

Arun/Shephali

**REPORTABLE**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 741 OF 2014**

**WITH**

**NOTICE OF MOTION NO. 90 OF 2018**

**IN**

**WRIT PETITION NO. 741 OF 2014**

**AND**

**NOTICE OF MOTION NO. 53 OF 2016**

**IN**

**WRIT PETITION NO. 741 OF 2014**

**1. RASHTRIYA CHEMICALS &  
FERTILIZERS LTD,**  
Having its registered office at  
'Priyadarshini' Eastern Express  
Highway Sion, Mumbai 400 022

...Petitioner/  
Applicant

**~ VERSUS ~**

1. **CHIEF EXECUTIVE OFFICER,  
SRA,**  
Prof. Anant Kanekar Marg, Bandra  
(East), Mumbai 400 051
2. **THE DEPUTY COLLECTOR  
(ENCROACHMENT),**  
Near Ambedkar Garden, Chembur  
(East), Mumbai – 400 071
3. **THE COLLECTOR OF MUMBAI  
SUBURBAN DISTRICT,**  
New Administrative Building, New  
Chetna College, Bandra (East),  
Mumbai.
4. **NEW EKTA SRA,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
5. **EKTA CO-OP HSG SOC LTD,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
6. **SAI KRUPA CHS,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
7. **ASHOK NAGAR CHS LTD,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
8. **SAHAYADRI NAGAR CHS,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.

9. **SAHAYOG CHS LTD,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
10. **OM GANESH SRA CHS,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
11. **EKTA SRA CHS,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
12. **JAI HANUMAN CHS,**  
Sahyadri Nagar, Zopadpatti, RC Marg,  
Model High School, Chembur,  
Vashinaka, Mumbai 400 071.
13. **WADHWA AND DESERVE  
BUILDERS LLP,**  
a Limited liability partnership  
registered under the provisions of  
Limited Liability Partnership Act 2008  
having its registered office at Unit No.  
24, Brijwasi Estate, Sonawala Road,  
Goregaon (East), Mumbai 400 063.
14. **DESERVE BUILDERS &  
DEVELOPERS,  
(WADHAVALI) PRIVATE  
LIMITED,**  
a company registered under the  
provisions of the Companies Act, 1956  
having its registered office at Unit No.  
24, Brijwasi Estate, Sonawala Road,  
Goregaon (East), Mumbai 400 063.

**15. DESERVE EXIM PRIVATE  
LIMITED,**

A company registered under the  
provisions of the Companies Act, 1956  
Having its registered office at Unit No.  
24, Brijwasi Estate, Sonawala Road,  
Goregaon (East), Mumbai 400 063.

...Respondents

**APPEARANCES**

<b>FOR THE PETITIONER</b>	<b>Mr Anoshak Daver, with MS</b> <i>Bodhanwalla, Sheroy M</i> <i>Bodhanwalla &amp; Sakshi Sharma,</i> <i>i/b MS Bodhanwalla &amp; Co,</i> <i>Advocates &amp; Solicitors</i>
<b>FOR RESPONDENT NO. 1-SRA</b>	<b>Mr Jagdish G Aradwad (Reddy).</b>
<b>FOR RESPONDENTS NOS. 4 TO 6, 8 AND 10 TO 12</b>	<b>Mr Girish Godbole, with Gargi</b> <i>Bhagwat, i/b M/s Divekar</i> <i>Bhagwat &amp; Co</i>
<b>FOR RESPONDENTS NOS. 13 TO 15</b>	<b>Dr Milind Sathe, Senior Advocate,</b> <i>with Harish Pandya, Yuvraj</i> <i>Choksy &amp; Pagya Dahiya, i/b</i> <i>Khaitan &amp; Co</i>
<b>FOR RESPONDENT- STATE</b>	<b>Mr Milind More, Additional GP.</b>

**CORAM : G.S.Patel &**  
**Madhav J Jamdar, JJ**

**DATED : 8th & 9th March 2022**

**ORAL JUDGMENT (Per GS Patel J):-**

1. Rule was issued on 8th December 2014. There are Affidavits up to the stage of Rejoinder.
2. By its order of 14th February 2020, the Supreme Court expedited the hearing of two Notices of Motion in the Writ Petition. One of those Motions was for interim relief. The other was to expedite the Writ Petition. Since we decided to take up the Writ Petition itself, and have disposed of it by this order on a priority basis, we believe this adequately addresses the order of the Supreme Court.
3. We have heard Mr Daver for the Petitioner, Rashtriya Chemicals And Fertilizers Ltd (“RCF”), Mr Godbole for Respondents Nos. 4 to 6, 8 and 10 to 12, all cooperative housing societies of erstwhile slum dwellers, Dr Sathe, who appears for Respondents Nos. 13, 14 and 15, all entities who are developers. The SRA, the Deputy Collector and the Collector, Mumbai Suburban District are Respondents Nos. 1 to 3 and are represented respectively by Mr Aradwad (Reddy) for SRA and Mr More, Additional Government Pleader for the State.
4. The dispute pertains to a fairly substantial tract of land, at village Wadhavali, Maravali, Chembur. The larger area is spread over several CTS or Survey Numbers. Relief is sought in respect of CTS No. 200.
5. This land is claimed by RCF as having been allotted to it. RCF claims an entitlement to all these lands and says specifically, to

put it as compactly as possible, that these lands were acquired by the State for RCF or its predecessor-in-title, the Fertilizer Corporation of India Limited (“**FCI**”) specifically for staff quarters and staff housing. It says that once these lands vested in and were transferred to RCF, a wholly-owned undertaking of the Central Government, there was no possibility at all of any of these lands being subjected to the discipline of Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (“**the Slum Act**”). Despite this position, RCF says slum housing societies — including those represented by Mr Godbole — were allowed to be constructed here, i.e., in situ on CTS No.200. In other words, this area was subject to first, a declaration of the area as a slum, followed by the sanction of a slum rehabilitation scheme with everything that this contemplates, including a table survey of slum structures, then an assessment of eligibility and a preparation of list of eligible persons in form Annexure-II and then construction of rehab tenements for the erstwhile slum dwellers, as also free-sale buildings as an incentive to Dr Sathe’s clients.

6. It is in this context that RCF seeks the following reliefs (as amended):

“a. That this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, to call for the records of the Petitioner’s case and to go into the legality and propriety thereof and to quash and or set aside the orders passed by and the permissions granted by the Respondents Nos. 1 to 3 to the Respondent Nos. 4 to 12 Societies and to the Respondents Nos. 13 to 15 including the Commencement

Certificate dated 14th October 2015 granted to the Respondent Nos. 13 to 15 by Respondent No.1.

b. That this Hon'ble High Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus to direct the Respondent Nos. 1 to 3 not to grant any permission, NOC/LOI to Respondent Nos. 4 to 12 Societies and to the Respondent Nos. 13 to 15 including any Commencement Certificate for development/re-development of CTS No.200 under any proposed or approved SRA Scheme.

c. That this Hon'ble High Court be pleased to issue a Writ of Prohibition or a Writ in the nature of Prohibition, prohibiting the Respondent Nos. 1 to 3 from granting any permission to Respondent Nos. 4 to 12 Societies and the Respondent Nos. 13 to 15 for development/re-development of CTS No.200 under any proposed or approved SRA Scheme including the Commencement Certificate dated 14th October 2015 granted to the Respondent Nos. 13 to 15 by Respondent No.1.”

7. The Petition opens with an assertion that FCI was split into several companies some time in 1978. One of these splinter companies was RCF. It says that the assets and undertakings of FCI in Maharashtra stood transferred to the RCF. We will take this as stated, but only note that nothing has been adduced to substantiate this.

8. On 23rd February 1960, well before RCF entered the frame, the Collector of Mumbai Suburban District permitted FCI to use these lands in question mentioned above pending final orders of the Government. On 20th September 1961, there was a Government

Resolution regarding action to be taken whenever there was a violation or breach of the terms and conditions of the allotment of grant of Government lands.

9. On 31st August 1964, the Collector wrote to the Secretary of the Government of Maharashtra in the Revenue Department stating that land would have to be allotted to FCI at current market value subject to the conditions mentioned in Form HH-1 to the then Bombay Land Revenue Code Rules 1931.<sup>1</sup>

10. On 6th January 1965, there was a memorandum of the Government of Maharashtra in its Revenue and Forest Department. This issued to the Additional Collector of Mumbai Suburban District. It was in regard to a grant of land admeasuring 110 acres and 13 gunthas to FCI for construction of a factory and staff quarters.<sup>2</sup>

11. Two years later, on 23rd October 1967, there was a memo from the Government of Maharashtra to the Additional Collector modifying the 6th January 1965 memorandum. This corrected the land grant of Survey No. 357 A from 74 acres 12 gunthas to 103 acres and 22 gunthas. On 28th July 1969, the Collector wrote to the Government stating that the value of the lands had been fixed.

12. On 12th August 1970, the Additional Collector wrote to the Administrative Officer of FCI. He said that the Tehsildar at Kurla had reported that Government lands that fell within the compound

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of FCI were in occupation of FCI for a long time although there was no grant of those lands to FCI. However, since possession was then with FCI, the District Inspector of Land Records (“**DILR**”) was directed to survey and measure the lands in preparation to the land being formally handed over to FCI. This was subject to the FCI submitting an undertaking that it would pay the full occupancy price of the land as fixed by the Government.

13. On 4th December 1970, the Government issued a memorandum stating that it had fixed the value of the land granted to FCI vide its memos dated 6th January 1965 and 23rd October 1967.<sup>3</sup> The Additional Collector was directed to work out the total value of the land and to recover the amount of difference between the provisional occupancy price and the final occupancy price from FCI.

14. On 24th March 1971, the Additional Collector passed an order. This is important because it is really the springboard of Mr Daver's case for RCF.<sup>4</sup> This order said that the lands were granted to FCI subject to four conditions noted below:

- (a) the occupancy price of Rs.11,99,458/- would be paid within one month;
- (b) any charges would be paid;
- (c) the land would be used within two years of taking possession; and

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(d) FCI would execute an Agreement in Form HH-1  
whenever called on to do so.

15. On 1st January 1972, the DILR wrote to the Additional Collector stating that a measurement of the lands has been done and possession delivered to FCI on 28th September 1971.

16. According to Mr Daver, this is evidence of possession although it may not have the formal requirements of a 'possession receipt'. It is his submission that this document unambiguously states that possession of the surveyed lands was formally given to FCI. The antecedent factor, he submits, is the previous correspondence. The survey was necessitated because it was found that FCI was in actual possession of the land though without a formal delivery of possession or grant; hence the previous directions for a survey by the DILR. That survey having been done, since FCI was already in physical possession, all that was needed was a formal letter. There was no question of drawing a panchnama or making a separate list of lands. These are all part of the DILR survey report. The letter only records the fact of the survey having been done. Physical possession already being with FCI, Mr Daver submits, this is all that was required to confirm FCI's possession and to vest title in FCI.<sup>5</sup>

17. On 7th March 1972, FCI wrote to the Additional Collector enclosing a cheque for Rs.4,56,860.95 towards a provisional occupancy price.<sup>6</sup>

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18. On 17th May 1972, the Additional Collector replied to FCI demanding payment of the differential occupancy price.<sup>7</sup>

19. Another letter followed two years later on 3rd September 1974 from the Additional Collector to FCI calling upon it to make payment of a differential occupancy price of Rs.8,50,963.50.<sup>8</sup>

20. On 22nd January 1979, the Government wrote to the Collector, Mumbai Suburban District to recover the occupancy price from FCI, then computed at Rs.13,07,824.50. On 21st August 1979, the Additional Collector wrote to FCI stating that the Government of Maharashtra had sanctioned the grant of Government land admeasuring 139 acres and 33 gunthas vide its Government Memo dated 4th December 1970 read with another of 24th March 1971.<sup>9</sup> The letter also said that the Government had fixed the occupancy price at Rs.11,99,458.50, but FCI has only made a part payment on 7th March 1972.<sup>10</sup> What is next said in this document, was that FCI was unauthorisedly occupying lands listed in that letter. The next page said that the Government in Revenue and Forest Department had instructed the Additional Collector to take possession of this land and FCI was directed to pay rent at 8% of the occupancy price on the land unauthorisedly occupied. We note here that the land noted in this letter was in the villages Maravali and Wadhavali and seemed to cover portions of Survey Nos. 39A and 39B of village Maravali and certain other lands such

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Survey Nos. 103, 593, 111 (pt), 115 (pt), 118/1 and 116 of village Wadhavali.

21. On 16th June 1982, the Senior Administrative Officer of RCF wrote to the Additional Collector inter alia in regard to lands at Chembur, Maravali and Wadhavali referring to the previous demand for payment made in 1972, accepting that only provisional occupancy price has been paid but claiming that the matter was pending with the Government from 1972 to 1982. RCF then said there was enclosing a cheque for Rs.7,42,597.55 as a full and final payment of occupancy price for the grant for Government land in terms of the 24th March 1971 initial grant.

22. On 4th December 1993, the Collector wrote to RCF referring to the letter of 22nd January 1979 and saying that he had been instructed to recover an occupancy price of Rs.13,07,824.50 with applicable interest. The Collector said that the balance due was Rs.1,08,366/- and interest was Rs.7,36,728.40 making a total of Rs.8,45,094.40/-. Immediate payment was demanded.<sup>11</sup>

23. On 16th October 1996, there was a Government Resolution regarding the implementation of slum rehabilitation scheme on lands belonging to the Government of Maharashtra.

24. On 31st March 1999, RCF wrote to the Deputy Director of Land Records asking for a mutation of the land records to show the name of RCF.<sup>12</sup>

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25. On 12th June 2001, RCF wrote to the Collector to record that the property of 783 acres 32 gunthas and 14 annas was in possession of RCF and asking for a mutation to show RCF's possession.<sup>13</sup>
26. On 8th August 2006, the Government formulated directions for the processing of slum schemes by the Collector's office and the formalities required for this purpose.
27. On 15th January 2007, RCF wrote to the City Survey Officer to complete the process of converting the Survey Numbers into CTS Numbers.
28. On 17th March 2008, the Collector passed an order requiring RCF to pay unearned income of Rs.3,07,85,293/- as per condition 6 of the Government Resolution dated 20th September 1961.
29. On 16th April 2008, the Government Resolution relating to implementation of slum rehabilitation scheme on lands belonging to the Government of Maharashtra also in regard to the premium came to be issued.
30. On 25th May 2009, RCF wrote to the City Survey Officer again asking for a mutation in the revenue records and for a conversion of Survey Numbers to CTS Numbers.<sup>14</sup>

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31. On 20th April 2010, public notices were issued in regard to a SR scheme proposed on Survey No. 103(pt) and CTS No. 200, admeasuring 17,991.30 sq mtrs in the aggregate.<sup>15</sup>

32. On 18th October 2011, RCF wrote to the Collector to mutate its names in the 7/12 extracts for 26 of 103 acres and to issue instructions to the Tehsildar accordingly.<sup>16</sup>

33. On 4th January 2012, RCF wrote to the Collector submitting a list of properties that had not yet been transferred in RCF's name.<sup>17</sup>

34. On 11th January 201, RCF wrote to the Collector asking for an updating of records in respect of Survey Nos. 103 and 104 and a mutation in favour of RCF.<sup>18</sup>

35. On 16th January 2012, the Collector, Mumbai Suburban passed an order in an Appeal No. 278 of 2011 titled *Rashitriya Chemicals And Fertilizers Ltd v Tehsildar Kurla*. This Appeal related to breaches of terms and conditions of allotment by RCF regarding the lands that had been allotted to it.<sup>19</sup> The Collector's order held:

- (a) That RCF had breached terms of allotments of lands at Kurla bearing CTS Nos. 775(part), 678/202 (part), 678/203-295, Survey No. 68 (part), totally

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admeasuring 20 acres and 8 gunthas, all of which was occupied by slums.

- (b) As per the Government Notification dated 28th September 1965, upon a breach, the lands mentioned above had to be reverted in the land revenue records to the name of the Government of Maharashtra.
- (c) As to the unearned income recoverable, the amount due in respect of this land was to be deducted and the balance amount of Rs. 3,07,85,293.00 was to be recovered.

36. On 30th March 2012, a Letter of Intent (“LOI”) was issued by the SRA to Om Ganesh Nagar SRA CHS (the 10th Respondent) (“**Om Ganesh Nagar**”) and Ekta Nagar SRA CHS (the 11th Respondent) (“**Ekta Nagar**”) regarding CTS No. 200 admeasuring 47,471.60 sq mtrs. There was a need to accommodate 771 slum dwellers for residential units in-situ on this land.

37. On 18th May 2012, RCF again wrote to the Collector requesting that the records be updated.<sup>20</sup>

38. On 20th May 2012, SRA wrote to the Collector, Mumbai Suburban asking for an NOC to implement the slum scheme on CTS No. 200 under DC Regulation 33(10).

39. On 28th May 2012, SRA wrote to the Collector stating that the LOI was issued on 30th March 2012 in the name of Wadhwa and

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Deserve Builder LLP for this SRA scheme on CTS No. 200. It was for the benefit of Om Ganesh Nagar and Ekta Nagar.<sup>21</sup>

40. On 19th June 2012, the Collector wrote to the Executive Engineer SRA refusing an NOC for the SRA scheme since the necessary documents had not been submitted.<sup>22</sup> The SRA sent the documents by its letter of 1st August 2012.<sup>23</sup>

41. On 24th August 2012, RCF wrote to the Collector now saying that it needed protection for properties that “belonged to Government of India Entities” and complaining about non-cooperation from various revenue officials.<sup>24</sup>

42. On 31st August 2012, RCF’s attorneys sent a Notice to the Additional Collector demanding that no slum rehabilitation scheme be allowed on Survey No.103/CTS No.200 since these “belonged” to RCF.<sup>25</sup>

43. On 2nd November 2012, the Collector wrote to the Additional Chief Secretary, Revenue and Forest seeking approval to allow the SRA to grant permission to implement the SR scheme on CTS No.200 as per the policy of the Government of Maharashtra dated 8th August 2006 and 16th April 2008 and subject to

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compliance with the Government decision dated 16th October 1996.<sup>26</sup>

44. RCF complained about the implementations of the slum rehabilitation schemes by its letter of 25th January 2013.

45. On 28th February 2013, the Government approved the SR schemes to be developed on CTS No.200 since this land was in the name of the Government. There were 5500 slum dwellers on this land and their presence was noted as being before 1995.

46. On the same day, there was another Government order in relation to the SR scheme on CTS No. 200 and it was said to be subject to compliance with the LOI conditions stated in the LOI of 30th March 2012 and on payment of a premium at 25% of the market value.

47. On 13th May 2013, the Collector, Mumbai Suburban District granted an NOC for implementation of the SR scheme, Om Ganesh Nagar and Ekta Nagar. SRA wrote to the Collector on 28th May 2013 for an NOC for the slum scheme and under DCR 33(10) read with Section 2.8 of Appendix IV.

48. On 30th May 2013, the City Survey Officer wrote to the Collector seeking instructions about the mutation of lands on Survey No. 103 at RCF's request.<sup>27</sup>

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49. On 20th September 2013, SRA replied to RCF (in response to RCF's letter of 25th January 2013) and said that the SR schemes were sanctioned on lands belonging to the State Government. The proposals for eight societies were approved after the NOC was received from the land-owning authority.<sup>28</sup>

50. On 24th October 2013, the Collector wrote to SRA stating the LOI issued to Om Ganesh Nagar and Ekta Nagar saying that a survey requested by RCF was being undertaken.

51. On 12th November 2013 public notices were issued in the newspapers regarding the slum scheme on CTS No.200.<sup>29</sup>

52. This Petition was filed on 30th November 2013.

53. On 9th December 2013, the Collector made a Report stating that RCF had not fulfilled the conditions of allotment. It had also not paid the full occupancy price within the stipulated time. It had not obtained a sanad. Although RCF was in possession of the land, it was not the owner. Therefore CTS No. 200 continued to stand in the name of the Government and the mutation entry for that purpose was correct.<sup>30</sup>

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54. On 30th December 2013, the Divisional Commissioner wrote to the Collector seeking information about discrepant reports as to which survey numbers were in the actual possession of RCF.<sup>31</sup>

55. On 22nd January 2014, the Collector made a report to the Commissioner reiterating what he had said earlier about RCF not having fulfilled conditions, not having paid full occupancy price within the prescribed time, not having obtained a Sanad and not being the owner of CTS No.200. This time, the Collector added that the lands were occupied by slums and since the slum dwellers had submitted proposals under DCR 33(10), these proposals had been approved by the Government by a communication dated 28th February 2013.<sup>32</sup>

56. On 15th March 2014, the State Government wrote to RCF saying that the question of RCF's claim that land had been allotted to it had been discussed with the Minister of Revenue. It was found large tracts of lands were occupied by slums before 1st January 1995. Under the Slum Rehabilitation Act, and in law, these slums were eligible for protection. To determine which lands were in RCF's possession and which were covered by slums, a survey or measurement was necessary. RCF was directed to get this done on payment of the necessary fees.<sup>33</sup> The Revenue and Forest Department wrote to RCF on 15th March 2014 requesting RCF to get these measurements done and to make the remaining outstanding payments.

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57. On 21st July 2014, the City Survey Officer made an order in Case No. 587 of 2014 (*Rashitriya Chemicals And Fertilizers Ltd v City Survey Officer*), the City Survey Officer rejected RCF's request to record its name on CTS No. 200. The reason was that the City Survey Office had previously requested RCF to produce a possession receipt and survey records by several communications dated 28th February 2013, 8th March 2013, 30th May 2013, 8th November 2013, 4th December 2013 and 30th January 2014. RCF had never done so. Therefore, RCF's request to mutate its name in the property records of CTS No. 200 was rejected.<sup>34</sup>

58. On 26th August 2014, the Revenue Minister made an order in an Appeal filed by Om Ganesh Nagar. That Appeal challenged the order of the Collector of 4th August 2014 staying the slum scheme. The Revenue Minister allowed the Appeal and set aside the Collector's orders. He allowed the subdivision and measurements of lands as per the Letter of Intent dated 30th March 2012 and the Government NOC dated 28th February 2013.

59. On 14th November 2014, the Collector made an order granting an NOC for the implementation for a slum scheme for Om Ganesh Nagar and Ekta Nagar for a land admeasuring 44,471.60 sq mtrs of CTS No.200.

60. On 1st March 2017, the DILR made an appellate order in an appeal filed by RCF against the City Survey Officer's order of 21st July 2014 rejecting RCF's application for a mutation of the land

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records. The appellate order rejected the appeal holding that RCF had not complied with the terms and conditions of the allotment order.

61. On 8th June 2018, LOIs were issued by SRA for Sai Krupa, New Ekata and Sahyadri Nagar-B. Their SRA schemes covered an area of 31,540.22 sq mtrs.

62. On 30th June 2018, there was a similar LOI for Kasturba Nagar SRA over land admeasuring 14,231.06 sq mtrs.

63. The last LOI was of 19th September 2018 for Sai Krupa, New Ekata and Sahyadri Nagar B for land admeasuring 31,540.22 sq mtrs.

64. These are the background facts taken from the Petition and the Affidavits in Reply.

65. The submission by Mr Daver on behalf of RCF is that the land in question namely, CTS No. 200 belongs to RCF. This is the principal point of the argument and the Petition. All other arguments flow from this premise. But to reach the conclusion that RCF invites us to do, the starting premise must be shown to be undisputed. When RCF says that CTS No.200 belongs to it, it must establish that there is a grant complete in all respects. It must show that all terms and conditions of the grant have been met. Any amounts that are to be paid must be shown to have been paid, and paid on time. There must be some evidence of vesting and of possession. Mr Daver's argument, noted above, that the DILR

survey report substitutes for possession cannot be taken for granted. If the petition raises a question of title, axiomatically it would put RCF out of Court.

66. The exact submission in paragraph 29(a) runs like this:

“The Petitioner submits that the land in question bearing CTS No.200 belongs to the Petitioner”.

67. If this is disputed, then surely RCF must be driven to a suit on title to substantiate its position.

68. The second problem with this submission is that the State Government “allowed” the slum societies to carry out work on land. This ignores or overlooks the position in law. According to Mr Daver, CTS No.200 is exempted from the application of the Slum Rehabilitation Act because of the provisions of Section 3Z-6. The section reads thus:

**“3Z-6. Notwithstanding anything contained in this Act, nothing in this Chapter shall apply to the,—**

- (a) Scheduled areas, declared as such by the President of India by an order under paragraph 6 of the Fifth Schedule to the Constitution of India;
- (b) forest area to which the Forest (Conservation) Act, 1980 applies;
- (c) Coastal Regulation Zone as declared under clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986;
- (d) Eco-Sensitive Zones of Ecologically Fragile Areas as declared under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986;

- (e) Hill Stations as notified by the State Government;
- (f) Special Tourism Areas, declared as such by the Central or State Government;
- (g) Lands belonging to the Central Government or any entity thereof unless the same is voluntarily offered for the housing scheme;**
- (h) any slum area which, in the opinion of the State Government or the concerned Housing Committee, is unsuitable for human habitation or to which it would not be in the public interest to apply the provisions of this Chapter.”

*(Emphasis added)*

69. But in order to get to the exemption in 3Z-6(g), title must be unambiguously vested in the Central Government or entity of the Central Government. This cannot be an assumption. It is either an admitted position or it must be proved. There is no third option. If title is disputed, then, until and unless title to the land is established as vesting in (and the land belonging to) the Central Government, the provisions of 3Z-6 and that entire chapter would not apply. But the exemption in Section 3Z-6 is only in respect of Chapter I-C of the Slum Act. This Chapter contains special provisions for *in-situ rehabilitation housing schemes for protected occupiers in a slum area*. The exemption does not mean that the **whole** of the Act does not apply. The exemption also does not mean that other Chapters will not apply. If the suggestion is that lands privately held or held by the Union Government can *never* be declared as slums irrespective of conditions on site, then we find no support for so broad a proposition in the Act. No judgment is shown to us to establish such

a proposition. All that the exemption means is that for Section 3Z-6 lands, there is no in-situ re-development.

**70.** At this stage it would be useful to consider the provisions of Section 4(1), 4(2), 4(3), 5, 5(A) and 5(C) of the Act.

“4(1) Where the competent authority is satisfied that—

(a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise; or

(b) the buildings in any area, used or intended to be used for human habitation are—

(i) in any respect, unfit for human habitation; or

(ii) by reasons of dilapidation, overcrowding, faulty arrangement and design of such building, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area,

the Competent Authority may, by notification in the Official Gazette, declare such area to be a slum area. Such declaration shall also be published in such other manner (as will give due publicity to the declaration in the area) as may be prescribed.]

[Explanation.—For the purposes of clause (b), the expression “buildings” shall not include,—

(a) cessed buildings in the island City



of Mumbai as defined in clause (7) of section 2 of the Maharashtra Housing and Area Development Act, 1976, or old buildings belonging to the Corporation;

(b) buildings constructed with permission of the relevant authority at any point of time;

(c) any building in an area taken up under the Urban Renewal Scheme.]

(2) In determining whether buildings are unfit for human habitation for the purposes of this Act, regard shall be had to the condition thereof in respect of the following matters, that is to say,—

- (a) repairs;
- (b) stability;
- (c) freedom from damp;
- (d) natural light and air;
- (e) provision for water-supply;
- (f) provision for drainage and sanitary conveniences;
- (g) facilities for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid, if, and only if, it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

(3) Any person aggrieved by a declaration made under sub-section (1) may, within thirty days after the date of such declaration in the Official Gazette, appeal to the Tribunal, 1 No such appeal filed after the expiry of thirty days as aforesaid shall be entertained.”

“5.(1) Where the Competent Authority is satisfied that any slum area or any part thereof is capable of being

improved, at a reasonable expense, so as not to be a source of danger to the health, safety or convenience of the public of that area, it may serve upon the owner or owners and every mortgage of the properties in that area or any part thereof a notice informing them of its intention to carry out such improvement works as in its opinion are necessary and asking each of them to submit his objections or suggestions, if any, to the Competent Authority, within thirty days from the date of such notice. A copy of such notice shall also be displayed at some conspicuous places in the area for the information of the occupiers thereof and for giving them also an opportunity to submit their objections or suggestions, if any. On such display of the notice, the owners, occupiers and all other persons concerned shall be deemed to have been duly informed of the matters stated therein.

(2) After considering the objections and suggestions received within the time aforesaid, from the owners, occupiers and other persons concerned, the Competent Authority may decide and proceed to carry out the improvement works with or without modifications or may postpone them for a certain period or cancel the intention to undertake the works.

**5A.** For the purpose of this Act, the improvement works may consist of all or any of the following :—

- (a) laying of water mains, sewers and storm water drains;
- (b) provision of urinals, latrines, community baths, and water taps;
- (c) widening, realigning or paving of existing roads, lanes and pathways and constructing new roads, lanes and pathways;
- (d) providing street lighting;

- (e) cutting, filling, levelling and landscaping the area;
- (f) partial development of the area with a view to providing land for unremunerative purposes such as parks, playgrounds, welfare and community centres, schools, dispensaries, hospitals, police stations, fire stations and other amenities run on a non-profit basis;
- (g) demolition of obstructive or dilapidated buildings or portions of buildings;
- (h) any other matter for which, in the opinion of the Competent Authority, it is expedient to make provision for preventing the area from being or becoming a source of danger to safety or health or a nuisance.”

“5C. (1) Where the Competent Authority, upon report from any of its officers or other information in its possession, is satisfied that any buildings in a slum area are in any respect unfit for human habitation, or any slum area or part thereof is or is likely to be a source of danger to the health, safety or convenience of the public in that area or in its neighbourhood by reason of the area having no basic amenities or having inadequate amenities or being insanitary, squalid, overcrowded or otherwise a source of such danger, the Competent Authority may, unless in its opinion the buildings or the area are not capable at a reasonable expense of being rendered so fit or free from such danger, serve upon the owners of the buildings or lands in the area a notice requiring them, within such time, which shall not be less than thirty days, as may be specified in the notice, to execute such works of improvement, either within or outside the buildings or the area, as may be specified in the notice and stating that in the opinion of the Authority those works will render the buildings or the area

fit for human habitation or free from such danger, as the case may be.

(2) In addition to serving a notice under this section on the owners, the Competent Authority may serve copy of the notice on every mortgagee of the building or land so far as it is reasonably practicable to ascertain such persons and further a copy of such notice shall also be displayed at some conspicuous place in the slum area for the information of the occupiers thereof. Such display of the notice shall be conclusive proof that the owners, occupiers and other persons concerned have been duly informed of the matter stated in the notice.

(3) In determining for the purposes of this Act whether the building can be rendered fit for human habitation or the area can be rendered free from danger aforesaid, at reasonable expense, regard shall be had to the estimated cost of the works necessary for these purposes and the value which it is estimated that the buildings or lands will have when the works are completed.”

71. In Section 4(1), the word ‘area’ is not defined. It is not defined elsewhere in the Act either. It must, therefore, receive its normal, everyday dictionary meaning. It would thus include any space measured by any metric. The qualification is in Sections 4(1) (a) as to the *conditions* that must obtain on site in the “area”. The next sub-Section 4(1)(b) speaks of the structures or buildings in any area being of a certain dilapidated or unacceptable quality. Building is defined in Section 2(b) thus:

“(b) “building” includes a house, out-house, stable, shed, hut and other enclosure or structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever, whether used as human dwelling or otherwise; and also

includes verandahs, fixed platforms, plinths, doorsteps, electric meters, walls including compound walls and fencing and the like; but does not include plant or machinery comprised in a building.”

Land is defined in Section 2(d) thus:

“(d) “land” includes building and also benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth.”

**72.** Therefore, a declaration under Section 4(1) of any area as a slum area must be preceded by a satisfaction as required by the controlling part of Section 4(1).

**73.** The reason this becomes important is to be found in Chapter-III and particularly Sections 5, 5A and 5C, extracted above. From RCF’s perspective, therefore, if it was in fact the owner of CTS No. 200, it was under a statutory obligation to prevent the slums and slum-like conditions from obtaining on any part of CTS No.200. Even if, as an owner, it failed to do so, that area could have been declared as a slum though perhaps on account of the exception in 3Z-6(g) would not have been available for in situ redevelopment. The question of ownership therefore does not affect the declaration of an area as slum per se but only whether in situ development can or cannot be permitted.

**74.** If RCF was indeed the owner of the land and therefore exempted from the applicability of Chapter I-C, it could have challenged the slum notification under Section 4(1) by showing that there were no slum-like conditions on site. This RCF is clearly

unable to do. Apart from this being yet another set of disputed questions of fact, there is simply no such challenge. Therefore, the slum-like conditions that obtained and were to the satisfaction of the competent authority must be accepted as having existed on CTS No.200.

75. This, therefore, narrows the controversy to the initial question of whether in situ development is exempted. That, as we have observed is a question of title and nothing else.

76. The claim of ownership and the exemption in 3Z-6 is repeated in grounds (b), (c), (e) and (f).

77. There are no other grounds taken in this Petition.

78. We turn now to the Affidavits in Reply and which we will quickly summarise. The 1st Respondent, SRA, has filed an Affidavit from page 172. This establishes the existence of slums on the site and the various steps taken towards furthering the slum rehabilitation scheme. The plea that there are disputed questions of fact in respect of the ownership of CTS No.200 is specifically taken in paragraph 14 at page 180.

79. One of the Society's Affidavit in Reply is also on record but we will not trouble with it or with the Affidavit of the developers, Respondents Nos. 13 to 15. We are more concerned with the Affidavits of the State functionaries.

80. There is further Affidavit of 12th July 2015 from page 182 filed by the Petitioner which says that the Government of India had considered the entire issue and, on 17th March 2015, advised that RCF should take possession of lands allotted to it by the Government of Maharashtra make its claim for ownership clear and demand possession. RCF then says that 10 acres of land has been surrendered by RCF to the Government on 15th November 1976. It seeks that the remaining land may be got vacated. This Affidavit is of very little consequence. The directive of a Central Government functionary again proceeds on the assumption that title vests in RCF. The Central Government's directive does not, and cannot, in and of itself confer title on RCF. Indeed, that directive was incapable of compliance by any officer of RCF precisely because of that incorrect assumption.

81. Finally, at page 519 is the Affidavit of Vandana Chitamani Maku, the Additional Chitnis/Tehsildar in the office of the Collector. Paragraphs 4, 5 and 6 at pages 520 and 521 put the question of the claim of ownership by RCF into sharp focus. Those three paragraphs read thus:

**“4. I submit that the Writ Petition is misconceived for the reasons that Petitioner is not owner of the said Property in question. The Property in question bearing Survey no. 103 CTS no. 200 of Village Wadhavali, Taluka Kurla is owned by the Government of Maharashtra. The said land stands in the name of the Government of Maharashtra as admitted by the Petitioner itself in the Petition.**

5. I say that the Petitioner is relying upon Government Memorandum dated 6.1.1965. The Government of

Maharashtra has agreed to grant Occupancy Right in respect of the various Properties to the petitioner for construction of factory and staff quarters. **However, the Memorandum of the Government dated 6.1.1965 is only intention to grant the said land to the petitioner, on payment of provisional occupancy price of Rs. 10,85,000/- and on terms and conditions specified therein. The Order/Memorandum also records that the petitioner will have to pay the difference between the final valuation and the provisional valuation and the proposed grant is subject to the conditions specified in the memorandum dated 6.1.1965. The conditions are as under:-**

- i) FCI to execute Sanad in form HH 1 (Sanad to be issued after full payment of occupancy price);
- (ii) FCI shall abide by conditions laid down in Government Resolution dated 17.10.1947 No. 1970/45 read with Resolution dated 7.8.1956 as amended by Resolution dated 12.9.1962. Petitioner has suppressed the aforesaid G.Rs and conditions specified therein. Petitioner has not shown that it has complied with said conditions;
- (iii) Company shall pay full NA assessment current in the locality; and
- (iv) Land shall revert to Government if no longer required by FCI for the purpose it is granted.

6. **I say that Sanad in form HH-1 as mentioned in Memo dated 6.1.1965 is not executed as all the conditions mentioned in the memorandum are not fulfilled and thus the ownership of the said Property was never transferred from the Government of Maharashtra to the Petitioner. Admittedly, the ownership of the said property remains with the Government of Maharashtra as reflected in the Property Card. The ownership/title of the said land does not vest in the Petitioner under the**



said Order/Memorandum dated 6.1.1965 and on this ground the writ petition is not maintainable and is liable to be dismissed.

*(Emphasis added)*

82. Paragraphs 15, 16, 22 and 23 of the same Affidavit say this:

“15. I say that the Collector vide his report /letter dated 9.12.2013 read with letter dated 22.1.2014 to the Konkan Commissioner stated the entire facts and position relating to the land in question, interalia records that the land bring Survey No.103/CTS No. 200 is recorded in the name of the Government of Maharashtra and the petitioner has not utilized the land for the purpose it was granted.

16. I say that the encroachment/slums have come up over the said land. I further state that the slums are censused slums as defined by Regulation 33(10) of Development Control Regulation (DCR) 1991.

22. I say that the ownership of land remains with the Government of Maharashtra and the claim of the Petitioner is barred by the law of Limitation and therefore cannot be agitated ever under Writ Jurisdiction of this Hon’ble Court.

23. I say that the Petitioner is not in possession of the property and not paid occupancy price under so called Grant. Therefore the claim of the Petitioner as owner cannot be accepted or adjudicated in this proceeding.”

*(Emphasis added)*

83. These paragraphs are clear and emphatic assertions by the State of Maharashtra that the land in question does not belong to RCF at all.

84. We permitted a late Affidavit in Rejoinder for completeness. This is dated 4th March 2022. It contains denials but does not further the case of the Petitioner at all.

85. In our view what we are actually being asked to decide is nothing but a title suit. We cannot embark on any such enquiry in a Writ Petition under Article 226 of the Constitution of India. It is simply not possible to grant the Petitioner, RCF, the kind of relief that it seeks. There is no manner of doubt on the record as it stands that CTS No.200 is encroached by slums. Slum societies have already come up. It is not possible to shift them. RCF has not been able to conclusively establish title to CTS No.200 or to show that this is an undisputed position.

86. Despite Mr Daver's most valiant efforts, we are unable to find substance in the Petition. It will have to be rejected.

87. In the view that we have taken it is only fair to observe, although this is not strictly necessary, that this order is not a determination of title one way or the other. We leave it open to RCF to adopt such proceedings as it may think fit and if it wishes to do so, whether on title or by way of damages. We say nothing in that regard except that all contentions are kept open and any such proceedings will necessarily have to be decided on its own merits and unaffected and uninfluenced by the present order.

88. Rule is discharged. In the fact and circumstances of the case, there will be no order as to costs.

89. We would be remiss in not acknowledging the fair approach of Mr Daver for RCF. He has conducted his case with patience and accuracy and admirable concision.

90. The Petitioners will remove the prefixes before the names of the parties in the cause title as this interferes with the correct listing in the Court CIS records. The registry will update the CIS records to remove the prefixes.

**(Madhav J. Jamdar, J)**

**(G. S. Patel, J)**