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

Mr. A. V. Anturkar, Senior Advocate, *with Sagheer Khan, Parth Zaveri, Zia Amaan Khan, Khurram i/b Judicare Law Associates, Advocates for the Petitioners.*

Mr. Darius Khambata, Senior Advocate, *with Mr.Aditya Mehta, A Faizzullabhoy, Fatema Kachwala, Ahsan Allana i/b JSA, Advocates for Respondent No.10.*

Mr. R. M. Hajare *i/b Sunil Sonawane, for the MCGM.*

Mrs. Sayali Apte *i/b P. G. Lad, for the MHADA in Wp.2997/21.*

Mr. Manish Upadhyay*, AGP, for the State in WP.2997/21.*

CORAM : B. P. COLABAWALLA, J &
M. M. SATHAYE, JJ.

RESERVED ON : JULY 11, 2023
PRONOUNCED ON: JULY 21, 2023

JUDGMENT (Per B. P. COLABAWALLA, J.)

The above Writ Petition is filed inter alia (i) challenging the constitutional validity of Regulation 33(9)(3)(5) of

the Development Control and Promotion Regulations of Greater Mumbai-2034 [for short **"DCPR-2034"**]; (ii) for quashing and setting aside the Notification dated 27th September 2019 issued by the Collector Mumbai City published in the Maharashtra Government Gazette Part 1- Konkan Division Supplementary, October 3-9, 2019 under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 [for short the **"2013 Act"**] read with the provisions of the MRTP Act, 1966; and (iii) quashing of the Award dated 30th December 2019 passed by the Land Acquisition Officer and the Residential Collector Mumbai City.

2 When the matter came up on 5th November 2020, a statement was recorded on behalf of Respondent No.10 (Saifee Burhani Upliftment Trust – **"SBUT"**) that it shall not dispossess the Petitioners except by following the due process of law. Since there was no adjudication on merits for the grant of any interim relief, the above matter was moved before us as Respondent No.10 was not willing to continue the aforesaid statement. In these circumstances, we have heard Mr. Anturkar, the learned Senior Counsel appearing on behalf of the Petitioners, and Mr. Khambata, the learned Senior Counsel appearing on behalf of

Respondent No.10 – SBUT. We have heard the parties only for the purposes of considering whether the Petitioners have made out a *prima facie* case for grant of any interim relief.

3 At the outset, Mr. Anturkar fairly submitted that since the Court is hearing the matter only for interim relief, the unconstitutionality of Regulation 33 (9)(3)(5) of the DCPR-2034 is not being canvassed. He fairly submitted that at the interim stage, the Court would have to proceed on the basis that the said Regulation is valid and constitutional. He, however, submitted that despite this, the Petitioners have a very strong case on merits and would therefore, be entitled to interim reliefs.

4 Adverting to the facts, Mr. Anturkar submitted that the Petitioners are the owners of a plot bearing old Survey Nos.703, 1217, 1219 and 3133, New Survey Nos.7876 and 8384, Survey Nos.1148 & 1149 and New Survey Nos.4471, 4472 and 2/4472 and bearing Cadastral survey No.4274 of Bhuleshwar Division, C-Ward No.6997 to 6999 and Street Nos.114, 116, 118, 120, 128, 124 and 56 to 64, Husainiyah Marg (Pakmodia Street), Bhendi Bazar, Mumbai – 400003 (hereinafter referred to as the "**said plot**").

5 Mr. Anturkar submitted that the Petitioners are also the owners of a structure known as **"Lucky Building"** standing on the said plot (hereinafter referred to as the **"said building" or "Lucky Building"**). For the sake of convenience, the said plot and the said building are collectively hereinafter referred to as the **"said property"** or **"the Petitioners' property"**.

6 Mr. Anturkar submitted that the Petitioners are running their business from Shop Premises 3, 5, 6, 7 and 8 in the said building. He submitted that their livelihood is dependent on the earnings from the said shops. Mr. Anturkar also submitted that three rooms of the said building were for residence being Residence Nos.43, 44 & 45.

7 Mr. Anturkar pointed out that Respondent No.10 – SBUT, through its authorized representative, put in a proposal for redevelopment of various plots belonging to various persons for an in-principle approval of the State Government as per Regulation 33(9) of DCR, 1991. Regulation 33(9) inter alia deals with Cluster Development. Respondent No.9 (the State of Maharashtra), by letter dated 22nd July 2011, informed Respondent No.1 (MCGM) that it had given an in-principle approval of the Urban Renewal

Scheme under Regulation 33 (9) of the DCR 1991 in respect of various plots, including the plot of the Petitioners. These plots all form part of the Cluster Development of the Bhendi Bazar area.

8 Mr. Anturkar stated that though a lot of correspondence is annexed to the Petition, and which is not really germane for the purposes of considering the prayer for interim relief, he submitted that pursuant to the recommendations made by the High Power Committee [in its meeting held on 18th September 2015], the Additional Secretary, Government of Maharashtra, by a letter dated 8th January 2016, informed the Municipal Commissioner of Respondent No.1 that as per Court order dated 24th August, 2015 [issued under Section 151 (1) of the MRTP Act, 1966], the procedure for land acquisition should be carried out by the Collector (Respondent No.5). After this, the acquisition procedure was carried out and an Award was passed on 30th December 2019.

9 In these facts, Mr. Anturkar submitted that firstly, the entire acquisition proceedings are vitiated because Sections 126 (2) and 126 (4) of the MRTP Act, 1966 contemplate that on receipt of an application for acquisition, (i) if the State Government is

satisfied that the land specified therein is needed for a public purpose specified therein, or (ii) if the State Government itself is of the opinion that any land included in any 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 2013 Act in respect of the said land/property. Mr. Anturkar submitted that Section 126(4) of the MRTP Act, 1966 stipulates that 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. Mr. Anturkar submitted that under Section 126(2) and 126(4) it is the State Government which is empowered to give a declaration that a particular land is required for a public purpose. This power is to be exercised by the State Government, unless properly delegated to any officer.

10 Mr. Anturkar then brought to our attention Section 151 of the MRTP Act, 1966 which deals with the power to delegate. Relying upon this provision, Mr. Anturkar submitted that the State

Government may, by a notification in the Official Gazette, delegate any power exercisable by it under the MRTP Act,1966 or the rules framed thereunder, to any officer of the State Government subject to such conditions, if any, as may be specified in such Notification. Mr. Anturkar submitted that in the facts of the present case, though a Government Order was passed [on 24th August 2015] delegating the power to the Collector under Sections 126(2) and 126(4) of the MRTP Act, 1966, the same has not been notified/published in the Official Gazette as required under Section 151 (1) of the MRTP Act, 1966. He submitted that if this be the case, then the Collector's satisfaction that the Petitioners' property is required for a public purpose as set out in the Notification issued on 27th September 2019, is clearly vitiated. This is for the simple reason that no such power of the State Government was properly delegated to the Collector. Mr.Anturkar submitted that failure to publish the Government Order dated 24th August 2015 in the Official Gazette is a fatal flaw. Once this is the position, then the entire acquisition proceedings itself are vitiated because there is no satisfaction that the Petitioners' property was required for a public purpose which is *sine qua non* for exercising powers of acquisition. In support of this proposition, Mr. Anturkar relied upon a decision of the Hon'ble Supreme Court in

the case of ***The Collector (District Magistrate) Allahabad & Anr v/s Raja Ram Jaiswal*** **[(1985) 3 SCC 1 paragraph 16].**

11 Without prejudice to the aforesaid argument, Mr. Anturkar submitted that even otherwise, the Government Order dated 24th August 2015 categorically delegates the power of the State Government to the Commissioner, Konkan Division and Collector Mumbai City with a specific direction that there can be no further delegation. He submitted that despite this, in the Notification dated 27th September 2019 (pages 105 & 106 of the paper book), the Collector has delegated his powers to the Residential Collector Mumbai City. He submitted that in the teeth of the Government Order dated 24th August 2015, the Collector, who issued Notification dated 27th September 2019, could not have delegated his powers to the Residential Deputy Collector, Mumbai. He submitted that on this ground also, the entire acquisition proceedings are vitiated. In this regard, Mr. Anturkar relied upon a decision of the Supreme Court in the case of ***District Collector, Chittoor v/s Chittoor District Groundnut Traders' Association, Chittor & Ors*** **[(1989) 2 SCC 58 paragraph 4].**

12 The next argument canvassed by Mr. Anturkar is that once the powers of the State Government are delegated to the Collector under Section 151(1) of the MRTP Act, 1966, the Collector must be satisfied that the Petitioners' property is required to be acquired for a public purpose. He submitted that in the present case, the Government had already given a mandate to the Collector to acquire the Petitioners' property, and hence, the Collector, really speaking, did not apply his mind independently whether the Petitioners' property was required for a public purpose. He has merely followed the directions of the State Government, and if this be the case, the entire enquiry into whether the Petitioners' property is required for a public purpose is a complete farce and hence vitiated.

13 Thereafter, adverting to Regulation 33(9)(3)(5) of the DPCR-2034, Mr. Anturkar submitted that under the said Regulation, properties can be acquired provided (i) the promoter has purchased/procured DRs of at least 70% of the land/properties comprised in the Cluster Development; and (ii) on the balance land/properties, there are dangerous buildings, and which are declared as such by the Competent Authority. In the present case, Mr. Anturkar submitted that there is no declaration

by the Competent Authority that the building on the land/plot belonging to the Petitioners is in a dangerous condition. He submitted that in the facts of the present case, the Competent Authority would be MCGM, and no such declaration has been given by it. He, therefore, submitted that in any event, acquisition of the Petitioners' property is vitiated even on this ground.

14 Mr. Anturkar lastly submitted that in any event the Award dated 30th December 2019, and which is impugned in this Writ Petition, is passed not by the Collector but by the Residential Deputy Collector. To put it in a nutshell, it was the argument of Mr. Anturkar that the Residential Deputy Collector had no power to pass the impugned Award. To support this argument, Mr. Anturkar submitted that the definition of the word "Collector" in the 2013 Act 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. He submitted that as per this definition, it is either the Collector or the Deputy Commissioner or any other officer specifically designated by the appropriate Government to perform the functions of the Collector, who could pass the Award [Section 23 of the 2013 Act]. Mr.

Anturkar then submitted that pursuant to Section 109 of the 2013 Act, the Government of Maharashtra has in fact framed rules called *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014*. Even though the definition of the word "Collector" in these Rules [Rule 2(g)], would include a Deputy Collector, under Rule 18 of these Rules, the Deputy Collector can only pass an Award if the amount of compensation to be paid is less than Rs.4 Crores. Mr. Anturkar submitted that in the facts of the present case, the Deputy Collector had passed an Award in excess of Rs.14 Crores which he had no jurisdiction to do. If this be the case, the Award is vitiated on this ground alone and would have to be set aside.

15 Based on all the arguments set out above, Mr. Anturkar submitted that the Petitioners have made out a strong *prima facie* case and, therefore are entitled to interim relief restraining the Respondents from in any manner dispossessing the Petitioners and other occupants of the "Lucky Building" and further restraining them from demolishing the said building.

16 We have heard Mr. Anturkar, the learned Senior Counsel, at some length. We have also heard Mr. Khambata, the learned Senior Counsel appearing on behalf of Respondent No.10 – SBUT. Before we deal with the arguments canvassed by Mr. Anturkar, there are certain factual aspects that we would like to refer to. The current project, namely the development of the Bhendi Bazaar area, is being carried out as a Cluster Development Scheme (CDS) under Regulation 33 (9) of DCR 1991 and now under Regulation 33 (9) of the DCPR-2034 (the Bhendi Bazaar Scheme). The main object of this scheme is upliftment of the lives of more than 20,000 residents of the Bhendi Bazaar area, admeasuring 16.5 Acres and comprising of 280 separate cadastral survey numbers. According to Respondent No.10 – SBUT, to date, it has spent approximately Rs.2,400 Crores towards this Cluster Development. The salient features of the Bhendi Bazaar Scheme (Cluster Development) appear to be:

(i) Ownership rights will be granted to all legitimate residential and commercial tenants in brand-new structures, all free of cost regardless of their caste, religion or section. In other words, the residential and commercial tenants will become owners of their new premises;

(ii) Residents in this project will get a 1 BHK self-contained flat [comprising of a minimum carpet area of 350 sq.ft.] with two bathrooms and WC. According to Respondent No.10 – SBUT, prior to the Cluster Redevelopment Scheme, in the Bhendi Bazaar area, on average, 1 WC was shared between 25 people on each floor;

(iii) The minimum carpet area of 350 sq.ft. being given is above the mandated area of 300 sq.ft. under the DCPR-2034;

(iv) Narrow and congested roads of 7-8 meters width will be replaced with upto 18 metre wide roads;

(v) An area that previously had no defined parking space, is being redesigned to accommodate approximately 3500 car parking capacity; and

(vi) Each sector will have its own environmentally friendly sewage treatment plant, solar panel, rainwater harvesting system etc.

17 To take this Cluster Development Project forward, more than 85% of privately owned lands that fall under the Bhendi Bazar Scheme have already been procured by Respondent No.10 –

SBUT. This fact has been taken note of by a Division Bench of this Court to which one of us was a party [B. P. Colabawalla, J.] in the case of ***Mr. Murtuza Shabbir Tinwala v/s the State of Maharashtra and Ors (2015 SCC Online Bom 6131)*** as far back as in the year 2015. This apart, Respondent No.10 has obtained irrevocable consents of more than 94% of the total tenants/occupants in the Bhendi Bazaar area for the said Cluster Development and the same is under implementation. It is also the case of Respondent No.10 that till date, 95% of the total tenants/occupants [forming part of the Cluster Development] have vacated their premises.

18 Now coming to the property in question, and which forms the subject matter of the Petition, out of the alleged 46 premises of "Lucky Building", two premises do not appear in the MHADA certification list and are thus not recognized by the appropriate authority. Out of the remaining 44 premises, 36 are residential premises and 8 premises are commercial. 35 out of the 44 eligible occupants have already vacated their premises, and two persons have agreed to vacate as per the directions of this Court. Two other occupants of commercial premises are not the Petitioners and have not raised any grievance in the matter.

Therefore, 37 occupants, out of 44 eligible occupants, have granted consent in favour of Respondent No.10 – SBUT for implementing the Cluster Development Scheme.

19 Keeping all these facts in mind, we shall now examine the contentions raised by Mr. Anturkar. As far as the first contention is concerned, it was the argument of Mr. Anturkar that the Government Order dated 24th August 2015, and which delegates the powers of the State Government to the Collector [for the purposes of Section 126(2) & 126(4) of the MRTP Act, 1966] was not published in the Official Gazette. If this be the case, the entire acquisition proceedings are vitiated because the Collector had no power or authority to come to a conclusion that the Petitioners' property needed to be acquired for a public purpose. After hearing the parties, we find that this argument is canvassed on the basis of incorrect facts and instructions. We say this because Mr. Khambata, the learned Senior Counsel appearing on behalf of Respondent No.10 – SBUT, has produced the relevant Government Gazette, which clearly reflects that the Government Order dated 24th August 2015 has, in fact, been published in the Government Gazette Part I - Konkan Division Supplementary, Thursday to Wednesday, September 3 - 9.2015. In fact, Mr.

Khambata brought to our attention paragraph 4.2 (J) of the Petition [page 50] and submitted that the Petitioners have, on oath, lied to the Court and/or made a false statement that the Government Order dated 24th August 2015 is not gazetted/published. He submitted that if the Petitioners come to Court with a false case, they should be shown the door at this stage itself, or, at the very least, would not be entitled to any interim relief. Be that as it may, since we are hearing the matter for interim relief, we refrain from giving any finding on this aspect and reserve the liberty to Respondent No.10 – SBUT to agitate this point at the hearing and final disposal of the Writ Petition. At this stage, suffice it to state that the argument canvassed by Mr. Anturkar proceeds on the basis of wrong instructions, and, therefore, holds no substance. In light of this finding, we find that the reliance placed by Mr. Anturkar on the decision of the Supreme Court in the case of ***The Collector (District Magistrate) Allahabad & Anr v/s Raja Ram Jaiswal (supra),*** is wholly inapplicable.

20 The next argument canvassed by Mr. Anturkar was that even assuming that the Government Order dated 24th August 2015 is published in the Gazette, even then, the same clearly

stipulates that the power given by the Government is to the Collector and the same cannot be delegated further to any other officer. He submitted that by the Notification dated 27th September 2019, the Collector had further delegated his powers to the Residential Deputy Collector, which could not be done. We find this argument also to be wholly misplaced. The Government Order dated 24th August 2015 delegated the powers of the State Government to the Collector under Sections 126 (2) and 126 (4) of the MRTP Act. In other words, the power delegated was for the limited purpose of the Collector to satisfy himself whether the lands covered under the said order were required for a public purpose. It is pursuant to that Government Order that the Collector, vide Notification dated 27th September 2019, came to the conclusion that the lands mentioned in the said Notification are required for a public purpose. That power has not been delegated, and this is clear from the Notification itself, which is found at pages 105 and 106 of the paper-book. What has been delegated under this Notification is to perform the functions of the Collector under the 2013 Act. In other words, once the Collector is satisfied that the lands in question are required for a public purpose, he has delegated his powers to the Deputy Collector for the purposes of acquisition under the 2013 Act. In fact, Section

126(3) of the MRTP Act, 1966 categorically stipulates that on publication of a declaration under Section 19 of the 2013 Act, the Collector shall proceed to take order for the acquisition of the land under the 2013 Act, and the provisions of that Act shall apply to the acquisition of the said land, with certain modifications as set out in Section 126(3). In these circumstances, we find that the argument of Mr. Anturkar regarding delegation by the Collector to the Deputy Collector proceeds entirely on the wrong premise. There has been no further sub-delegation by the Collector to the Deputy Collector for the purposes of satisfying himself that the property of the Petitioners is required for a public purpose. Once we have come to this conclusion, then, the reliance placed by Mr. Anturkar on the decision of the Supreme Court in the case of ***District Collector, Chittoor v/s Chittoor District Groundnut Traders' Association, Chittor & Ors (supra)*** is also wholly misplaced.

21 The next argument of Mr. Anturkar, namely, that the entire enquiry into whether the property of the Petitioners was required for a public purpose is a farce, also holds no substance. Firstly, from the Notification dated 27th September 2019, we do not find that the Collector did not apply his mind as to whether the

Petitioners' property was required for a public purpose or otherwise. The Collector in the said Notification has categorically stated that the land mentioned in the said Notification, and which includes the Petitioners' property, is needed for a public purpose. Even otherwise, we find that under Sections 126(2) or 126(4) of the MRTP Act, 1966, the State Government must satisfy itself that any land that is being acquired is for a public purpose. In the facts of the present case, the High Power Committee set up by the State Government recommended the acquisition of various lands in the Cluster Development Scheme and which has been accepted by the Government. This is clearly stated in the Notification dated 27th September 2019 (page 105 of the paper book). Once this is the case, then, even assuming for the sake of argument that the Collector has not applied his mind independently, once the State Government is satisfied that the Petitioners' property was required for a public purpose, the Collector, and who is a delegate of the State Government, certainly could not have taken a contrary view. In these circumstances, even when looking at it from this angle, we find that the argument canvassed by Mr. Anturkar [that the enquiry was only a farce] holds no substance and would have to be rejected.

22 The next argument canvassed by Mr. Anturkar was that Regulation 33(9)(3)(5) of the DCPR-2034 deals with the acquisition of lands and stipulates that the State can acquire the lands under the said DCPR provided (i) the promoter has purchased or procured DRs of at least 70% of the land comprised in the Cluster Development; and (ii) there are dangerous buildings, and declared as such by the Competent Authority, on the balance lands contained in the Cluster Development. In other words, twin conditions have to be fulfilled. According to Mr. Anturkar, in the present case, the Competent Authority would be the MCGM, and it has not given any declaration that the Petitioners' building, namely "Lucky Building", is in a dangerous condition. If this be the case, then there was no question of acquiring the Petitioners' property under Regulation 33(9)(3)(5), was the submission. After hearing the parties, we find this argument also to be factually incorrect. As correctly submitted by Mr. Khambata, the building of the Petitioners is built before 1940 [i.e. over 80 years old] and is a cessed building. MHADA, through its Executive Engineer MRRB, has issued warning notices to the tenants and landlord of the said building on multiple occasions notifying them that the building is in a dangerous condition and calling upon them to vacate the said building. These notices can

be found at Exhibits D, F & H of the reply filed by Respondent No.10 – SBUT. This being the case, we are unable to agree with the submissions of Mr. Anturkar that the Petitioners' building is not in a dilapidated or a dangerous condition. As far as the issue of the Competent Authority is concerned, we agree with Mr. Khambata that in the present case, and considering that the Petitioners' building is a cessed building, which is 80 years old, the authorities under MHADA are the Competent Authority to declare whether the building is dangerous or otherwise. This is ex-facie apparent from the provisions of Sections 76 & 77 read with Section 84 of the Maharashtra Housing and Area Development Act, 1976. These provisions *inter alia* designate the Mumbai Repair & Reconstruction Board (for short '**MRRB**') as the appropriate Board for repairs, demolition and reconstruction of cessed buildings. Section 77 (b) provides that the MRRB may cause any building proposed to be structurally repaired, or reconstructed or, demolished to be vacated by its occupants, if so considered necessary. Further, Section 76 (g) expressly authorizes the MRRB to take action for demolition of dangerous and dilapidated buildings. This apart, we find that Regulation 33(9)(1.2) inter alia provides that Cluster Development may consist of a mix of structures of different characteristics, such as cessed buildings in

the Island city which attract the provisions of the MHAD Act, 1976; buildings at least 30 years of age and acquired/reconstructed by MHADA under MHAD Act, 1976; authorized buildings at least 30 years of age as well as the buildings belonging to the Central Government and State Government. Under Regulation 33(9)(1.2)(iv), other buildings, by reasons of disrepair or because of structural/sanitary defects, are unfit for human habitation or by reason of their bad configuration or the narrowness of streets are dangerous or injurious to the health or safety of the inhabitants of the area, as certified by the Officer or the Agency designated for this purpose by MHADA/MCGM or the MRRB can be included in the Cluster Development. When one looks at even this Regulation, it is clear that even under the DCPR-2034, for a cessed building, the Competent Authority to decide whether the same is in a dilapidated or dangerous condition would be the authorities under MHAD Act, 1976 and not the MCGM as contended by Mr. Anturkar. In these circumstances, we find that even this argument of Mr. Anturkar holds no merit and deserves to be rejected.

23 The last argument canvassed by Mr. Anturkar is that the Award is vitiated because the same has been passed by the

Residential Deputy Collector who had no authority or power to pass the impugned Award. We have given our close consideration to the aforesaid argument. The word "Collector" has been defined in Section 3(g) of the 2013 Act to mean 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 the 2013 Act. Under Section 109 of the 2013 Act, the Maharashtra Government has notified Rules to carry out the functions of the 2013 Act. They are called *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014.* The word "Collector" has also been defined in these Rules to mean the District Collector and includes the Additional Collector, Deputy Collector (Land Acquisition) and Sub-Divisional Officer functioning in the district.

24 When one reads the definition of the word "Collector" appearing in the 2013 Act with the definition of the same word in the Rules, *prima facie*, we are of the view that the Deputy Collector had the power to pass the impugned Award. It is true that Rule 18 of these Rules itself stipulates that if an amount of compensation to be paid is less than Rs. 4 Crores, then the Deputy

Collector (Land Acquisition) or the Sub-Divisional Officer, as the case may be, shall declare an Award under Section 23 of the 2013 Act. If the amount of compensation is above 4 Crores and less than 10 Crores, then the Collector of the District shall declare the Award. If the amount of compensation to be paid is more than Rs.10 Crores, then the Collector shall get the previous approval of the Divisional Commissioner of the concerned revenue division and then only declare the Award.

25 In the facts of the present case, the Award that has been declared by the Deputy Collector is to the tune of approximately Rs.14 Crores. Be that as it may, *prima facie,* we are of the opinion that this would not in itself, without anything more, vitiate the Award. This at the highest, in our *prima facie* view, would be an irregularity. Even otherwise, assuming for the sake of argument that the Deputy Collector did not have the power or authority to declare the Award, even then, the same would not vitiate the entire acquisition proceedings. At the highest, at the hearing and final disposal of the Petition, if we are satisfied with this argument, we would always have the power to set aside the Award and direct the proper authority to pass a fresh Award. This ground, at least at the interim stage, does not impress us to stall

the entire Cluster Development by restraining Respondent No.10 or any other authority from taking appropriate action seeking possession of the Petitioners' property.

26 Before parting, we must mention that we cannot lose sight of the fact that this entire Cluster Development is of the Bhendi Bazar area and about 95% of the tenants/occupants have shifted out and are waiting for their respective permanent alternate accommodation. *Prima facie*, we are of the opinion, and agree with Mr. Khambata that this Petition is nothing but another attempt to merely obstruct the entire project and hold SBUT to ransom. In larger public interest, we cannot allow the Petitioners to do so as the needs of the many outweigh the needs of the few. It is now well settled that in writ jurisdiction it is not sufficient that a party should come to this Court and make out a case that a particular order/action is not valid. In order to get relief from the Court in writ jurisdiction, one must not only come with clean hands, not suppress any material fact and show utmost good faith, but he must also satisfy the Court that making of the order in his favour will do justice and that justice lies on his side. The observations of a Division Bench of this Court in this regard ***(M. C. Chagla, C. J. and S. T. Desai, J. as they then were)*** in

the case of ***the State of Bombay vs Morarji Cooverji (1958 LXI BLR 318)*** are apposite. The Division Bench (at page 332 of the report) opined as under:-

> **"But it is not sufficient that a party should come to this court and make out a case that a particular requisition order is not valid. In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his side."**

27 When one looks at the facts and circumstances of this case, we do not feel that the tests laid down in the aforesaid decision are satisfied. As mentioned earlier, we cannot hold up the entire Cluster Development at the instance of the Petitioners who are only five occupants of "Lucky Building" and who also are the owners of the land on which the said building stands. When one looks at the overall picture, we do not think that justice lies on the side of the Petitioners. This is apart from the fact that *prima facie* we are of the view that the Petitioners have come to Court with unclean hands by stating on oath that the Government Order dated 24th August 2015 was not published in the Government Gazette, when, in fact, the same was duly published. We say this

because it is on the strength of this argument that the entire acquisition proceedings are sought to be challenged.

28 For all the aforesaid reasons, we are of the view that no *prima facie* case is made out for the grant of any interim relief. The prayer for interim relief is therefore rejected. We may hasten to add that all observations and findings given in this order are only *prima facie* and will not bind the Court when hearing the matter at the final hearing stage.

29 Place the above Writ Petition for final hearing (at the admission stage) on 03/08/2023 at the end of the admission board.

30 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M. M. SATHAYE, J.] **[B. P. COLABAWALLA, J].**