

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

PUBLIC INTEREST LITIGATION NO.43 OF 2019

1. Shirish B. Patel
having office at 3rd Floor, Dabur
House, 41-45, Nagindas Master
Road, Fort, Mumbai-400 023

2. Sulakshana Mahajan,
residing at 8, Sanket Apartments
Uday Nagar, Panchpakhade,
Thane -400 602

...Petitioners

Versus

1. The State of Maharashtra
through its Secretary, Department
of Housing, Mantralaya, and its
Secretary, Ministry of Urban
Development, Madam Cama Road,
Hutatma Rajguru Square, Nariman
Point, Mumbai -400 032.

2. Maharashtra Housing and Area
Development Authority through its
Regional unit Mumbai Housing
and Area Development Board,
having address at Room
No.318/333, Second floor, Griha
Nirman Bhavan, Kalanagar,
Bandra (E), Mumbai 400 051.

3. SP-NMJ Project Pvt. Ltd.
having its registered office at SP
Centre, 41/44 Minoo Desai Marg,
Colaba, Mumbai-400 005.

4. Shapoorji Pallonji and Company
Pvt. Ltd. having its registered
office at 70, Nagindas Master

Road, Fort, Mumbai -400 023.

5. S.D. Corporation Pvt. Ltd.
having its registered office at 70,
Nagindas Master Road, Fort,
Mumbai- 400 023.

6. Larsen and Toubro Limited, 5th
Floor, Landmark A, Chakala,
Andheri (E), Mumbai – 400 093.

7. TCC Construction Private
Limited, a private limited company
formed as consortium between
Respondent Nos.8 to 10 having its
registered office at 605-607, Phase
I, adjacent to R.K. Studios,
Chembur, Mumbai-400 071.

8. Capacit'e Infraprojects Ltd. a
public company registered under
the provisions of Companies Act,
1956 having its registered office at
605-607, Shrikant Chambers, 'A'
Wing, 6th floor, Next to R.K.
Studio, Sion-Trombay Road,
Chembur, Mumbai- 400 071.

9. Tata Projects Limited
a Company registered under the
provisions of Companies Act, 1956
having its registered office at
Mithona Towers-1, 1-7-80 to 87,
Prenderghast Road, Secundrabad-
500 003 and office in Mumbai at
One Boulevard Street, 2nd, 3rd and
4th Floor, Lake Boulevard Road,
Powai, Mumbai-400 076.

10. Citic Construction Company
Limited, a Company registered

under the provisions of Chinese laws and having its registered office at 22/F, Tower A, TYC Centre, C2 Dongasanhuanbeilu Choayang District, Beijing-100027 China Through Tata Projects Ltd. Respondent No.8 above named.

11. Municipal Corporation of Greater Mumbai, Head Quarter, Mumbai C.S.T., 400 001.

...Respondents

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Mr. Aspi Chinoy, Senior Advocate with Mr. Sharan Jagtiani, Senior Advocate, Mr. Priyank Kapadia, Ms Sheetal Shah and Ms Dimple Bitra i/b. M/s. Mehta and Girdharlal for the Petitioners.

Mr. Abhay L. Patki, Addl. Govt. Pleader for Respondent No.1-State.

Mr. Ashutosh Kumbhakoni, Senior Advocate with Mr. Akshay Shinde for Respondent No.2-MMRDA.

Dr. Milind Sathe, Senior Advocate with Mr. Bhushan Deshmukh, Ms Sanidhaa Vedpathak i/b. M/s. Maneksha and Sethna for Respondent Nos.3, 4 and 5.

Mr. Ziyad Madon with Mr. Sunil Trilokchandani and Ms Nandita Shah i/b. M/s. Manilal Kher Ambalal and Co. for Respondent No.6.

Mr. Kunal Damle for Respondent Nos.7 to 10.

Ms Rupali Adhate for Respondent No.11-MCGM.

CORAM: S.V. GANGAPURWALA, ACTING CJ & S.G. CHAPALGAONKAR, J.

RESERVED ON : DECEMBER 19, 2022.

PRONOUNCED ON : JANUARY 12, 2023

ORAL JUDGMENT (Per : S.V. Gangapurwala, Acting CJ):-

1. Present Public Interest Litigation is filed thereby seeking

directions to quash and set aside the schemes for redevelopment of the BDD (Bombay Development Directorate) Chawls at N.M. Joshi Marg, Naigaon and Worli, as evident in the tender documents.

2. Mr. Chinoy, learned Senior Advocate for the Petitioners submits that the Petitioners are the professionals having expertise in Town Planning, Civil Engineering and Architecture. The Petitioner No.1 is a Civil Engineer, who has worked extensively in the field of urban affairs. The Petitioner No.1 was appointed to take charge of Planning and designing of new city, a position, he resigned five years later. He has held various positions. The Petitioner No.2 is an Architect and Urban Planner. The Petitioner No.2 has published four books on urban planning. The learned Senior Advocate submits that the present public interest litigation impugns Respondent Nos.1 and 2's plans for the redevelopment of over 15,000 tenements in the old BDD (Bombay Development Directorate) Chawls situated in the heart of island city - (i) N.M. Joshi Marg, (ii) Naigaon and (3) Worli. The residents/tenants of BDD Chawls presently living in 160 sq.ft. tenements (with common toilets) contained in the buildings of ground plus three upper floors. The existing Chawl buildings have adequate open space between the buildings and the tenants /occupants of all tenements get adequate light and air. Under the

proposed redevelopment, the existing tenants are given 500 sq.ft. 2 BHK apartments with two attached toilets, free of cost.

3. It is submitted that the residents/occupants of the Chawls are regular tenants and not slum dwellers and trespassers. The BDD Chawls comprise 207 Chawl buildings of ground plus three floors containing 16,544/- tenements, situated at four locations i.e. Worli, Naigaon, N.M. Joshi Marg and Sewri. Worli has 121 buildings containing 9680 tenements, Naigaon has 42 buildings containing 3344 tenements, N.M. Joshi Marg has 32 buildings containing 2560 tenements and Sewri has 12 buildings containing 960 tenements. The existing buildings are of ground plus three upper floors and each floor has 10 tenements /rooms each on either side of a central corridor of approximately 3 meters width. Each room /tenement is approximately 160 sq.ft. with a Nahani, a kitchen and a loft. The tenement density per hector was 403 at Worli, 517 at Naigaon and 464 at N.M. Joshi Marg.

4. On or about December-2016 DCR 33 (9)(B) was introduced under Section 37(1)(AA). DCR 33(9)(B) provides for reconstruction or redevelopment of the BDD Chawls at Naigaon, Worli, and N.M. Joshi Marg under the Urban Renewal Scheme only by the Planning Authority. The consent of the existing tenants /residents is not required to be sought

for such redevelopment. No upper ceiling on the FSI is provided and permits unlimited FSI. The learned Senior Advocate for the Petitioners contends that exclusion of need of consent of the tenants /occupants can only be justified on the basis that Respondent No.2, as a public authority, will act fairly and consistently with Articles 14 and 21 of the Constitution of India. However, under the proposed redevelopment, the existing tenants will be rehoused in rehabilitation buildings, which are grouped closely together with limited access to light and air. Moreover, by designating most of these rehab buildings as wings, even the mandatory minimum distance between two buildings is not being maintained. The substantial portions of the original land will be utilised to build additional sale buildings, which are much higher and have virtually unrestricted access to light and air. The redevelopment project has proposed by Respondent No.2 will enable it to make a huge profit (in excess of Rs. 15,000/- crores) at the cost of life, health and well being of the original occupants /tenants.

5. On or about 28/12/2016 Respondent No.2 issued a tender notice inviting bids from the contractors for constructing the rehabilitation buildings and additional sale buildings in respect of redevelopment project of BDD Chawls at (i) N.M.Joshi Marg, Lower Parel

(ii) Naigaon and (iii) Worli.

6. On 27/03/2017 LOA for construction at N.M. Joshi Marg was awarded to Respondent Nos.3 to 5. The rehabilitation component involves construction of 2 buildings each having 7 wings of 22 floors and height of 70 meters, which are to contain 2,536 tenements and 43 shops, having an aggregate built up area of 2,67,770 sq. meters. These rehabilitation buildings are closely grouped together and have severely limited access to light and air. In most cases wings nearly touch each other. In the guise of wings, even the mandatory minimum distance between two buildings is not being maintained. Such a close grouping will result in many rehabilitation units, particularly those at lower floors, being deprived of light and air. This would directly affect health and well being of occupants resulting in increased incidences of TB. The additional construction /sale component involves construction of residential flat in two HIG buildings of 47 floors comprising 540 flats and having a height of 178 meters and two MIG buildings of 47 floors comprising of 728 flats and a commercial building of 8 floors. All having a total area of 2,42,999 sq. meters with salable area of 1,61,999 sq.meters. The sale buildings have virtual unrestricted access to light and air.

7. The learned Senior Advocate for the Petitioners, relied upon

the pictorial depiction of the proposed development to substantiate his contention of the rehabilitation buildings being constructed in a manner that it would not have access to light and air. It is submitted that as a consequence of additional construction, the tenement density increases from 464 to 696.

8. On 27/03/2017 LOA for construction of 6,68,202 sq.meters at Naigaon was awarded to Respondent No.6. The rehabilitation component involves construction of two buildings, each having 20 wings of 19-23 floors, having 3,289 tenements, 55 shops and 93 stalls, total area of 3,55,406 sq.meters. These rehab buildings are closely grouped together and has severely limited access to light and air in the similar manner as N.M. Joshi Marg rehabilitation buildings.

9. Similarly, for redevelopment at Worli, LOA for the construction was issued on 21/06/2018 and was awarded to Respondent Nos.7 to 10. The rehabilitation component involves construction of total 87 buildings/wings -4 buildings each having 14 wings, 1 building of 10 wings, two buildings of 8 wings each -all of 22 floors having 9394 tenements and 639 shops on the ground floor having total area of 10,96,374 sq. meters. These rehabilitation buildings are also closely grouped with limited access to light and air as rehabilitation buildings at N.M. Joshi Marg and

Naigaon. The sale component involves construction of 10 residential buildings of 66 floors having 3224 MIG and 1772 HIG flats i.e. a total of 4996 flats and a commercial building of 29 floors all with a total built up area of 12,70,610 sq. meters and salable area of 8,47,073 sq. meters. The sale buildings are of 66 floors height and have a virtually unrestricted access to light and air.

10. According to the learned Senior Advocate for the Petitioners, the profit in respect of saleable area of these three buildings is in multiple of thousand crores. The tenement density will increase from existing 415 to 642 per hectore. The FSI increases from existing 0.73 to 7.38.

11. Mr. Chinoy, learned Senior Advocate relies upon the report published of "Doctors For You" on the correlation between the incidence of TB and restricted access to light and air in redevelopment projects. Relying upon the said report, it is submitted that the occurrence of TB in Natwar Parekh and Lallubhai Compounds is strongly associated with the built environment of the houses and the layout of buildings in both the colonies. In contrast, occurrence of TB is least in PMG Colony, which is associated with better built environment and the lay out characteristics. The efficient provision of day light and natural ventilation strategy within a particular space, may act as a factor in improving human health

condition, whereas poor sunlight access and natural ventilation may be major risk factors for the deadly TB disease. Relying upon the report, the learned Senior Advocate further submits that in literature, sky view factor less than 0.6 has been associated with TB. PMG Colony has the highest SVF among these colonies though all three colonies show SVF from 0-0.4 indicating that Lallubhai and Natwar Parekh Colonies are acting like culture medium/breeding ground for the TB bacteria. Low daylight autonomy and ventilation may be because of poor design of houses and compact stacking of buildings next to each other. Learned Senior Advocate relies upon a detailed report recording that SVF (Sky View Factor) for the existing BDD Chawls at N.M. Joshi Marg was 20.7% and for the proposed rehabilitation buildings at that location would reduce to 4%. This is significant as a comparable sky view factors for Lallubhai Compound is 4.6%, for Natwar Parekh Compound is 5.7% and for PMG Colony is 12%.

12. Learned Senior Advocate for the Petitioners submits that the persons residing in the Chawls are tenants and not trespassers or slum dwellers. They are required to be housed in a proper atmospheric and hygienic conditions. Depriving them of the adequate light and air would be violative of Article 21 of the Constitution of India. The enormous

profit cannot be at the cost of human health and life.

13. Mr. Sathe, learned Senior Advocate, Mr. Kumbhakoni, learned Senior Advocate and learned Advocates for the Respondents submit that present public interest litigation is not maintainable. None of the persons, who are to be benefited because of the redevelopment have complained about the project. The sample flat is ready and thousands of persons have visited the sample flat and none has raised a grievance till date.

14. It is submitted that the scheme of redevelopment of BDD Chawls is based on the provisions of the DCR for Greater Bombay, 1991 i.e. 33(9) (B) r/w appendix iii (B). The validity of DCR 33(9) (B) is not challenged. The existing scheme of redevelopment is strictly in accordance with DCR of 1991. No legal grounds are raised in the PIL. The opinion of the Petitioners are not based on any study or expert analysis of urban planning. The Draft Development Plan while getting final sanction from the State Government undergoes various levels of scrutiny by the Director of Town Planning, who is the expert officer of the State Government. Same now cannot be the subject matter of scrutiny of this Court. It is submitted by the learned Senior Advocates for the Respondents that the Petitioners themselves were the part of the report submitted by Mumbai Transformation Support Unit (MTSU), which

recommended development of the BDD Chawls way back in August 2009. In August, 2016 Notification under Section 37(1)(AA)(a) of the MRTP Act was issued inviting objections and suggestions for amending DCR and introducing new DCR 33(9) (B) and Appendix -III B. The Petitioners had not objected at that time. The present petition filed in June 2019. Same deserves to be dismissed on the ground of delay. Before initiation of the project, wide publicity was given to enable wide participation. The Petitioners, for the reasons best known to them, remained silent. On 05/01/2016 a joint meeting was convened of the Hon'ble Member of Parliament Mr. Arvind Sawant, Hon'ble Member of Assembly Mr. Kalidas Kolambkar, Mr. Sunil Shinde and Mr. Ajay Choudhari along with residents of BDD Chawls in Worli to understand demands and views of the residents of BDD Chawls. Thereafter on 20/01/2016 one more meeting was convened with Hon'ble Member of Parliament Mr. Rahul Shewale along with residents of BDD Chawls by VP and CEO, MHADA and his team of officers at Naigaon. It is only thereafter the proposal for redevelopment was submitted to the State Government taking into consideration the various suggestions. The tenants were made aware of the details of the project by the distribution of the project booklet and display of hoardings.

15. It is submitted that the redevelopment project of the BDD

Chawls located at 1 to 3 sites are designed by planning about 64% of the total land area for rehabilitation cluster and 36% of the total area for sale cluster. Thus, giving the maximum benefit to rehabilitation of tenants. Also 24% open space of the total land area is planned in the project including mandatory open space on the ground and reserved recreation ground. In addition to this, open space is also planned on the podium. Amenities and commercial areas have been planned taking care of all social needs of the occupants as per the planning standards. All the three redevelopment projects have been planned and designed as per the Development Control Regulation and Environment norms. The existing tenants will get rehabilitation tenement admeasuring carpet area of 500 sq.ft in lieu of their existing residential tenement admeasuring 160 sq.ft. free of cost. It is false to say that Respondent No.2 is going to make profit to the tune of Rs.15,000/- crores. The light and ventilation of the rehabilitation building is as per the DCPR 2034. The plans are sanctioned as per the same. The EIA report and GRIHA (Green Rating for Integrated Habitat Assessment) report show that light and ventilation within the rehabilitation buildings is satisfactory and complying the norms. As far as the tenements density is concerned, the decision is taken by statutory experts in the field of Urban and Town Planning. A similar challenge qua the tenement density of rehabilitation component of Slum Rehabilitation

Scheme is dismissed by this Court in PIL No.24 of 2015 in case of ***Manish Ramniklal Savla v.State of Maharashtra and Ors.***The tenements density are in conformity with DCPR 2034. The alternative plans suggested by the Petitioners for N.M. Joshi Marg and Naigaon are not practical and are vague. The suggested plans by the Petitioners do not consider the road networks, existing reservations under DCPR and designations, amenities, etc. There are various community spaces and amenities planned, the environmental clearance for the same was obtained by the Respondents from the state level environment impact assessment authority for redevelopment project of N.M. Joshi Marg and Naigaon. The EIA (Environment Impact Assessment) has been undertaken and the same was submitted to SEIAA Committee. Said EIA also included the chapters such as-Traffic Study Report, shadow analysis report, external daylight analysis report, wind analysis report, neighbourhood impacts and city level impacts, etc. It is submitted that the Chawls of BDD were constructed in the year 1920-25. The Chawls have outlived their structural life and are in most dilapidated conditions. Many accidental collapses are occurring, injuring people residing there. It is further submitted that the no objection certificates have been received from various authorities. A sample flat at Naigaon is completed on 10/02/2018 and was subsequently opened to the public. The sample flat at Naigaon was visited by more

than 10,000 people, most of whom are beneficiaries. The said sample flat is widely appreciated by the people. It is further submitted that the work order is issued on 21/04/2017 in favour of Respondent Nos.3 to 5 for the Redevelopment Scheme at N.M. Joshi Marg. Several steps have been taken by these Respondents pursuant to letter of acceptance. All the standards required for light, air, open space are being maintained. The same is as per the DCPR -2034.

16. We have considered the submissions advanced by the learned Senior Advocates for the parties.

17. The present PIL certainly cannot be considered as an adversarial litigation. We may appreciate the concern of the Petitioners in filing the present PIL for the benefit of the beneficiaries of rehabilitation buildings. The persons residing in the Chawls, who are beneficiaries of the rehabilitation buildings are tenants/occupants and certainly not the trespassers/slum dwellers.

18. In fact, it appears that the Chawls where these tenants are residing were constructed in the year 1920-25 and have outlived their life. As per Respondent No.2 they are in a dilapidated conditions.

19. The amendment appears to have been carried out in the form

of DCR 33(9) (B) r/w Appendix III B. The said amendment is not the subject matter of challenge.

20. This Court is not expert on planning and designing of the houses. The said job is of the experts. This Court can only consider as to whether the constructions, to be carried out, are in consonance with the Development Control Regulations and Rules. If it is pointed out that construction is not in consonance with the rules and regulations, then only this Court would step in.

21. In the present case, it has not been demonstrated by the Petitioners as to how the redevelopment project of the rehabilitation buildings is not in tune with the provisions of the DCR provisions.

22. The Respondents have placed on record the Environmental Impact Assessment report for the redevelopment of Bombay Development Directorate (BDD) Chawls at N.M. Joshi Marg, Lower Parel, Mumbai, Maharashtra. In the report the socio economic test was also conducted. It is observed that MHADA would provide self contained 2 BHK home with separate bathroom with carpet area of 500 sq.ft.in lieu of tenement of 160 sq.ft area in old dilapidated building with common toilet. Homes have been designed to maximize natural light and ventilation. The

shadow and wind analysis have also been carried out. It also appears that sample flat was constructed. Nobody has raised objection to the sample flat. The Petitioners were also part of the MTSU report. Their stand appears to have not been accepted by the Respondents. The EIA and GRIHA reports referred by the Respondents demonstrate that light and ventilation within the rehabilitation buildings was satisfactory and complying the norms. The reports are prepared by the experts. The Petitioners may be knowledgeable in that field however, it would be a case of word against word. This Court would not substitute its view for the view of expert, more particularly, there is nothing on record to even remotely suggest that the plans sanctioned and the redevelopment being carried out is against the provisions of DCPR 2034 or against the provisions contained in Regulations of DCR 33 (9) (B) r/w Appendix III B. The Respondents have carried out a socio-economic environmental study. It also provides that during construction and operation phase ambient air control, exhaust from DG set, noise level, water analysis and sewage analysis shall be regularly done at the locations. The environmental clearance given by the Competent Authorities, does not demonstrate that the construction activity is against the provisions of any rules and regulations in force. The contention of the Petitioners cannot be accepted.

23. The Respondents certainly are required to carry out the construction strictly in accordance with the provisions of DCPR 2034 and the rules and regulations operating and holding the field.

24. The reliance upon the reports about the occurrence of TB in respect of absence of light, air and density, may be in case of locality wherein the survey is carried out, however on the basis of the same it would not be possible to conclude that in the present case the construction activity undertaken is flawed. In the present case, as the said constructions, not been demonstrated to be against the permissions or environmental clearances, at this stage no interference is called for.

25. The Public Interest Litigation as such is disposed of. No cost.

(S.G. CHAPALGAONKAR, J.)

(ACTING CHIEF JUSTICE)