31 and 37 of the MRTP Act. It was emphasized that the process of making and modification of Development Control Regulations, including the subject DCPR, is governed by a participatory process under the aforesaid provisions and therefore,

it cannot be said that the DCPR is *ultra vires* the MRTP Act or that the impugned Regulation 33(9)(3)(5) of DCPR can be said to be *ultra vires* and illegal. The learned AG relied upon Section 22(m) of the MRTP Act, to contend that Development Control Regulations have statutory force and hence they are part and parcel of the parent statute. It was emphasized that DCPR forms a part of the development plan and hence, the contentions raised on behalf of the petitioners are unsustainable.

29. It was emphasized that while the petitioners have concentrated only on the two words i.e. 'designated' and 'reserved' used in Sections 125 and 126 of the MRTP Act, the word 'required' is completely ignored. It was submitted that when any land is required for public purpose under the development plan, the process of acquisition of land can be undertaken as per Section 126 of the MRTP Act, read with the Development Control Regulations, in this case, the subject DCPR. On this basis, it was submitted that the further contention of the petitioners that the acquisition, in the present case, is vitiated and the impugned DCPR is beyond the legislative intent of the MRTP Act, is unsustainable, for the reason that an Urban Renewal Scheme, such as the subject CDS for cluster development to be undertaken by an entity such as the respondent Trust, is well within the statutory framework and it is indeed for public purpose. It was submitted that in such a situation where congested residential and commercial areas are required to be re-developed as part of the Urban Renewal Projects, so long as the conditions specified in the

Development Control Regulations are met, such a project including the subject CDS are certainly for public purpose.

30. It was submitted that in such a situation, the acquisition of land including the subject property, is clearly with authority of law as DCPR has statutory force. On this basis, it was submitted that the petitioners cannot contend that acquisition of their properties violated Article 300A of the Constitution of India. It was emphasized that since the acquisition was for public purpose, merely because the cluster development was being executed by the respondent Trust, it could not be said that the planning authority had abdicated its role or that the respondent Trust was being illegally benefited.

31. It was submitted that the petitioners are not justified in contending that this is a case of excessive delegation of legislative powers, simply for the reason that the DCPR is part and parcel of the development plan and the power of acquisition is exercised only under Section 126 of the MRTTP Act. The impugned Regulation merely identifies the circumstances in which an Urban Renewal Scheme, such as the subject CDS, can be executed. The impugned Regulation 33(9)(3)(5) of the DCPR itself provides sufficient guidelines, and therefore, it cannot be said that arbitrary and unbridled power is available for the authorities to undertake the execution of an Urban Renewal Scheme and in that context, undertaking acquisition of land.

32. It was further submitted that the Urban Renewal Scheme,

such as the subject CDS, under impugned Regulation 33(9)(3)(5) of the DCPR, is more beneficial for landowners as compared to the schemes envisaged under the MHAD Act. As per Section 44 of the MHAD Act, compensation to a landowner whose property becomes part of an Urban Renewal Scheme is restricted to an amount equivalent to rent of 100 months. As opposed to this, while executing such a scheme under the DCPR, read with the provisions of the MRTP Act, compensation is payable to the landowner under the Act of 2013 and if the acquisition is by consent, an additional 25% is payable. On this basis, it was submitted that the contention raised on behalf of the petitioners that acquisition of their land was illegal, cannot be sustained. On the question of the subject building belonging to the petitioners in Writ Petition No.2997 of 2021 not being declared a dangerous building, it was submitted that the said contention is fallacious, for the reason that the said building existed since prior to 1940 and as per the provisions of the MHAD Act, it stood classified as a category 'A' cessed building. Such a building did not require a specific declaration of being dangerous and therefore, the said requirement under the impugned DCPR was also satisfied for proceeding to acquire the property of the said petitioners.

33. Thereafter, the learned AG referred to the chronology of events to impress upon this Court that the proposal of Urban Renewal Scheme, which ultimately led to the subject CDS, was initiated way back in the year 2010 and in principle approval was granted in the year 2011 itself. It was submitted that therefore, the

petitioners are not justified in claiming that the HPC approved the scheme within minutes of it being presented. It was asserted that there was absolutely no substance in the contention that even while implementing the impugned Regulation 33(9)(3)(5) of the DCPR, the HPC did not properly examine the proposal. It was further submitted that the argument on delegation by the Collector is without any substance, if the provisions of the MRTP Act and the Act of 2013 are appreciated in the correct perspective. In any case, it was submitted that the subject award was to be approved by the Divisional Commissioner and therefore, the petitioners cannot raise any grievance in that regard. It was submitted that proper opportunity of hearing was granted to the petitioners and no prejudice was demonstrated at any stage. It was also emphasized that the petitioners had themselves invoked Section 64 of the Act of 2013 by approaching the Competent Authority for enhancement of compensation. On this basis, it was submitted that the writ petition deserved to be dismissed.

34. During the course of arguments, the learned AG referred to a number of judgements, which shall be referred to while considering and analyzing the rival contentions.

35. Dr. Saraf, learned senior counsel appearing for the respondent Trust supported the contentions raised by the learned AG appearing for the State authorities. It was submitted that the thrust of the arguments on behalf of the petitioners, that the entire scheme in the present case had been devised to benefit the

respondent Trust, is wholly misplaced. It was submitted that the respondent Trust is the implementing agency of the Urban Renewal Scheme in the form of the subject CDS, having satisfied all statutory requirements, including the minimum percentage of landowners giving their consent and their rights for execution of such a Scheme. It was emphasized that the non-consenting landowners were about 7%, including the petitioners and as per the statutory scheme, their lands had to be acquired, in accordance with law. It was submitted that the entire process and machinery of acquisition continued to be that of the State authorities and the monetary component for payment of appropriate compensation came from the respondent Trust. It was not as if the respondent Trust was the force behind the acquisition, and therefore, the allegations of *mala fide* and high-handedness raised against the said respondent Trust ought to be ignored.

36. The learned senior counsel for the respondent Trust further relied upon the chronology of events, to contend that the HPC ultimately granted its approval after considering the proposal concerning the subject CDS for a long period of time. At every stage, proper scrutiny was undertaken and after all the requirements of the MRTP Act read with the DCPR were satisfied that the said Scheme was executed. It was emphasized that the petitioners were all along aware about the said Scheme and yet, they chose to file the writ petition in the year 2021, after the award had been passed and they had also approached the competent authority for enhancement of compensation. None of

the decisions or approvals granted by the HPC were ever challenged at any stage, and therefore, it was submitted that the writ petition ought to be dismissed solely on the ground of delay and laches. It was emphasized that the impression sought to be created by the petitioners that the subject CDS was approved in one single day by the HPC is mischievous and hence, the same ought to be rejected.

37. The learned senior counsel for the respondent Trust also referred to the orders passed by this Court in writ petitions filed at various stages of execution of the CDS. This Court was constrained to observe that those persons, who continued to occupy the subject building and other such buildings, were doing so at their own risk, thereby indicating that no fault could be found with the action of acquisition of properties of non-consenting landowners, including the petitioners herein.

38. It was further submitted that the petitioners are not justified in contending that since the subject land was never reserved for a public purpose under the Development Plan, acquisition could not be undertaken under Section 126 of the MRTP Act. In this regard, reliance was placed on judgements of the Supreme Court and this Court, to contend that the DCPR is very much part of the MRTP Act and that since the subject land was required for the Urban Renewal Scheme, acquisition of land of non-consenting landowners was clearly justified. Much emphasis was placed on the need for such Urban Renewal Schemes in the context of poor

conditions of life in congested residential and commercial localities, such as the subject Bhendi Bazaar locality in the island city of Mumbai. It was further submitted that as per settled law, the Development Plan is an organic document, requiring periodic changes and the requirement of the future development cannot be ignored.

39. It was further submitted that the facts and circumstances of the instant case do not justify exercising writ jurisdiction in favour of the petitioners. By referring to judgements of the Supreme Court and this Court, it was contended that the petitioners would have to demonstrate that justice was on their side while seeking relief from the Writ Court. On this basis, it was submitted that the writ petition deserved to be dismissed.

40. On the question of notice to the Waqf Board raised in Writ Petition No.4762 of 2024, the learned senior counsel for the respondent Trust supported the contention of learned AG for the respondent State authorities that the said issue did not deserve consideration on a proper reading of the provisions of the Waqf Act. As per the statutory provision, the Waqf Board was required to move an application within one month for declaring the subject award as void on the ground that the Board was not first put to notice. No such application was moved by the Waqf Board in the present case. In any case, in the reply affidavit filed by the Waqf Board in the said writ petition, it was categorically stated that the Board had no objection for acquisition of the subject property and

that it had notice of the acquisition as per public notice dated 27.09.2019 and a separately received notice. Therefore, it was submitted that both the writ petitions deserved to be dismissed.

41. The rival submissions have to be considered and analyzed in the backdrop of the Urban Renewal Scheme such as the cluster development undertaken in the present case. In cities like Mumbai where there are number of localities having highly congested residential and commercial establishments, with poor facilities for the residents / occupants, renewal and redevelopment has become necessary to ensure a humane, hygienic and congenial atmosphere and surroundings for such residents / occupants. Such Urban Renewal Schemes can be executed only if the existing properties are demolished and new structures are constructed with proper common facilities of roads, drainage, etc. It cannot be disputed that such Urban Renewal Schemes ultimately lead to a proper development of urban areas within mega cities like Mumbai and eventually aim at modernizing such cities over a period of time.

42. The said concept of urban renewal has been part of the thought process of planning for a number of years. This is evident from the manner in which the Development Control Regulations were framed from time to time. Initially, such Urban Renewal Schemes were limited to repairs and reconstruction of cessed buildings identified under the MHAD Act for the city of Mumbai. Subsequently in DCR 1991, Regulation 33(9) provided for reconstruction or redevelopment of cessed buildings / Urban

Renewal Schemes on extensive areas. It provided for the MCGM or MHADA jointly with landowners / co-operative societies of tenants / occupiers of buildings or developers, to undertake such Urban Renewal Schemes for which the Floor Space Index (FSI) was fixed at 4 and if rehabilitation of existing tenants / occupiers was undertaken, there was provision for incentive FSI also.

43. Thereafter, the subject DCPR 2034 came into existence wherein Regulation 33(9) provided for reconstruction or redevelopment of cluster of buildings under such Urban Renewal Schemes. The subject CDS is part of such a concept of Urban Renewal. The said Regulation provided detailed guidelines for execution of such Urban Renewal Schemes, involving redevelopment of clusters of building, including minimum area in which such a cluster development scheme could be executed. The impugned Regulation 33(9)(3)(5) of DCPR specifically referred to the necessity of acquiring lands in a situation where a promoter / developer of such a cluster development scheme had already purchased or procured development rights over at least 70% of the land forming part of the cluster development. It specifically provides that for the purpose of such acquisition of land, CDS would be regarded as public purpose. The thrust of the attack on behalf of the petitioners on the impugned regulation is that it goes well beyond the statutory scheme of the MRTP Act and that it has become a source of acquisition of land, while such acquisition of land can be undertaken only under Section 126 of the MRTP Act.

44. The respondent State authorities have stoutly defended the subject CDS, contending that the impugned Regulation 33(9)(3)(5) of the DCPR is in consonance with the statutory scheme contemplated under the MRTP Act. It is contended that the impugned Regulation and the DCPR form part of the parent Statute i.e. MRTP Act, and that the contentions raised on behalf of the petitioners in this regard are based on a misunderstanding of the statutory scheme.

45. In order to consider the rival submissions on the said issue, it would be necessary to refer to the provisions of the MRTP Act and the relevant portions of the DCPR. Sections 125 and 126 of the MRTP Act are found in Chapter VII pertaining to land acquisition. The Development Control Regulations, including the subject DCPR, have been framed under Section 159 of the MRTP Act. Such regulations are to be framed consistent with the MRTP Act and the Rules framed thereunder. In this context, the respondents have specifically relied upon Section 22(m) of the MRTP Act. A perusal of Section 22 of the MRTP Act shows that it specifies the contents of the Development Plan. Clause (m) thereof pertains to provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority and ancillary issues.

46. Hence, it would be appropriate that the relevant portions of the said provisions are reproduced for a better understanding of the rival contentions. The said provisions read as follows:-

“22. Contents of Development Plan

A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,-

(a) to (l) ...

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, at such rate as may be fixed, by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act.

125. Compulsory acquisition of land needed for purposes of Regional Plan, Development plan or town planning etc.

Any land required, reserved or designated in a Regional plan, Structure plan, Development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:

Provided that, the procedure specified in sections 4 to 15 (both inclusive) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall not be applicable in respect of such lands.

126. Acquisition of land required for public purposes specified in plans

(1) When after the publication of a draft Regional plan, Structure plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113A acquire the land,—

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013,

and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :

Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said section 19, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,—

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the

Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme:

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration is not made within the period referred to in sub-section (2) or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993, the State Government may make a fresh declaration for acquiring the land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.

159. Power to make regulations

(1) Any Regional Board, Planning Authority or Development Authority may, with the previous approval of the State Government, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act, and without prejudice to the generality of this power,—

(i) a Regional Board or a Development Authority may make,—

(a) regulations subject to which it shall exercise powers and perform functions under this Act;

(b) regulations for regulating its procedure and the conduct of its business at its meeting ;

(c) regulation providing for any other matter which has to be or may be prescribed by regulations ;

(ii) a Planning Authority may make,—

(a) regulations prescribing the manner in which its order under sub-section (1) of section 45 shall be communicated to the applicant seeking permission under that section;

(b) regulations prescribing the time within which and the manner in which a notice shall be served on the State Government under sub-section (1) of section 49 ;

(c) regulations providing for any other matter which has to be or may be prescribed by regulations.

(2) Subject to the provisions of this Act, the State Government may, by notification in the Official Gazette, make special Development Control Regulations consistent with this Act and the rules made thereunder, for the purpose of implementing any Scheme, Project, Programme or Policy, of the Central or the State Government, in the whole or a part of the State.

(3) The State Government shall, before making such Regulations prepare a draft thereof and publish a notice in the Official Gazette stating the draft Regulations have been prepared. The notice shall state that the names of the places where a copy of such draft Regulations shall be available for inspection by the public at all reasonable hours mentioned therein and the copies thereof or any extract therefrom,

certified to be correct, shall be available for sale to the public at a reasonable price; and invite objections and suggestions from any person with respect to the draft Regulations before such date as may be specified in the notice. The notice shall also be published in at least two newspapers having wide circulation in the area to which the Regulations are to be made applicable and also in such other manner as the State Government may think fit.

(4) After considering the objections and suggestions received by it, the State Government may approve such draft Regulations with modifications or without modifications, if any, as it may think fit, or decide not to approve the same and shall publish a notification in the Official Gazette stating that the Regulations have been approved with or without modifications or have not been approved, as the case may be. In case the Regulations are approved, the notification shall specify therein the date on which the Regulations shall come into operation.

(5) Where Special Development Control Regulations are made, the provisions of such Regulations shall be in force in the area to which such Regulations are made applicable and the provisions of any plan or scheme applicable to and in force in such area or part thereof, prior to the date of coming into force of such Regulations under sub-section (4) shall, to the extent of the provisions contained in such Regulations, stand modified.”

47. The petitioners have specifically emphasized upon the words ‘designated’ and ‘reserved’ used in the above-quoted Sections 125 and 126 of the MRTP Act. According to the petitioners, unless a particular land is either designated or reserved in the development plan for a public purpose, there is no question of acquisition of any portion of such land. It is also claimed that the acquisition can be only by and for the benefit of the local authority / planning authority and that acquisition can never be undertaken for the benefit of a private entity like the respondent Trust in the present

case. On this basis, it is alleged that the provision for acquisition of land under the impugned Regulation 33(9)(3)(5) of the DCPR is a case of excessive delegation and that it goes beyond the provisions of the parent Statute i.e. MRTP Act, particularly Section 126 thereof.

48. The thrust of the submissions made on behalf of the petitioners is that the impugned Regulation 33(9)(3)(5) of the DCPR goes well beyond the provisions of the parent statute i.e. the MRTP Act and therefore, it deserves to be struck down. By relying upon the judgement of the Supreme Court in the case of *State of U.P. and others vs. Babu Ram Upadhya*, **AIR 1961 SC 751**, it is contended that the impugned Regulation expands the scope of the MRTP Act, by virtually giving the right of acquisition of property to a private entity like the respondent-Trust, which is clearly contrary to the provisions of the said statute.

49. In this regard, reliance is place on the judgement of the Supreme Court in the case of *Kerala State Electricity Board vs. The Indian Aluminium Co. Ltd.*, **(1976) 1 SCC 466**, to contend that a subordinate legislation, like the impugned Regulation, is rendered invalid, when it travels beyond the regulation-making or rule-making power under the parent statute. In support of the proposition that the subordinate legislation is rendered invalid and *ultra vires* the parent statute when it violates the provisions thereof, reliance was placed on the judgements of the Supreme Court in the cases of *Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay*

Environmental Action Group and others, (2006) 3 SCC 434 and *Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala and others*, (2006) 4 SCC 327.

50. The petitioners have placed reliance on the judgements of the Supreme Court in the cases of *Agricultural Market Committee vs. Shalimar Chemical Works Ltd.*; (1997) 5 SCC 516, *Global Energy Limited and another vs. Central Electricity Regulatory Commission*; (2009) 15 SCC 570, *State of U.P. and others vs. Renusagar Power Co. and others*; and *Kunj Behari Lal Butail and others vs. State of H.P. and others*, (2000) 3 SCC 40, in support of the propositions viz (i) while framing statutory Rules and Regulations, a delegate cannot widen or restrict the scope of the parent statute; (ii) such a rule-making or regulation-making power cannot be exercised to create substantive rights or disability not contemplated in the parent statute; (iii) such a power of making Rules and Regulations is for the purpose of carrying out the object of the parent statute and hence, cannot be at cross purposes with the same; and (iv) the subordinate legislation framed by the delegate must contain sufficient guidelines.

51. In addition and in order to elaborate upon the said propositions, the petitioners have also relied upon judgements of the Supreme Court in the cases of *Girnar Traders vs. State of Maharashtra and others*, (2011) 3 SCC 1 and *Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and others*, (1996) 11 SCC 501, as also

judgement of this Court in the case of *Mehtab Laiq Ahmed Shaikh and another vs. State of Maharashtra and others*, 2017 (6) Mh.L.J. 408.

52. By placing reliance on the said judgements, it was further contended that acquisition of land can be undertaken as per Section 126 of the MRTP Act only by the planning authority and land which is either designated or reserved for public purpose can only be acquired. Hence, the power reserved in the impugned Regulation 33(9)(3)(5) of the DCPR granting such power of acquisition to a private entity, like the respondent-Trust, demonstrates that the impugned Regulation is rendered wholly unsustainable.

53. Upon consideration of the said judgements and the contentions raised on behalf of the petitioners, we find that the whole basis of raising such contentions is their understanding that only when land is either 'designated' or 'reserved' for public purpose in a development plan, that the same can be acquired by the planning authority. But, the said contention ignores the word 'required' used in Sections 125 and 126 of the MRTP Act.

54. The contention raised on behalf of the petitioners that in Section 125 of the MRTP Act, since there is a comma between the word 'required' on the one hand and the words 'reserved or designated' on the other, land which is required and reserved/designated can only be acquired, deserves to be rejected, for the reason that Sections 125 and 126 of the MRTP Act are

necessarily required to be read and applied together.

55. In Section 126, it is specifically provided that when any land is 'required or reserved' for any public purpose in a development plan, the power of acquisition can be exercised. The respondent-State authorities are justified in contending that when any piece of land is required for public purpose in the development plan, the power to acquire the same can be exercised read with the Development Control Regulations, in these case, the DCPR.

56. We find that the Development Control Regulations are indeed a part of the development plan, as they are framed under Section 159 read with Section 22(m) of the MRTP Act. Once it is held that the Development Control Regulations or DCPR are part of the development plan, the moment a land is required for public purpose as per such regulations, the same can be acquired.

57. It is a misunderstanding on the part of the petitioners that when such acquisition takes place, the source of power is not Section 126 of the MRTP Act. We find that on a proper reading of the aforementioned provisions of the MRTP Act and understanding the true purport of the words 'required', 'development plan' and 'public purpose', even though the acquisition refers to the impugned Regulation 33(9)(3)(5) of the DCPR, the source of power of acquisition is indeed Section 126 of the MRTP Act.

58. In this context, the observations made by a Division Bench

of this Court in the case of *DB Realty Limited vs. State of Maharashtra and others*, 2015 SCC OnLine Bom 315 are relevant and they read as follows:

“28. The impugned notification finds its source/parentage in Section 22 of the MRTP Act. The opening words of Section 22 being very wide and, therefore, lay down various matters from clauses (a) to (m) which could be provided for in Development Plan. It provides for the manner in which the use of the land shall be regulated. Thus, the powers are very wide. In particular, Section 22(m) of the Act opens with the words "provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of the local authorities". This itself would suggest that the Development Plan can provide for controlling and regulating the use of land; secondly, the concluding words of Section 22(m) inter alia provide for "other matters as may be considered necessary for carrying out the objections of this Act". This would certainly include within its ambit regulation for Inclusive Housing. We find that the power under Section 22(m) of the MRTP Act is very wide and not restricted only to the plans originally made and gives powers to the Planning Authorities to regulate the use of the land under the over all plan made for the region.

29. The contention of the Petitioner is that the impugned notification is inconsistent with the MRTP Act for the reason that unless a particular plot has been reserved/designated/allocated for the particular purpose under the Development Plan, it cannot qualify for the acquisition of land as it has not been reserved under the plan. We find that it is undisputed position that the DCR 1991 framed under the MRTP Act are also a part of the Development Plan as held by this Court in *Nariman Point Association v. State of Maharashtra*, (2003) 5 BCR 273. In the above case, this Court has held that the Development Plan under Section 22 of the Act makes provisions inter alia for permission to be granted for controlling and regulating the use of land under the Development Plan. DCR 1991 have been sanctioned by the State Government in exercise of its power under Section 31 of the Act. These regulations

form part of Development Plan under Section 22(m) of the Act. Therefore, the DCR, 1991 would be a part of the sanctioned final Development Plan, as is abundantly clear from Section 22(m) of the MRTP Act. Moreover, once it is accepted that the DCR 1991 are part of the Development Plan, there is no reason to restrict the words 'for permission to be granted' in respect of use of land appearing in Section 22(m) of the Act. It is correctly contended that there is no requirement in language of Section 22(m) of the Act that there must be first reservation/allocation/designation of a land for a particular use in the Development Plan before the land can be subjected to control/regulation by way of permission under the DCR. According to us, there is no justification to restrict the operation of Section 22(m) of the MRTP Act so as to hold that the impugned notification is ultra vires the MRTP Act.”

59. In the said judgement, reliance was placed on an earlier judgement of a Division Bench of this Court in the case of *Nariman Point Association and another vs. State of Maharashtra and others*, 2003(3) Mh.L.J. 68, wherein the following observation was made:

“11. In assessing the tenability of the submissions which have been urged on behalf of the petitioners, it would at the outset be necessary to have regard to the provisions of the Act, insofar as they relate to the contents of a Development Plan. Section 22 of the Act stipulates that "a Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and the manner in which the development of land which a Development Plan may incorporate. These matters include in clause (a), proposals for allocating the use of land for purposes such as residential, industrial, commercial, agricultural and recreational; in clause (b), proposals for designation of lands for public purposes; and in clause (C), proposals for designation of areas for open spaces, green belts and gardens. Clause (m) of section 22 is relevant for the purpose of the present proceedings and provides that a Development Plan may also provide for the following

matters:

‘(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boarding and other matters as may be considered necessary for carrying out the objects of this Act.’

Thus, under clause (m) of section 22, the development plan is to make provisions inter alia for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority and the use and purposes to which buildings or specified areas of land may or may not be appropriated. The Development Control Regulations for Greater Bombay, 1991 have been sanctioned by the State Government in exercise of powers conferred by sub-section (1) of section 31 of the Act. These Regulations form part of the contents of the Development Plan under section 22(m). Section 31(1) empowers the State Government to sanction the draft development plan. Under subsection (6) of section 31, a Development plan which has come into operation is designated as the final development plan. **The Development Control Regulations for Greater Bombay, 1991, are, therefore, conceptually and in law a part of the sanctioned final development plan. That the Development Control Regulations would be a part of the sanctioned final development plan is abundantly clear from clause (m) of section 22 of the Act.**

(emphasis supplied)’

60. Thus, it becomes abundantly clear that the Development

Control Regulations, DCPR 2034 in the present context, become part of the finalized development plan under the provisions of the MRTP Act. Consequently, when a piece of land is required for public purpose under such a Development Control Regulation, which is part of the development plan, the power to acquire the same can certainly be validly exercised, as has been done in the present case. The emphasis placed by the petitioners only on the two words ‘reserved’ and ‘designated’, while ignoring the word ‘required’ for public purpose, is found to be erroneous and hence, the contentions raised on behalf of the petitioners in this context, are rejected.

61. As regards the nature of Development Control Regulations and the nature of power exercised while framing and amending such Regulations, the Supreme Court, while considering the Development Control Regulations framed under this very MRTP Act, in the case of *Pune Municipal Corporation and another vs. Promoters and Builders Association and another*, (2004) 10 SCC 796, observed as follows:

“5. Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural

justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for “such inquiry as it may consider necessary” by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (*Union of India v. Cynamide India Ltd.* (1987) 2 SCC 720, SCC paras 5 and 27. See generally *H.S.S.K. Niyami v. Union of India* (1990) 4 SCC 516 and *Canara Bank v. Debasis Das* (2003) 4 SCC 557). While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally *ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat* (1990 Supp SCC 397). Therefore, the view adopted by the High Court does not appear to be correct.

6. DCR are framed under Section 158 of the Act. Rules framed under the provisions of a statute form part of the statute. (See *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav* (1988) 2 SCC 351, SCC para 14. In other words, DCR have statutory force. It is also a settled position of law that there could be no ‘promissory estoppel’ against a statute. (*A.P. Pollution Control Board II v. Prof. M.V. Nayudu* (2001) 2 SCC 62, SCC para 69, *STO v. Shree Durga Oil Mills* (1998) 1 SCC 572, SCC paras 21 and 22 and *Sharma Transport v. Govt. of A.P.* (2002) 2 SCC 188, SCC paras 13 to 24. Therefore, the High Court again went wrong by invoking the principle of “promissory estoppel” to allow the petition filed by the respondents herein.”

62. Thus, the scope for challenging such a Development Control Regulation is necessarily limited and in the present case, we find that the petitioners have failed to raise substantive grounds for quashing the impugned Regulation 33(9)(3)(5) of the DCPR.

63. The petitioners have heavily relied upon the judgement of

the Supreme Court in the case of *Manohar Joshi vs. State of Maharashtra and others*, (2012) 3 SCC 619, to contend that the main object of the MRTP Act is planned development, while acquisition is an incidental issue, further stating that the provisions of the MRTP Act emphasize upon democratic process of planning.

64. It is contended that public participation is a hallmark of the provisions of the MRTP Act and this basic feature has been obliterated due to the manner in which the land of the petitioners is sought to be acquired, by invoking the impugned Regulation 33(9)(3)(5) of the DCPR. In this context, it is vehemently submitted that while framing the impugned DCPR, the principles of natural justice and the aspect of public participation have been violated and therefore, the impugned Regulation deserves to be set aside.

65. The said contention raised on behalf of the petitioners deserves to be rejected, in the light of the finding rendered hereinabove that Development Control Regulations, including the impugned Regulation forming part of DCPR 2034, are part of the development plan. A perusal of Sections 21 to 31 of the MRTP Act shows that the entire process involves publishing public notices inviting objections and dealing with the same before finalization of the development plan. As noted hereinabove, Development Control Regulations are framed under Section 159 read with Section 22(m) of the MRTP Act.

66. Sections 37 and 37(A) thereof also assume significance in

this context, as the said provisions pertain to modification of final development plan and temporary change of user. Section 37(1AA) of the MRTP Act provides that when the State Government is satisfied that in public interest, it is necessary to urgently carry out any modification of a final development plan of such nature that it will not change the character thereof, a notice is to be published in the official gazette, inviting objections and suggestions from any person with respect to the proposed modification. It is only after dealing with the objections and suggestions, can the proposed modification be carried out in the final development plan.

67. In this context, it would be appropriate to reproduce Sections 37 and 37A of the MRTP Act, which read as follows:

“37. Modification of final Development Plan

(1) Where a modification of any part of or any proposal made in a final Development Plan, the Planning Authority may, or when so directed by the State Government shall, within ninety days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction within one year from the date of publication of notice in the Official Gazette. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:

Provided that, such lapsing shall not bar the Planning Authority from making a fresh proposal.

(1A) If the Planning Authority fails to issue the notice as

directed by the State Government, the State Government shall issue the notice, and thereupon, the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.

(1AA) (a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development Plan of such a nature that it will not change the character of such Development Plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice, and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its consideration. The Planning Authority shall, thereupon, submit its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modification with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development Plan shall be deemed to have been modified accordingly.

(1B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a final

Development plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction.

(2) The State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly.

37-A. Power of State Government or Planning Authority to permit temporary change of user

Notwithstanding anything contained in this Act or any other law for the time being in force, or in any judgement, order or direction of any Court, or any draft or final Development Plan, the State Government or the Planning Authority may in respect of any plot of land reserved, designated or allocated for the purpose of play ground in such draft or final Development Plan, which is in the possession of the State Government or the Planning Authority, by an order issued from time to time, permit any organisation, body of persons or association to use such play ground for functions organised on the occasions of Independence Day, Republic Day, Maharashtra Day and similar National events, and the Jayanties or Punnyatithies of National Leaders, religious functions and public meetings, on terms and conditions specified by the State Government or the Planning Authority, as the case may be in such order, for a period not exceeding 12 days at a time and in any case not exceeding forty-five days in the

aggregate, in a calendar year; and such use shall not be deemed to be a change of user:

Provided that, temporary use of any plot of land, reserved, designated or allocated for the purpose of play-ground, for management of any disaster or emergency such as Helipad or other essential use, shall also not be deemed to be a change of user.”

68. It is relevant to note that the Development Control Regulations framed under the MRTP Act, specifically refer to the aforesaid exercise contemplated under Section 37(1AA). DCPR 2034 was also framed by following the said process and the respondent-State authorities have placed material on record to support the said assertion, which shows that the State Government had appointed a Study Group/Committee to examine as to the manner in which DCR 1991 was operating, in the context of reconstruction and redevelopment of cessed buildings, as also the Urban Renewal Schemes.

69. On 10.09.2012, the State Government issued a government resolution appointing such a Study Group/Committee to examine the functioning of such Urban Renewal Schemes and as to whether any modifications could be suggested for better functioning of such schemes. The said Study Group/Committee of which the Chief Secretary was the Co-ordinator, consisted of high ranking officials as its members such as Principal Secretary (Public Works); Commissioner (MCGM); Chief Executive Officer of Slum Rehabilitation Authority, Chief Executive Officer of MHADA; Director (Town Planning) and Chief Secretary (Town Planning).

70. In the said report submitted by the Study Group/Committee, it was recommended that if a promoter/developer of a cluster obtains development rights to the extent of 70% of the subject land, cluster development schemes should be implemented and as regards the remaining 30% land, the power of acquisition could be exercised. Such and other recommendations were taken into account when the State Government proposed to modify Regulation 33(9) of the Development Control Regulations, by exercising power under Section 37(1AA)(c) of the MRTP Act.

71. Thereupon, the State Government issued public notices inviting objections and suggestions. The Deputy Director (Town Planning) was appointed as the designated officer to consider the objections/suggestions, in order to submit report in the context of the proposed modification of the said Regulation. After carrying out the statutory exercise contemplated under Section 37(1AA) of the MRTP Act, on 09.09.2014, the respondent-State issued notification modifying Regulation 33(9), to introduce the concept of cluster development of buildings, under the Urban Renewal Scheme. Extensive modification was carried out and elaborate procedure was laid down, which eventually led to the present form of the impugned Regulation 33(9)(3)(5) of the DCPR.

72. Thus, it is evident that democratic planning methodology contemplated under the MRTP Act and recognized in judgements of Courts, was duly followed and only thereafter, was the modification brought about in the Regulations. We do not find

substance in the contention raised on behalf of the petitioners that the impugned DCPR was issued without public participation. Since statutory procedure contemplated under the provisions of the MRTP Act, starting from Sections 21 to 31 pertaining to finalization of development plan and thereafter, modification thereof under Section 37(1AA) was followed to frame/modify the Development Control Regulations, it cannot be said that the impugned Regulation is *ultra vires* the provisions of the MRTP Act.

73. Much was said on behalf of the petitioners on the aspect of 'public purpose'. The petitioners claim that the impugned Regulation 33(9)(3)(5) of DCPR virtually grants power to a private entity, like the respondent-Trust, to acquire land and that since it benefits a private entity, there is no public purpose served in the entire exercise. The said contention of the petitioners is based on a complete misunderstanding of the manner in which Urban Renewal Schemes are operated, including the subject CDS.

74. In the case of *Sooraram Pratap Reddy and others vs. District Collector, Ranga Reddy District and others*, (2008) 9 SCC 552, the Supreme Court considered the expression 'public purpose' and made the following observations:

“67. The expression 'public purpose' is of very wide amplitude. It is merely illustrative and not exhaustive. The inclusive definition does not restrict its ambit and scope. Really, the expression is incapable of precise and comprehensive definition. And it is neither desirable nor advisable to attempt to define it. It is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be

benefited.

xxx xxx xxx xxx

69. Before about a century, in *Hamabai Framjee Petit v. Secy. of State for India in Council* (1911) 13 Bom LR 1097 certain lands were sought to be acquired for erecting buildings for the use of government officials. The action was challenged in the High Court of Judicature at Bombay contending that the purpose of acquisition could not be said to be “public purpose”. Negating the arguments and upholding the acquisition, Batchelor, J. observed: (*Hamabai case* (1911) 13 Bom LR 1097, IA p. 47

“... ‘General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase “public purposes” in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.’ ”

(emphasis supplied)

The aggrieved appellant approached the Privy Council. The Council in *Hamabai Framjee Petit v. Secy. of State for India in Council* approved the above observations of Batchelor, J. Speaking for the Judicial Committee, Lord Dunedin stated: (IA p. 47)

“... all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. Prima facie the Government are good judges of that. They are not absolute judges. They cannot say: ‘Sic volo sic jubeo’, but at least a court would not easily hold them to be wrong. But here, so far from holding them to be wrong, the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants. From such a conclusion Their Lordships would be slow to differ, and upon its own statement it commends itself to their

judgment.”

(emphasis supplied)

xxx xxx xxx xxx

79. A ‘public purpose’ is thus wider than a ‘public necessity’. Purpose is more pervasive than urgency. That which one sets before him to accomplish, an end, intention, aim, object, plan or project, is purpose. A need or necessity, on the other hand, is urgent, unavoidable, compulsive. “Public purpose should be liberally construed, not whittled down by logomachy.”

(emphasis supplied)”

75. In the present case, the subject CDS is being implemented in the congested Bhendi Bazaar area of Mumbai city. As noted hereinabove, urban renewal is indeed necessary for planned development of Mumbai city, which has a number of such pockets and areas of extreme congestion that have led to subhuman existence of residents/occupants of such areas. The subject CDS has been framed and is being executed for the general interest of the community and residents/occupants of such area, which clearly qualifies as public purpose. As part of Urban Renewal Scheme, the subject CDS is operated and executed in terms of guidelines specified in the DCPR framed under the MRTP Act, which involves a promoter/developer like the respondent-Trust. The purpose of such scheme is urban renewal through cluster development and it certainly cannot be branded as a scheme for the benefit of a private entity like the respondent-Trust. We find the contentions raised in this regard on behalf of the petitioners to be wholly misdirected and also, based on a misunderstanding of the concept of public purpose, in the context of subject Urban

Renewal Schemes. The concept of ‘public purpose’ clarified by the Supreme Court in various judgements, including the above-quoted portion from **Sooraram Pratap Reddy and others vs. District Collector, Ranga Reddy District and others** (*supra*), clearly demonstrates that the subject CDS qualifies as ‘public purpose’.

76. It cannot be ignored that the urban planning and development is necessarily a dynamic concept, which has to remain alive to the needs of the times and it cannot be treated as static. It is for this reason that in the case of **Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group and others** (*supra*), the Supreme Court observed as follows:

“249. A development plan is an organic document in the sense that periodic changes are contemplated thereby. A development plan is required to be changed every 20 years. Such changes are to be brought about keeping in view the past experience of the planning authority and the intended future development of the town. While, therefore, interpreting the words ‘change in the character of plan’ the question would be as to whether the change in the character is referable to alteration of the entire plan. The change in the character would, therefore, necessarily mean the change in the basic feature thereof and the entire plan as a whole wherefor the same must be read in totality. In this case, the changes made do not bring about any significant changes so as to come to a conclusion that its basic features are altered.”

77. Thus, the development plan is to be treated as an organic document and the Development Control Regulations statutorily framed under the MRTP Act ensure that the development plan is synchronized with the changing requirements of times. The introduction of the concept of cluster development as a feature of

Urban Renewal Schemes, by modification of the Development Control Regulations, cannot be found fault with, particularly when such Regulations have been framed and modified as per the statutory requirements under the MRTP Act.

78. It is necessary to appreciate that in the fast changing scenario of economic and social development, the aspect of urban planning also needs to keep pace and therefore, it becomes necessary for delegating the power of undertaking Urban Renewal Schemes, as per the requirements of the changing times. The legislature while enacting the parent statute lays down the broad blueprint and subordinate legislation like the Development Control Regulations are framed by the delegate, in order to meet the changing requirements of urban planning and detailing thereof, with passage of time. So long as the delegated legislation provides for sufficient guidelines and it is framed in tune with the objects of the parent statute, it cannot be said that such subordinate legislation amounts to excessive delegation. Having perused the contents of the subject DCPR, we find that there are sufficient guidelines in the same and therefore, it cannot be said to be a case of excessive delegation. In the case of *Consumer Action Group & Anr. vs. State of Tamil Nadu & Ors.*, (2000) 7 SCC 425, the Supreme Court held as follows :

“18. The catena of decisions referred to above concludes unwaveringly in spite of a very wide power being conferred on the delegatee that such a section would still not be ultra vires, if guidelines could be gathered from the Preamble, Objects and Reasons and other provisions of the Acts and Rules. In testing the validity of such provision, the courts have

to discover, whether there is any legislative policy, purpose of the statute or indication of any clear will through its various provisions. If there be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegatee is controlled through such policy. The fast-changing scenario of economic, social order with scientific development spawns innumerable situations which the legislature possibly could not foresee, so the delegatee is entrusted with power to meet such exigencies within the inbuilt check or guidance and in the present case to be within the declared policy. So the delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially affecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situations cannot be culled out, which have to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of the society at large. Such power is meant rarely to be used. So far as decisions relied on by the petitioner, where the provisions were held to be ultra vires, they are not cases in which the Court found that there was any policy laid down under the Act. In *A.N. Parasuraman* [(1989) 4 SCC 683] the Court held Section 22 to be ultra vires as the Act did not lay down any principle or policy. Similarly, in *Kunnathat Thathunni Moopil Nair* [AIR 1961 SC 552 : (1961) 3 SCR 77] . Section 7 was held to be ultra vires as there was no principle or policy laid down.”

79. In this context, it would be appropriate to refer to the relevant portions of the impugned Regulation 33(9) of the DCPR, which read as follows :

“33(9) Reconstruction or redevelopment of Cluster(s) of Buildings under Cluster Development Scheme(s)(CDS):

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

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

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

1) Under the Cluster Development Plan (CDP) for the concerned area, to be prepared by the Commissioner, who may revise the same as and when required; or

Under the Development Plan (DP), where the DP contains such well-defined cluster

2) By the Promoter of the CDS,

Provided that no cluster or clusters shall be identified for redevelopment or implementation of CDS by the Municipal Commissioner without carrying out an Impact Assessment Study regarding the impact on the city and sector level

infrastructure and amenities as well as traffic and environment of the implementation of CDS on such cluster or clusters.

3. Land pooling for the CDS:

The Promoter of CDS shall try to pool lands belonging to various categories of land holders including Public lands by obtaining their consent for including their lands in the proposed CDS, by resorting to any of the following methods of land pooling:

1) Purchase of lands, including buildings, if any, standing thereupon,

Provided that if the Promoter wishes to include any building or land belonging to the State Govt. or MCGM or MHADA or any Agency under the control of State Govt. (hereinafter collectively referred as "Public Authority"), then he shall make a written request in this regard through the Municipal Commissioner to an Empowered Committee (EC) headed by the Chief Secretary. This EC shall be as formulated by GoM.

The EC shall examine the request made by the Promoter in terms of the desirability of making the land belonging to a Public Authority available for CDS and would decide the terms of transfer of such land to the Promoter for the purpose of implementing CDS. In case the land sought by the Promoter belongs to an Authority created by or under a statute, the decision of the EC shall be subject to ratification/approval by such Authority.

2) Exchange of such land with a suitable land of at least equivalent value as per ASR land rates.

3) Procurement of DRs over such land, by way of registered document by the Promoter, provided that the area over which the Promoter holds DRs shall be regarded as one plot for all the purposes of the DCPR; or

4) Transfer of all lands included in the CDS to a legal entity (e.g: Registered Society or Company, Co-operative Housing Society, Charitable Trust, etc.) to be created by the Promoter for implementing the CDS where different landholders have stakes proportionate to their share in the total land under CDS; or

5) Acquisition of lands, provided the Promoter has purchased or procured DRs over at least 70% land comprised in the CD

and there are dangerous buildings, declared as such by the Competent Authority, on the balance lands contained in the CD. In such a situation, the Promoter may approach the HPC for recommending the proposal to the Govt. for acquisition of such balance lands. Upon receipt of such request, the HPC may, after due examination, recommend to the Govt. as to which lands are required to be acquired for the purposes of CDS. The Govt., thereafter, shall take necessary steps to acquire such balance lands under the provisions of the relevant law and transfer the same to the Promoter only for the purpose of implementing CDS after executing an agreement with him in this regard, subject to the Promoter depositing with the Govt. necessary amount of money for the land acquisition. For the purpose of land acquisition, CDS shall be regarded as public purpose.

6. a) Redevelopment or Reconstruction under CDS may be permitted in pursuance of an irrevocable registered written consent by eligible tenants/ occupiers of all authorized buildings not less than 51 percent of each building or 60 percent overall of the scheme involved in the CDS Consent as aforesaid of f tenants/occupiers for reconstruction or redevelopment shall not be required, if MHADA/MCGM undertakes redevelopment, on its own land, directly without any developer.

The Developer shall be required to submit along with the CDS proposal, proof of ownership or procurement of DRs in respect of at least 70% of the land under the proposed CDS(excluding Municipal Roads if maintained as existing in proposed CDS) and it shall be mandatory for him to submit such proof of ownership or procurement of development rights in respect of the balance area within one year from the date of issue of the LOI.

b) All the eligible occupants/tenants of the building(s) undergoing redevelopment shall be rehabilitated in the redeveloped building(s).

(emphasis supplied)”

80. A perusal of the above quoted relevant portions of the impugned Regulation 33(9) of the DCPR, particularly the

emphasized portions, would show that there are sufficient guidelines contained therein. These include minimum area of 4000 sq. m. in the island city of Mumbai and 6000 sq. m. in the Mumbai suburbs and extended suburbs. There are sufficient guidelines for identifying distinguishing physical boundaries to such areas of lands identified for cluster development. Sufficient safeguards are incorporated to ensure that only when at least 70% of the development rights of the subject land are purchased or procured by the promoter/developer that the cluster development can proceed. The balance lands should comprise of dangerous buildings and the entire proposal for such cluster development is required to be examined by the HPC. It is only when all the conditions and guidelines specified in the said Regulation are satisfied that the CDS is regarded as public purpose and acquisition of land can be undertaken. Considering the contents of the impugned Regulation, we find that neither does it suffer from the vice of excessive delegation nor can it be said that it is bereft of sufficient guidelines. Hence, the contentions raised on behalf of the petitioners in this regard are rejected.

81. In the light of the manner in which the Urban Renewal Scheme in the form of CDS is implemented and executed in a systematic and step-wise manner provided in the impugned Regulation, it cannot be said that such a scheme is only for the benefit of a private entity like the respondent-Trust. The public character of such a Urban Renewal Scheme is not diluted because of the fact that it is implemented with the assistance of a

promoter/ developer. In any case, as per the aforesaid scheme, the amount required, to arrange for compensation for acquisition of the balance land, is arranged by the promoter/developer and therefore, even the cost of the acquisition does not fall upon the public exchequer. On the other hand, the benefit of such a Urban Renewal Scheme, particularly through cluster development, inures to the benefit of the public at large, as those living in congested areas in almost subhuman conditions are given tenements of larger sizes, with excellent common facilities, including broad roads, proper drainage and other such facilities, which contributes towards better living conditions. Therefore, we are unable to agree with the petitioners that framing of DCPR and execution of the Urban Renewal Scheme through cluster development is an action beyond the objects and purposes of the MRTP Act.

82. We find substance in the contention of the respondent-State Authorities that even with respect to the specific subject CDS concerning Bhendi Bazaar area of Mumbai city, in judgements and orders passed by this Court, the scheme has been noted with approval. In this context, reference can be made to the orders in the cases of *Mr. Murtuza Shabbir Tinwala a/w The State of Maharashtra & Ors.*, 2015 SCC OnLine Bom 6131 and *Mohd. Jahir Shaikh Nasir vs. State of Maharashtra & Ors.*, 2019 SCC OnLine Bom 8223. In the said judgements and order, this Court took specific note of the subject CDS as part of urban renewal by referring to the number of persons who would be benefiting from the scheme, apart from the fact that units admeasuring minimum

350 sq. ft. carpet area with self-contained toilets would be available even for residential tenants, more than 700 trees would be planted and the entire infrastructure of the Bhendi Bazaar area would be upgraded. There would be facilities for roads having width between 15 meters and 16.5 meters with footpaths and sufficient parking spaces along with new sewerage and sanitation facilities, along with a sewerage treatment plant. These features indeed demonstrate that such Urban Renewal Scheme is for public purpose and in the general interest of the community at large, thereby indicating that the acquisition undertaken for execution of such a scheme cannot be said to be foreign to the object of the MRTP Act and the Rules and Regulations framed thereunder.

83. The petitioners have alleged that they were never given notice before the decision was taken to undertake the Urban Renewal Scheme through the subject CDS. We find that the petitioners were aware about the Urban Renewal Scheme at least from the year 2011. As a matter of fact, the tenants in the said Lucky Building concerning Writ Petition No. 2997 of 2021 had given consent for implementation of the scheme. More than 80% of the tenants gave their consent, while the petitioners refused to respond to the same. The decisions of the HPC were never challenged by the petitioners. They did not even respond to the public notices published in newspapers on 30.05.2019, when the subject lands were intended to be purchased by way of negotiations. It was after the process of acquisition was over that the petitioners chose to knock the doors of this Court. Therefore,

the petitioners cannot be heard to say that the Urban Renewal Scheme through the subject CDS was initiated and implemented behind their back.

84. In any case, as noted hereinabove, the petitioners never raised any objection when public notices were issued, inviting objections with regard to the proposed modification of the DCR from time to time, including while framing the subject DCPR 2034. We do not find substance in the contention of the petitioners that since such proposed modification did not specifically identify the property of the petitioners to be made subject matter of acquisition, there was no occasion for them to raise the objection. Such a contention cannot be accepted as public participation is a statutorily engrafted mechanism in the MRTP Act. The respondent-State Authorities have been able to demonstrate that all the statutory requirements contemplated while finalizing the development plan under Sections 21 to 31 of the MRTP Act, as also while proposing to make modifications under Section 37 thereof, were duly followed and therefore, the public at large had sufficient notice about the upgradation of the concept of urban renewal through cluster development and the detailing of its execution as proposed in the Development Control Regulations. Hence, the said contentions on behalf of the petitioners are also rejected.

85. In view of the above, we find that the propositions recorded in paragraph 50 hereinabove are answered in favour of the

respondents and against the petitioners. The judgements relied upon by the petitioners in the context of the said propositions do not take their case any further. On the other hand, they support the case of the respondents.

86. Apart from claiming that the impugned Regulation 33(9)(3)(5) of DCPR is *ultra vires* the MRTP Act, the petitioners also contended that the said Regulation violates their constitutional rights under Article 300A of the Constitution of India. The aforesaid Article pertains to the right to property and it stipulates that no person shall be deprived of its property save by authority of law. It is already held hereinabove that the DCPR is part of the development plan, which in turn is part of the parent statute i.e. the MRTP Act. Therefore, it qualifies as law in the context of Article 300A of the Constitution of India. We find substance in reliance placed on behalf of the respondent-State Authorities on the judgements of the Supreme Court in the cases of *Hindustan Times & Ors. vs. State of U.P. & Anr.*, (2003) 1 SCC 591 and *Bishambhar Dayal Chandra Mohan & Ors. vs. State of Uttar Pradesh & Ors.*, (1982) 1 SCC 39. In the said judgements, the Supreme Court categorically held that the expression 'law' within the meaning of Article 300A of the Constitution of India means a parliamentary Act or the Act of a State legislature or a statutory order having the force of law. In the present case, impugned Regulation 33(9)(3)(5) of the DCPR clearly qualifies as 'law' within the meaning of Article 300A of the Constitution of India. Thus, it cannot be said that in the present case, the petitioners

have been deprived of their property without the authority of 'law'. In fact, the acquisition has been undertaken under Section 126 of the MRTP Act, read with impugned Regulation 33(9)(3)(5) of DCPR and the provisions of the Act of 2013. The determination of market value has been made in terms of the provisions of the Act of 2013 and therefore, it cannot be said that the acquisition in the present case amounts to violation of the right of the petitioners under Article 300A of the Constitution of India.

87. One of the contentions raised on behalf of the petitioners concerns the specific stipulation in the impugned Regulation 33(9)(3)(5) of the DCPR to the extent that when balance land is to be acquired, it must consist of dangerous buildings. A bare reading of the impugned Regulation quoted hereinabove would show that the requirement is with regard to existence of dangerous buildings on the balance land within the cluster development area. It is specifically contended on behalf of the petitioners that since the requirement is that the Competent Authority must have declared such buildings as dangerous and since, the subject Lucky Building was never declared dangerous by the competent Authority, the whole exercise of acquisition stood vitiated.

88. In the chronology of events narrated hereinabove, reference is already made to warning notices issued by the competent Authority i.e. the Mumbai Building Repair and Reconstruction Board to the occupants of the subject building in the year 2018,

as regards the dilapidated status of the building and for consent of the tenants/ occupants with regard to the said scheme. This includes a warning notice dated 11.06.2018 sent by the aforesaid Board to the petitioners referring to the subject CDS and specifically stating that despite the building being in dangerous condition, no steps were being taken for vacating the same, while the tenants/occupants had shown their willingness to vacate the building. A reference has been made hereinabove to an order passed by this Court in one of the writ petitions to the effect that the occupants of the subject building were residing therein at their own risk. These documents sufficiently indicate that notices/warning notices were issued even with regard to the subject building of the petitioners, on the ground of it being dangerous and risky for habitation.

89. Apart from this, we find substance in the contention raised on behalf of the respondent-State Authorities to the effect that since the subject building was more than 100 years old, as per Section 84 of the MHAD Act, it was statutorily classified as a category A building. It is an admitted position that the subject building was a cessed building, erected before 01.09.1940 and therefore, it stood classified as a category A building. It is to be noted that the Supreme Court in the case of *Jayant Achyut Sathe vs. Joseph Bain D'Souza & Ors.*, (2008) 13 SCC 547 has taken note of the said provision of the MHAD Act and the categorization of such buildings constructed prior to the year 1940. Such a building falling in the said category by itself was

dangerous and therefore, we do not find any substance in the contention raised on behalf of the petitioners that since it was not specifically declared a dangerous building, the requirement in the impugned Regulation 33(9)(3)(5) of the DCPR was not satisfied.

90. At this stage itself, another aspect highlighted on behalf of the respondent-State Authorities deserves consideration. This pertains to the contention raised on behalf of the said respondents that as between the acquisition of such dangerous buildings and properties under the MHAD Act on the one hand and the MRTP Act on the other, the provisions of the MRTP Act read with the Act of 2013 are clearly more advantageous to the claimants like the petitioners. As per Section 44 of the MHAD Act, in the event acquisition is to be undertaken, the compensation is restricted to an amount equivalent to the rent of 100 months. As opposed to this, under the provisions of the MRTP Act read with DCPR and the provisions of the Act of 2013, the compensation payable is at market value of the subject property and the claimants also have the facility of seeking enhancement of compensation through statutory remedies. Therefore, we find substance in the contention raised on behalf of the respondent-State Authorities that acquisition of the subject property of the petitioners under impugned Regulation 33(9)(3)(5) of the DCPR read with Section 126 of the MRTP Act and the provisions of the Act of 2013 results in compensation as per market value and the right to property of the petitioners is sufficiently protected.

91. The petitioners have further contended that in the facts of the present case, even the mechanism contemplated in the impugned Regulation 33(9)(3)(5) of the DCPR has not been complied with and that on this ground, the writ petition ought to be allowed. In this context, the petitioners claimed that the HPC granted approval to the execution of CDS as an Urban Renewal Scheme, which ultimately led to acquisition of property of the petitioners, within minutes of the proposal being submitted and in any case, within one day of submission of the same. An impression was sought to be created that the HPC along with other State authorities, acted in connivance to somehow hurriedly hand over the area of land made subject matter of the CDS under the impugned Regulation 33(9)(3)(5) of the DCPR, with the sole object of benefiting a private entity like the respondent-Trust.

92. But, the chronology of events recorded hereinabove, while referring to the facts of the case, shows that the proposal for redevelopment of Bhendi Bazaar area in terms of DCR 1991 was first considered on 11.06.2009 by the HPC. Over the years, the proposal was placed for further consideration with necessary documents being placed before the HPC. The percentage of land owners giving their consent and development rights to the respondent-Trust and other details were placed before the HPC from time to time. Initially, the redevelopment was contemplated in two phases.

93. But, the HPC was of the opinion that there should be

amalgamation and that the respondent-Trust must procure a single property card for the entire cluster. Upon necessary steps being taken in that regard and eventually, the HPC being made aware about the fact that all the land owners/tenants/occupants of the proposed cluster development, except about 7%, had given their consent and the other requirements of the DCPR had been satisfied, that the HPC granted its approval to the subject CDS. The in-principal approval had been granted in the year 2011 itself.

94. This Court has already recorded that the land owners/tenants/occupants of the subject area, including the tenants of the petitioners and the petitioners themselves were well aware about the aforesaid development. Hence, we find no substance in the contention raised on behalf of the petitioners that the mechanism and procedure contemplated under the impugned Regulation 33(9)(3)(5) of the DCPR was not followed. Much emphasis was placed on the words 'after due examination' by the HPC, to the contend that since the approval was granted in haste, the HPC had not duly examined the proposed CDS. In the light of the facts brought to the notice of this Court, we find no substance in the said contention raised on behalf of the petitioners.

95. We also find that the specific requirements of cluster development, as noted hereinabove, concerning minimum size of the plot being at least 4000 sq.mtrs. and other requirements regarding consent of at least 70% of the development rights of the subject land, the extent of permitted FSI etc. were all satisfied and

therefore, the requirements of the Regulation 33(9)(3)(5) of the DCPR were duly complied with. On this count also, no deficiency can be attributed to the action taken for implementing the subject CDS as an Urban Renewal Scheme for the congested Bhendi Bazaar area of Mumbai city.

96. The petitioners also contended that the principles of natural justice were grossly violated in the present case. We have already found hereinabove that notice was sent to the petitioners about the said Urban Renewal Scheme in the form of cluster development, proposed to be undertaken in the area in which the property of the petitioners was located. But, it was claimed that the necessary notices were not issued before seeking to acquire the subject property under the Act of 2013.

97. In this regard, a reference to proviso to the above-quoted Section 126 of the MRTP Act, would be apposite. The said proviso lays down that the procedure specified in Sections 4 to 15 of the Act of 2013, shall not be applicable in respect of the lands required for public purpose as per the development plan. If the contentions of the petitioners are accepted, it would amount to introducing the requirements of Section 4 to 15 of the Act of 2013, when they have been specifically excluded as per the proviso to Section 125 of the MRTP Act. In the present case, acquisition has been undertaken for public purpose, in order to undertake urban renewal of the subject area through cluster development, which is indeed a public purpose, as per Sections

125 and 126 of the MRTP Act read with Regulation 33(9)(3)(5) of the DCPR framed under the MRTP Act.

98. It is also relevant to note that eventually, when the petitioners did raise objections before the Deputy Collector in the context of the proposed acquisition, the same pertained to the very power of the Collector to acquire the subject lands for public purpose, while no submissions were made with regard to the quantum of compensation or any dispute regarding measurement, etc. The nature of objections raised by the petitioners were beyond the jurisdiction of the authority before whom such objections were raised. In other words, the petitioners did not avail of the opportunity granted for raising objections in terms of Section 21 of the Act of 2013.

99. It was also contended that sufficient notice was not given to the petitioners in terms of the statutory provisions. We find that even if that be so, it is not contended by the petitioners that they did not have sufficient time to raise their objections or that they suffered any prejudice. As a matter of fact, the petitioners did raise their objections and they remained present before the Deputy Collector to pursue the same, thereby indicating that the aforesaid contention raised on their behalf cannot lead to setting aside of the impugned award.

100. As noted hereinabove, the nature of objections of the petitioners pertained to the very power of the Collector to undertake acquisition and there were no issues raised as

contemplated under Section 21 of the Act of 2013. Thus, the contentions raised on behalf of the petitioners with regard to violation of principles of natural justice, cannot be accepted.

101. In this regard, the respondent-State authorities are justified in placing reliance on the observations made in the judgement of the Supreme Court, in the case of *State of Uttar Pradesh vs. Sudhir Kumar Singh and others*, (2021) 19 SCC 706. The said observations support the case of the respondents that in the facts of the present case, the impugned award cannot be set aside on the alleged violation of principles of natural justice. The observations made in the aforesaid judgement read as follows:

“42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or

indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

102. It was further contended on behalf of the petitioners that delegation of power to the Deputy Collector to undertake the acquisition proceedings and to render the award, amounts to the delegate of the State Government i.e. the Collector further sub-delegating the power of the State to the Deputy Collector. It is submitted that since the Collector could not have further delegated the authority to the Deputy Collector, all actions taken by the Deputy Collector for acquisition of the subject land, stood vitiated.

103. On this basis, the petitioners have challenged the impugned notification dated 27.09.2019, whereby the Collector designated the Deputy Collector to perform the functions of the Collector under the Act of 2013. Section 3(g) of the Act of 2013 defines Collector as follows:

- “3. Definitions: In this Act, unless the context otherwise requires,-
- (g) “Collector” means the Collector of a revenue district, and includes a Deputy Commissioner and any officer specially designated by the appropriate

Government to perform the functions of a Collector under this Act;”

104. The appropriate Government in the present case is the respondent-State, as the subject land for acquisition in the present case is within the territory of the State of Maharashtra. Rule 2(g) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014, provides that the Collector means the District Collector and includes the Additional Collector, Deputy Collector (Land Acquisition) and Sub-divisional Officer functioning in the District.

105. A conjoint reading of the said provisions makes it abundantly clear that the Deputy Collector exercising power in the present case, does not mean that an authority devoid of jurisdiction undertook the procedure for acquisition of the subject land. The petitioners sought to indicate illegality on the part of the respondents in the Deputy Collector proceeding to render the subject award, on the basis of monetary classifications prescribed in Rule 18 of the aforementioned Rules of the State of Maharashtra.

106. We find substance in the contention raised on behalf of the respondent-State authorities that the classification based on monetary considerations and specifying pecuniary limits is a procedural and administrative division of work, which cannot impinge upon the true purport of Rule 2(g) of the said Rules of the State of Maharashtra, whereby the expression ‘Collector’ indeed

includes the Deputy Collector. In any case, Rule 18(3) itself provides that when the amount of compensation to be paid is more than Rs.10 crores, approval has to be taken from the Divisional Commissioner. Such limits are subject to review annually. Thus, if at all any procedural infirmity exists in this regard, it is a curable infirmity. The same cannot inure to the benefit of the petitioners, particularly in the facts of the present case, where the financial burden of payment of compensation is not borne by the State, but it is provided by the promoter/developer of the CDS such as the respondent-Trust in the present case. Thus, the said contention raised on behalf of the petitioners also does not take their case any further.

107. The petitioners claimed that the entire proceedings before the Deputy Collector were conducted in haste and hence the compensation granted in the impugned award is not sustainable. It was submitted that valuation report was obtained within one day and as many as 16 awards were passed in a single day. We find that such arguments necessarily pertain to the determination of quantum of compensation in the impugned award. Any grievance with regard to the said aspect of the matter has to be raised in terms of the statutory remedy of reference available to the claimant under Section 64 of the Act of 2013. As per the provisions of the Act of 2013, the Collector considering the acquisition proceedings, while determining the quantum of compensation, has to apply the principles specified in Sections 26 to 30 thereof. In a reference proceeding, the Land Acquisition,

Rehabilitation and Resettlement Authority (LARR Authority) under Section 64 of the Act of 2013 is required to examine whether the Collector has applied the correct principles while calculating the quantum of compensation. The reference proceeding before the LARR Authority is the remedy for raising such grievance by an aggrieved claimant. It is an admitted position that the petitioners have taken recourse to the said remedy by filing reference under Section 64 of the Act of 2013. Hence, the petitioners are at liberty to pursue the same in accordance with law. On this ground, the aforesaid grievance raised with regard to the determination of quantum of compensation in the impugned award, cannot be considered in this writ petition.

108. The petitioners have also challenged the action of the respondents while taking possession of the subject property. The documents on record show that sufficient notice was given to the petitioners to handover possession of the subject property as the award had been passed and the compensation amount was kept ready for disbursal to the petitioners. They refused to accept the same and in such a situation, the concerned respondents proceeded on 03.02.2020 to take possession of the property, which action cannot be said to be illegal in any manner. It is already noted hereinabove that the petitioners were given sufficient notice about the implementation of the Urban Renewal Scheme through the subject CDS and even public notices were issued at the stage of initiation of acquisition proceedings. Upon completion of such acquisition proceedings and the award being

passed, the next step was taking possession of the subject properties so that the CDS could be executed and implemented for urban renewal and redevelopment of the area. The petitioners have not been able to make out any ground to claim that the possession of the subject property was illegally taken. It is also a matter of record that the writ petition was filed by the petitioners, concerned with the aforesaid Lucky Building, in the year 2021. Initially, a limited direction was issued by this Court in the writ petition to the effect that the petitioners would not be dispossessed without following due process of law. Subsequently, a Division Bench of this Court heard the parties on the question of interim relief. The Division Bench of this Court, by a detailed order passed on 21.07.2023, rejected the prayer for interim relief. The petitioners challenged the said order by filing Special Leave Petition (Civil) No.17997 of 2023. By an order dated 21.08.2023, the Supreme Court refused to interfere with the order passed by this Court. The Special Leave Petition was disposed of, leaving all contentions open and with an expectation that this Court would consider and dispose of the writ petition expeditiously in accordance with law.

109. Thereafter in August 2023, the subject building was demolished in order to execute the CDS. Respondent No.10 Trust has placed before this Court present status of the project. It is evident that redevelopment, at large scale in the subject area, has already taken place and buildings have come up with common facilities wherein the owners / tenants / occupants of the old

structures are being accommodated. The present status of the said project brought to the notice of this Court clearly indicates that major portion thereof is already completed.

110. In the light of the findings rendered hereinabove, the said grounds raised in the writ petitions on behalf of the petitioners cannot be accepted and the prayers in the writ petitions deserve to be declined.

111. Additionally, in Writ Petition No.4762 of 2024, the petitioners have raised an issue about the subject acquisition violating Section 91 of the Waqf Act. It is alleged that notices were never issued under Sections 19 and 21 of the Act of 2013. But, the material on record shows that the notification dated 27.09.2019 issued under Section 19 of the Act of 2013 was a Gazetted Notification and it was published in the newspaper on 28.09.2019. A notice dated 06.11.2019 was also pasted on the door of the subject property and the petitioners were well aware about the inclusion of the subject property for acquisition.

112. Apart from this, the issue with regard to violation of Section 91 of the Waqf Act is completely answered by the said provision itself. In sub-section (4) of Section 91 of the Waqf Act, it is specified that any order passed under the provisions of the Land Acquisition Act or under corresponding provisions of law, without giving an opportunity to the Waqf Board, can be declared void if the Waqf Board, within one month of its coming to know of the order, applies in that behalf, to the authority, which passed such an

order. In the present case, the Waqf Board did not make any such application, much less within one month before the concerned authority. In any case, in the reply affidavit to the said Writ Petition No.4762 of 2024, the Waqf Board categorically stated that it had no objection to the subject acquisition and that it had notice of the same.

113. Therefore, we do not find any substance in the said additional point raised in Writ Petition No.4762 of 2024 and hence, the same is rejected.

114. The concept of Urban Renewal through such cluster development scheme needs to be appreciated in the correct perspective. It cannot be said to be a new concept, for the reason that even in the earlier Development Control Regulations, the concept of Urban Renewal Scheme was recognized and incorporated. Initially, it was restricted to repairs and reconstruction of cessed buildings in the island city of Mumbai. But, with passage of time and recognizing the need for development of a city like Mumbai in an organic manner, the concept of cluster redevelopment of buildings was incorporated in the Regulations. The detailing was further added from time to time and in the present form of the Development Control Regulations i.e. DCPR 2034, specific guidelines have been incorporated, including specifying the minimum area of 4000 square meters in the island city of Mumbai and 6000 square meters in Mumbai Suburbs and extended Suburbs for executing

such scheme of cluster development. It is not as if such Urban Renewal Scheme through reconstruction and redevelopment of cluster of buildings is foisted upon unwilling citizens. DCPR 2034 sufficiently addresses the aforesaid issue by mandating that development rights of at least 70% of the subject area of the land are with the promoter / developer before the said scheme can even be considered. Such a scheme is placed before the HPC and upon ensuring that all the requirements of law are satisfied, approval is granted to such schemes.

115. In the present case, the subject area falls in Bhendi Bazaar. The said area is highly congested, with poor living conditions for the occupants thereof and in such a situation, this Court, exercising writ jurisdiction, is not expected to interfere with redevelopment work, which ultimately inures to the benefit of the residents and the citizens of Mumbai city. The allegations of *mala fide* and involvement of highly placed officials of the respondent State in allegedly benefiting a private entity like the respondent Trust, are based on a misunderstanding of the entire Urban Renewal Scheme incorporated in the Development Control Regulations, which forms part of the Development Plan and hence, has statutory backing as per the provisions of the MRTP Act.

116. In this context, the respondents are justified in relying on the position of law that when a party approaches the Court for such a declaration that the acquisition is not valid, it must satisfy

the Writ Court that making such an order would do justice and that justice lies on its side. This was the position of law clarified by this Court in the case of *State of Bombay Vs. Morarji Cooverji*, **1958 SCC OnLine Bom. 188**. Applying the said position of law to the facts and circumstances of the present case, we find that the acquisition of the lands of the petitioners is for the purpose of urban renewal by cluster development so that the greater good of the community and the public at large is advanced. Only about 7% owners / tenants / occupants of the subject area, including the petitioners, opposed the said Scheme, while an overwhelming majority wholeheartedly supported the same for redevelopment of the area located in the congested Bhendi Bazaar area in Mumbai city. It is settled law that private interest must give way to larger public interest and public good. In any case, it is not as if the property of the petitioners has been taken away without compensation. The entire exercise of determination of compensation was undertaken and the quantum of compensation so determined was also offered to the petitioners. It is an admitted position that the petitioners have even initiated the process of reference under Section 64 of the Act of 2013, seeking enhancement of the quantum of compensation. The said claim of the petitioners will obviously be decided in accordance with law.

117. In view of the above and considering the facts and circumstances of the case, we are of the opinion that the petitioners have failed to support their case for granting reliefs as claimed in the writ petitions. Accordingly, the writ petitions are

dismissed.

118. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)