

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

**WRIT PETITION (L) NO. 1135 OF 2014**

Municipal Corporation of Greater Mumbai,  
Through the Municipal Commissioner, having  
its office at Mahapalika Marg, CST,  
Mumbai-400 001.

.. Petitioner

Versus

- 1 State of Maharashtra  
Mantralaya, Mumbai-400 032.
- 2 Commissioner of Police,  
having his address at  
Crawford Market, Mumbai.
- 2A) Deputy Commissioner of Police, (Zone-9),  
having address at Hill Road,  
Bandra (West),  
Mumbai-400 050.
- 2B) Assistant Commissioner of Police,  
having address at Off. D.N. Nagar,  
Above D.N. Nagar Police Station,  
Link Road, Andheri (West),  
Mumbai-400 052.
- 3 Senior Police Inspector,  
Oshiwara Police Station,  
Mumbai.
- 4 Sardar Baldevsingh Sohansingh  
Occupation- Not Known, Age- Adult,  
having his address at Sohansingh  
Mansion, Behind H.P. Petrol Pump,  
S.V. Road, Jogeshwari (W),  
Mumbai.

5 Satish Raghunath Patil,  
Occupation- Not Known, Age – Adult,  
having his address at Sarah Corporation,  
Shop No. 2 & 3, Bldg. No.1,  
Apna Ghar CHS, N.S. Phadke Marg,  
Near Telli Galli Signal, Andheri (E),  
Mumbai – 400 069.

6 Mrs. K. Leela Sadanand,  
Occupation- Not known, Age Adult,  
residing at Room No. 67, 1<sup>st</sup> Floor,  
Sohansingh Mansion,  
Behind H.P Petrol Pump, S.V. Road,  
Jogeshwari (W), Mumbai-400 102.

7 M.M.R.D.A.,  
having its address at  
Bandra Kurla Complex,  
Bandra (E), Mumbai -400 051.

.. Respondents

Mr. E.P. Bharucha, Senior Counsel with Mr. S.U. Kamdar, Senior Counsel with Mr. A.Y. Sakhare, Senior Counsel with Ms. Komal Punjabi with Ms. Trupti Puranik with Ms. Shobha Ajitkumar i/by Mr. J.J. Xavier for the Petitioner-BMC.

Mr. D.G. Khambata, Advocate General, with Ms. Uma Palsuledesai, AGP for Respondent Nos. 1 to 3.

Ms. Kiran Bhagalia for Respondent No.7.

Mr. K.K. Malpathak for Respondent No.6.

Mr. V.P. Sawant for MHADA.

Mr. Sardar Baldevsingh Sohansingh Respondent No. 4 present in person.

Mr. Satish Raghunath Patil, Respondent No. 5 present in person.

**CORAM: ANOOP V. MOHTA AND**

**A.A. SAYED, JJ,**

**DATE : 23 JUNE 2014.**

**PC.:-**

This matter was listed from time to time. We have heard all the Counsel including the Counsel in other matters which were listed along with this matter for their respective suggestions. We have also heard the learned Advocate General and Counsel for MHADA.

2 This Petition has been filed by Municipal Corporation of Greater Mumbai seeking prayers against the State of Maharashtra and concerned police personnel to take steps for forcible eviction of the occupants of the building known as "Sohansingh Mansion" as also other buildings which are declared to be dilapidated and dangerous by the Corporation and to issue appropriate guidelines for removal of non-cooperating occupants of dilapidated and dangerous buildings. According to the Corporation, these guidelines are necessary so as to avoid any untoward incidents of loss of lives of the occupants of the said buildings, as well as, occupants of the adjoining structures and passers-by.

3 Sometimes owners/builders are non-cooperative and fail to take care of their obligations. Sometimes tenants/occupants do not

co-operate. Mere initiation of Civil and/or Criminal proceedings for the same is also of no use or effective mechanism to evacuate or evict immediately the non-cooperative tenants/occupants/owners. In view of the urgency expressed, we are inclined to pass the following order based upon the draft of minutes of order prepared and submitted by the Senior Counsel for the Petitioner-Corporation and approved by the State Government and MHADA. A copy of the draft of Minutes of Order is taken on record and marked "X" for identification.

4 In light of the problem faced by the Corporation concerning large number of seriously dangerous and dilapidated buildings/structures which require to be urgently vacated/demolished, so as to prevent loss of life of the persons residing therein and/or residing in surrounding localities and/or people who are passers-by, the Corporation has issued notices under section 354 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the said Act") requiring the occupiers/owners to vacate/pull down the building(s). In view of the fact that in many of such buildings, the tenants and/or occupiers are residing and/or unwilling to vacate the premises inspite of the fact that the building is dilapidated and

dangerous and likely to fall, which would cause loss of human life including of the persons who are refusing to vacate therefrom and/or because of the inaction on the part of the owners, it has become necessary to pass the present order.

5 On one hand, a number of petitions are filed and moved by the landlord/owner of such buildings seeking direction that the Corporation must enforce the notices issued by them under Section 354 of the said Act and evacuate/remove the occupiers and demolish the dangerous and dilapidated building(s) after evicting unwilling tenants/occupiers AND on the other hand, a number of petitions are filed by the occupiers and/or tenants of such dangerous and dilapidated buildings seeking to challenge the said notices under Section 354 of the said Act.

Section 354 of the said Act reads as under-

**“Dangerous Structures**

**354 Removal of structures, etc., which are in ruins or likely to fall. - (1)** If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous conditions, or likely to fall, or in

any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, subject to the provisions of section 342, and to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence."

7 The Hon'ble Supreme Court in the matter of Makarand Dattatreya Sugavkar Vs. Municipal Corporation of Greater Mumbai<sup>1</sup> in paragraph 20 has observed that:

"The primary object underlying Section 354 is to safeguard the public from the danger of being forced to live in a structure, which includes any building, wall or other structure and which is in a ruinous condition or is likely to fall or is in any way dangerous to any person occupying the same. This section is also intended to protect those who may pass by such structure. A reading of the plain language of Section 489 gives an impression that it is only an enabling provision but if the same is read keeping in view the purpose of its enactment and the setting in which it is placed, it becomes clear that the Commissioner is duty bound to ensure that the written notice given to the owner or occupier under Section 354(1) is implemented in its

1 (2013) 9 SCC 136

*letter and spirit. The duty cast upon the Commissioner is in the nature of a public law obligation and in appropriate case, the Court can issue direction for its enforcement."*

8 According to the Municipal Corporation of Greater Mumbai in view of the difficulties faced by them in implementation of such notices under Section 354 of the said Act in the absence of any specific provisions in the said Act for removal/evacuation of occupants of dilapidated buildings, and to make it effective and workable, considering the human problems, it is necessary to issue certain guidelines. It is the case of the Corporation that there is no proper response from the police and the Corporation officers are not in a position to enforce the notices under Section 354 of the said Act.

9 Accordingly, for the present, in the absence of any policy in that behalf, the following guidelines are issued:-

- a) The present order will be applicable only in respect of those buildings which are highly dilapidated and dangerous and/or classified in Category C-1 by the Corporation, whether owned by a private party or by the Corporation or any other authority and in respect of which building, either a notice under section 354

has been issued or the Corporation has issued a Letter of Evacuation to their tenants and/or occupiers of the buildings.

b) The Corporation will, before classifying a building under category C-1, conduct their own independent inspection and assessment with the help of the Engineers of their Department and carry out a survey of such building(s). The report of Structural Audit shall be taken into account.

c) The Corporation shall consider the report of Structural Engineer appointed by the owners and/or occupants classifying the building as dilapidated and dangerous. If the owners and/or the occupants bring conflicting reports on the status of the building, the Corporation shall refer the matter to Technical Advisory Committee (TAC) under the Chairmanship of Director (ES&P) with at least 3 other members, viz. City Engineer, Chief Engineer (DP) and Chief Engineer (P&D).

d) The TAC shall:

i) Carry out a visual inspection of the state of the internal and

external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections, sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank column condition, parapet at terraces, chhajas, common areas, terrace water proofing.

ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio as may be considered by TAC as necessary.

e) If it is found after due notice that the building(s) is in a highly dangerous or in dilapidated condition, then in that event, the Corporation shall also make a list of the names of the tenants and/or occupiers in the said building and the carpet area of the premises in their respective occupation and possession including the floor at which the same has been occupied.

f) A copy of such list will be furnished to the landlord and/or owner/builder of the said building. The Corporation thereafter will issue a notice under section 354 of the said Act calling upon such tenants and/or occupiers to vacate the said premises and if such notice under section 354 of the said Act has already been issued, then in that event the Corporation will give 7 days' notice to such tenants/occupiers, copies whereof will be furnished to the landlord for vacating the said building(s). If such tenant and/or occupier is not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

g) The Corporation shall then take steps to turn off the water, supply, electric power and gas to such building immediately before the removal of occupiers.

h) In the case of a municipal owned building(s), the Corporation will issue Letter of Evacuation to every person in occupation of the said building or part thereof to vacate the said building along with their belongings within the said period of 7 days

from date of issuance of such notice of Letter of Evacuation in respect of municipal owned building(s). The notice issued to such occupiers shall contain the name of the occupier and the area in his occupation and also the floor at which the premises are located. In case, if such tenant and/or occupier is not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

i) In the event, a person occupying such tenement whether of the privately owned building(s) or building(s) owned by Corporation or any other authority refuses to vacate the said premises, then the police shall remove such person from the said premises by using nominal force if required for the same.

j) The police may use such force as is reasonably necessary to remove such person and/or occupiers and/or allottee along with their belongings from the said premises, without causing damage to their movables.

k) The Corporation may then demolish such dangerous and

dilapidated building.

- l) The rights of the tenants and/or occupiers and/or owners in respect of the said premises/property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building in exercise of the power under section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and/or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation/removal/demolition will not affect the *inter se* rights of owners if there be more than one owner or there is a dispute as to the title of the property.

- m) If there are any pending suits/proceedings and there are any restraint orders passed, the Corporation shall be free to apply for

vacating and/or modifying such orders, which applications shall be decided on its own merits and in accordance with law.

n) In respect of the Municipal buildings, it shall be the duty of the Corporation to provide alternate accommodation as early as possible in any of their premises to such tenant and/or occupier of the Corporation owned building till and until the said building is reconstructed by the Corporation or the tenancy of any of such occupier is determined in accordance with law.

o) In respect of the private owned buildings, if such building falls in cessed category as contemplated under the provisions of the Maharashtra Housing and Area Development Act, 1976, then in that event, it will be the duty of MHADA/ MBR&RB to provide temporary alternate arrangement in a transit camp for transit accommodation, in accordance with law, as early as possible.

p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting

sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under section 45 of the MRTP Act, 1966 unless and until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest.

- q) In case of buildings which have suddenly collapsed, to determine the reasons for such collapse, it is desirable that forthwith a Committee be constituted headed by a former Municipal Commissioner and consisting of Former Chief Engineer of MHADA alongwith a Professor of VJTI and a Professor of IIT, Powai having expertise in Structural Engineering as also an employee of the Corporation, holding a post not lower than that of the Director (E.S.&P) and such Committee will determine the cause of such collapse and *inter-alia* identify whether any Architect and/or Consultant and/or Municipal officers or other person/s is/are responsible in any

manner whatsoever for such a collapse. The reference to the Committee will not in any way be a hindrance in the criminal investigations/proceedings that may have commenced or may be commenced under the relevant criminal law. This no way would restrict the State of Maharashtra to pass appropriate order for any such inquiry or investigation.

10 The above order in no way restricts the power and scope and purpose of Section 354 of said Act. The Commissioner/Corporation and its Officers shall act in accordance with law. These guidelines will not affect any orders passed in pending proceedings and are not to be read and interpreted to restrict or permit the Corporation or any party to go beyond the statutory provisions of law. This order is necessitated essentially to make Section 354 effective and to see that human lives are not in any manner compromised. The Corporation and its officers to follow other pre-steps and provisions before issuing Section 354 notices and/or such other notices.

11 The list of dilapidated/dangerous C-1 category buildings/

structures shall be published in advance on the website of the Corporation so that effective steps can be taken by all concerned, by all available modes and methods. A copy of this order shall also be published on the website of the Corporation and State of Maharashtra as also other Local Authorities etc..

12 It is reiterated that this order covers only C-1 category buildings which are unsafe and declared as dangerous, and the demolition, if any, shall be carried out by the Corporation in accordance with law and in no manner pre-empts/curtails the rights of any person/s from objecting and/or approaching the Court and if a case is made out to pass appropriate orders on its own merits and in accordance with law. It is also clarified that during the interregnum, in appropriate cases, the Corporation would be at liberty to take all safety measures, including propping up, etc., of the buildings/premises and enclose/fence the surrounding area in accordance with law.

13 The rights and the contentions of the other parties to raise and/or agitate distinctive and individual pleas/issues of their

respective matters separately, are kept open. All the aggrieved parties shall be at liberty to approach the Court in case any clarification is required. Pendency of this Petition would not preclude the State Government to come out with appropriate policy to address the grievances of the tenants/occupiers or for that matter the owners thereof.

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Stand over to 7 July 2014

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION (L) NO.1135 OF 2014

Municipal Corporation of Greater Mumbai  
V/s.  
State of Maharashtra & Ors.

: Petitioner  
: Respondents

Mr.A.Y.Sakhare, Senior Advocate, with Ms Komal Punjabi and Ms A.R.Joshi  
for the Petitioner.

Mr.V.P. Savant for MHADA.

Mr.S. Joshi for the Applicant in Chamber Summons no.164/2014.

CORAM : ANOOP V. MOHTA &  
A.A. SAYED, JJ.

DATE : JULY 07, 2014.

P.C.:

Stand over to 21.07.2014. In the meantime, the Petitioner-Corporation  
to proceed against the tenants, in accordance with law.

( ANOOP V. MOHTA, J.)

(A.A. SAYED, J.)

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

WRIT PETITION (L) NO.1135 OF 2014

Municipal Corporation of  
Greater Mumbai ... Petitioner.  
V/s. ... Respondents.  
State of Maharashtra & Ors.

Ms. Komal Punjabi i/b Mr. J.J. Xavier for the Petitioners.  
Ms. Uma Palsuledesai, AGP with Ms. Geeta Mastri, Additional G.P. for  
Respondent nos.1 to 3.  
Mr. Mandakini Sinha i/b Mr. Kiran Bhagalia for Respondent no.7.

CORAM: ANOOP V. MOHTA &  
A.A. SAYED, JJ.

DATED : JULY 21, 2014.

PC. :

1. Learned Counsel appearing for the Petitioner Corporation on instructions from Mr. Sunil Janardhan Tawde, Asstt. Eng. (B& F)K/West makes statement that the last occupants have already vacated the premises and the landlord/owner is already directed to take steps to demolish dilapidated building in question and that the Corporation will take steps, to demolish the building in case the owner fails to demolish within reasonable time apart from all protective measures.

2. The Corporation to file affidavit with a list of C-1 category buildings within two weeks. We have already noted that in spite of the

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reasoned order dated 23 June 2014 in this matter they have not even circulated the list of C-1 category buildings for people at large even on the web site.

3. We have already ordered to the Corporation to appoint a Nodal Officer to give instructions to their counsel in such matters. Learned Counsel only asks for adjournment/time as the concerned officers of respective Wards unable to send instructions and/or give timely instructions. The matters are delayed for non-reply/affidavit/instructions. The buildings in C-1 category are require immediate attention from all the concerned. The Corporation, therefore, to file an affidavit explaining the reasons for delay in appointing the Nodal Officer. Affidavit be filed within two weeks.

4. The parties including the Corporation to take steps to circulate all those C-1 category buildings and or dangerous or dilapidated premises matters particularly where ad-interim reliefs are issued against the Corporation as early as possible, notwithstanding their adjourned dates.

Stand over to 4 August 2014.

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1135 OF 2014

With

CHAMBER SUMMONS NO.67 OF 2014

In

WRIT PETITION (L) NO.1135 OF 2014

Municipal Corporation of Greater Mumbai

: Petitioner

V/s.

State of Maharashtra & Ors.

: Respondents

Ms S. Tambe i/b. J.J. Xavier for the Petitioner.

Mr.Rui Rodrigues for Respondent no.5.

Ms Mandakini Sinha for Respondent no.7.

Mr.Dilip H. Shukla for Applicant in Chamber Summons no.67 of 2014.

CORAM : ANOOP V. MOHTA &  
A.A. SAYED, JJ.

DATE : AUGUST 04, 2014.

PC:

Learned counsel appearing for the Corporation makes a statement that a Nodal Officer is appointed in pursuance of order dated 21.07.2014. A statement is also made that the list of C-1 category buildings (dangerous and/or dilapidated premises) will be published within seven days on the web-site.

2. Stand over to 11.08.2104.

3. Chamber Summons no.67 of 2014 filed by the Applicant is allowed to be withdrawn with liberty. Chamber Summons is disposed of as withdrawn.

(ANOOP V. MOHTA, J.)

(A.A. SAYED, J.)

Bombay High Court

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

WRIT PETITION (L) NO.1135 OF 2014

Municipal Corporation of Greater Mumbai

: Petitioner

V/s.

State of Maharashtra & Ors.

: Respondents

...  
Mr.S.U.Kaindar, Senior Advocate, with Ms Trupti Puranik for the Petitioner.  
Mr.D.J.Khambata, Advocate General for the State.

...  
CORAM: ANOOP V. MOHTA &  
A.A. SAYED, JJ.

DATE: AUGUST 13, 2014.

P.C.:

This Petition is filed by the Corporation, inter alia, seeking directions to issue appropriate guidelines in respect of buildings in Mumbai which are in a dilapidated and unsafe condition. Though the Petition has been substantially worked out, in view of the importance of the issues involved, we have kept the Petition pending, so as to issue further/additional guidelines, if necessary.

2. By an order passed by us on 23.06.2014, we have issued some interim guidelines in respect of dilapidated and unsafe buildings which have been categorized by the Corporation as 'C-1'. In the said order, in clause 9(b), we have directed that before classifying a building under category C-1, the Corporation shall conduct their own independent inspection and assessment with the help of the Engineers of their Department. That direction was issued so as to obviate a situation where merely on the basis of a structural audit report submitted by one of the parties and inspection by its officers, the Corporation

~~will~~ categorise the building as 'C-1'. We direct the Corporation to place on record, by way of an affidavit, the relevant Circular/procedure under which the buildings are categorised as C-1, C2-A, C2-B, C-3, etc., by the next date.

3. In the present assignment, we have come across several Petitions challenging the notices issued by the Corporation under section 354 of the Mumbai Municipal Corporation Act, 1888, to pull down dilapidated and unsafe buildings. It is noticed that in respect of re-development of buildings of Co-operative Housing Societies, the State of Maharashtra has issued directions/order dated 03.01.2009 under section 79A of the Maharashtra Co-operative Societies Act, 1960. In respect of Municipal buildings (or buildings belonging to other authorities) in our order dated 23.06.2014, we have recorded that it shall be their duty to provide temporary alternate accommodation to the tenants/occupants until the Corporation (or the authority) re-develops the building. In respect of privately owned cessed buildings in the island city, the provisions of the Maharashtra Housing and Area Development Act, 1976 ('MHAD Act' for short) are applicable and MHADA is required to provide temporary alternate arrangement to the tenants/occupants in transit camps till the building is redeveloped. It is another story that some of such tenants/occupants have been languishing in those transit camps for years together. In case of redevelopment of such cessed buildings provisions of Development Control Regulation for Greater Mumbai, 1991 ('DCR' for short)

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are applicable which provide for schemes for additional FSI as incentive for redevelopment. However, insofar as privately owned non-cessed buildings are concerned, it appears that there is no mechanism/scheme in place to provide for temporary alternate accommodation and MHAD Act is not applicable and it appears that the schemes for additional FSI under DCR also do not apply to redevelopment of such non-cessed buildings. Consequently, in such privately owned non-cessed buildings, unless the landlords and the tenants/occupants arrive at an amicable arrangement, there is a stalemate/deadlock in respect of redevelopment of the building. In such a situation, the tenants/occupants do not vacate and cling on to their premises (never mind the risk of their life in the event of collapse of the dilapidated building) as there is always a genuine and bona fide apprehension on their part whether the landlord would ever redevelop the building and within what time frame and as to what shelter they would have over their head during the interregnum if the building was to be redeveloped. The owners and the tenants/occupants many a times are at loggerheads and unable to resolve the issue. The tenants/occupants sometimes make unreasonable and ridiculous demands whereas at times the landlords wait for a situation where the tenants/occupants are required to vacate forcibly pursuant to the section 354 notice for demolition of the building and they are in a more advantageous position to negotiate and eventually offer a raw deal to the tenants/occupants for surrender of their premises to them. There may be several other reasons due to which the landlords and the tenants/occupants are unable

to come to terms. In the bargain, redevelopment is not possible and more often than not, the building is neglected and remains in a state of dis-repair and progressively deteriorates. As noted earlier, in such cases of non-cessed tenanted buildings, MHADA has no role to play and the schemes for additional FSI under DCR are apparently not applicable. As a matter of fact, even in cases of cessed buildings, where the schemes of additional FSI under DCR are applicable, there are cases where landlords are unwilling to redevelop the building and the tenants/occupants also are not able to garner the required 70 percent consent as required under the DCR, inter alia for reasons of interse disputes of choice of developer, etc. There is thus a stalemate/deadlock in such cases also in respect of redevelopment of cessed buildings.

4. Under the MHAD Act as well as under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, there are provisions for acquisition of the properties by the State Government/Authorities. Under the Mumbai Municipal Corporation Act also, there are powers available with the Corporation under the amendments/insertions made to section 354 of the Mumbai Municipal Corporation Act to make appropriate schemes for improvement or declare an area as clearance area and develop building/s and also to acquire property for re-development. We understand that there is also a proposal by the State Government to even acquire private land coming in the way of the proposed cluster re-development project if the owner of that land

refuses to hand it over under the cluster re-development policy. There are provisions in the Disaster Management Act, 2005 for measures to be adopted for prevention thereof of any disaster and for rehabilitation and reconstruction. It appears that in the State Disaster Management Plan also, there is a reference made to rehabilitation and re-construction in respect of dilapidated buildings. As a matter of fact, in one of the Petitions before us [Writ Petition (L) No.1933 of 2014 – Shree Dipty Co-operative Housing Society Ltd. v. The Municipal Corporation of Greater Mumbai & Ors., which is disposed of], the Corporation had invoked the provisions of that Act in respect of a dilapidated building and issued notice accordingly. We also prima facie find that in CRZ Notification 2011 also, there is a reference made for the occupants (of dilapidated, cessed and unsafe buildings) to be accommodated in the new building after re-construction and it further provides for setting up of a High Level Oversight Committee.

5. A building would always have a shelf-life. By way of proper maintenance and repairs, that shelf-life can be extended for a few years. There would however always be a point where repairs are not feasible and the building is required to be pulled down and re-constructed/redeveloped. Majority of the old tenanted buildings in Mumbai have outlived their lives, whether cessed or non-cessed. Mumbai, which is said to be the financial capital of the country and come to be known as a world city, can ill-afford a situation where such old

buildings remain in a state of dis-repair and collapse, which unfortunately has become a common phenomenon each year, come monsoon. This not only consumes human lives, but also sends a wrong signal world over.

6. In the circumstances, we are of the view that it is time that the State Government steps in. It is expected of the State Government to take appropriate measures and set a mechanism in place and/or consider bringing out an appropriate legislation/policy, if necessary, to salvage the situation and address the apprehensions and concerns of the tenants/occupants (of such dilapidated and unsafe buildings) or for that matter the landlords/owners (who are often subjected to criminal prosecution) and all concerned and to prevent loss of human lives. Passing orders by Court of forcible eviction of tenants/occupants of dilapidated and unsafe C-1 category buildings (so as to prevent loss of human lives) and consequent demolition of such buildings and/or providing some conditions in IOD as regards commencement of construction by landlords/developers (so as to protect the interest of the tenants/occupants) in terms of our order dated 23.06.2014, is no solution. It is only a transient measure. Such situations can hardly be left in a state of flux. It needs to be ensured that redevelopment of such dilapidated and unsafe buildings, whether cessed or non-cessed, takes place at the earliest and the tenants/occupants are put back in possession of the newly constructed building within a stipulated time frame and the landlords too get their due.

7. We are conscious of our powers under Article 226 of the Constitution as also the limitations of the State Government. However, at the same time, we need to highlight this issue and cannot be unmindful to this human problem and turn a blind eye. The fact that presently there is no legislation or policy in place in respect of redevelopment of tenanted non-cessed buildings, is not an answer to the problem. Prima facie, we find that even in case of cessed buildings in the island city, the provisions of MHAD Act have been unfruitful so far as redevelopment is concerned and in our view, there has to be some mechanism in place to take things forward in the event the landlords or for that matter, the tenants/occupants (in case of their inability to procure 70 per cent consent as required under DCR) are not able to redevelop the building/s by taking advantage of the schemes under the provisions of DCR. There is, in our view, a need for some serious introspection.

8. We direct the State Government to place on record a roadmap addressing the issues discussed above by way of an Affidavit.

9. Stand over to 10 September 2014.

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)