FOR THE RESPONDENT-STATE	**Mr Amit Shastri, AGP.**
FOR THE RESPONDENT-MCGM	**Mr Kunal Waghmare.**
FOR RESPONDENT NO.9	**Mr Piyush Raheja,** *i/b Mayuresh Borkar.*
PRESENT IN PERSON	**Mr Vinay A Dwivedi,** *Respondent No 6.*

CORAM : GS Patel &
Kamal Khata, JJ

DATED : 18th October 2023

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

1. **Rule**. Rule returnable forthwith.

2. There are two Affidavits in Reply by the Municipal Corporation of Greater Mumbai ("**MCGM**") and an Affidavit in Reply by the 6th Respondent ("Vinay Dwivedi") on behalf of himself and Respondent Nos 7 & 8. Mr Raheja appears for Respondent No 9 who is a co-owner of the property and claims that Respondent Nos 6 to 8 are legal heirs of the original lessee. No reliefs are sought against Respondent No 9 who has apparently been joined as a necessary party.

3. Before us the matter has unfolded steadily but, as we shall presently see, in a wholly unsatisfactory fashion from 21st August 2023. We turn first to the orders that we passed since that date. They tell their own story.

4. The first order is of 21st August 2023. It reads thus::

"1. This is a most unfortunate situation. The Petitioner Association has 103 or 104 members. They are tenants of a structure that was called Chandralok at CTS No. 872, 872/1 to 46 Dubey Wadi, Sudhakar Dubey Compound, Aarey Road, Village Pahadi, Goregaon (West), Mumbai - 400104. Respondent No. 2 is the Municipal Corporation of Greater Mumbai ("**MCGM**"). Respondent No. 6 is one Vinay Ashok Dwivedi. He appears in person. Respondent No. 9 is one Shamina Pramod Jaykar. She is the owner and lessor of the plot on which the building stood. Mr Dwivedi attempted to begin addressing this problem by saying that he was the lessee and not the lessor, as if to suggest that the issues with the tenants were that of Ms Jaykar and were not his concern. But it emerges as an undisputed position that Ms Jaykar is the lessor only of the land not the structure, and that it is Mr Dwivedi who is the lessee of the land, but the owner of the structure. The law in India recognises explicitly the concept of dual ownership, separately for land and separately for structure. Mr Dwivedi should be well aware of this.

2. The building Chandralok is said to have been not only more than 55 years old, but also consistently neglected. It was the subject of notices under Section 354 of the Mumbai Municipal Corporation Act, 1888 from the MCGM. While those notices were indeed challenged in civil proceedings, the fact also undisputed is that the building has been brought down. Mr Dwivedi would have it that it is the Petitioner Association that "demolished" the building, but this is hardly relevant. Indeed, we would venture so far as to say that it is entirely irrelevant. The tenants are now scattered across the city, forced to fend for themselves, and to find accommodation wherever they can on whatever terms they are best able to afford. They are

provided no transit rent. There is so far no indication of any redevelopment proposal. There is no prospect in sight of their homes being rebuilt or redeveloped.

3. It is not the law that tenancies end with the pulling down of a structure. The law is to the reverse. The obligations of the owner of a structure are well settled, both in municipal law as also under the Maharashtra Rent Control Act, 1999. These are not obligations that can be avoided, and this Court has repeatedly held as much, even if Mr Dwivedi is presently unaware of those legal obligations.

4. We require an Affidavit in some urgency from the MCGM about the state of the building, the details of when it was brought down and whether the MCGM has on its files any proposal at all from the owners of the structure for redevelopment of the building, the appointment of a developer and any proposals for payment of transit rent or the provision of transit accommodation.

5. Similarly, Mr Dwivedi is to file an affidavit setting out what he proposes to do in regard to the property that has now been demolished. We make it clear that it is open to Mr Dwivedi to say on affidavit, though at his peril, that he proposes to do precisely nothing about the re-development of this building. If that be his stand, we will decide what the law requires him to do and what he is, therefore, then obligated to do. If he does have a proposal, we will need those details on affidavit. All Affidavits are to be filed and served on or before 25th August 2023.

6. List the matter high on board on 29th August 2023."

5. A second order followed on 29th August 2023 in the following terms:

"1. The Municipal Corporation of Greater Mumbai ("**MCGM**") has filed one Affidavit. Its further Affidavit is to be filed in the Registry by e-filing.

2. Respondent No. 6, Dwivedi, has the leasehold rights from Respondent No. 9 for 99 years. He agrees that the building itself was brought down in 2019. The tenants are scattered across the city. There has been no progress in re-development. There is no transit rent. There is no proposal presently for redevelopment. Dwivedi appeared on the last occasion in person. He is now represented. He seeks time of a week to work out a proposal. We will grant him that indulgence. He is free to meet with the representatives of the Petitioner, the Tenants Welfare Association. Any proposal must necessarily take into account the development potential of this land at Goregaon including incentive FSI, fungible FSI if any, loading of TDR and so on. We will not accept an argument that without an appropriate order of a Court of competent jurisdiction, any tenancy can be held to have been terminated merely because the building has been demolished or brought down. That is not the state of the law. Tenants' rights continue. Whether on redevelopment these are to be converted to ownership or to be continued as tenancy is not our concern in a Writ Petition under Article 226 of the Constitution of India.

3. Having said this, we must bear in mind the limits on the exercise of our discretion and these will have to be read with the prayers in the Petition. Prayer (a) seeks a mandamus demanding that the MCGM direct compliance with various sections of the Mumbai Municipal Corporation Act, 1888 ("**MMC Act**") to compel the reconstruction or redevelopment of the building in question and for grant of compensation in lieu of transit accommodation etc. The alternative prayer (b) is for a direction to that Tenants Association to call for tenders from interested developers to redevelop the property.

4. This is, therefore, the frame of the discussion. At the first stage, we are leaving it to Dwivedi and the Petitioner to see if they can arrive at some understanding, arrangement or agreement in regard to redevelopment. We do however make it clear that we will require the public authority, namely, the MCGM to supervise the project until completion including monitoring progress, ongoing welfare of tenants and so on. All of that is part of the planning process.

5. List the matter on 6th September 2023."

6. Then we come to our order of 11th September 2023 which reads as follows:

"1. Even at this stage, we have to express our grave disapproval of the manner in which the 6th Respondent has gone about addressing this Petition. He is the lessee for the 99 year-old property in question CTS Nos. 872 and 872/1 to 46 at Sudhakar Dubey Compound, Aarey Road, Village Pahadi, Goregaon (West), Mumbai, 400 014. The plot is about 2702.5 sq mts. The Petitioner is a welfare association of 103 or 104 tenants or occupants of the Chandralok Building. The Association is registered. The Chandralok building is not in existence. It was built in 1965. The land is leasehold. The building was not repaired for a long period of time. There were structural audits. The members of the Petitioner vacated the building in about July 2019. Following this, the Municipal Corporation of Greater Mumbai ("MCGM"), the 2nd Respondent partly demolished the building and made it inhabitable.

2. There the matter has remained.

3. In this Petition, what the Association seeks is an order directing the MCGM to take action under Section 489 of the Mumbai Municipal Corporation Act, 1888

compelling the owner to carry out necessary works and if he does not do so to have those works done at the owner's cost. This is to be read with Section 354 for removal of whatever skeletal structure presently remains. The principal prayer seeks that redevelopment be done under DCR 33(7)(a) which deals with redevelopment of a non-cessed building. The alternative prayer (b) is to permit the Petitioner Association to call for tenders for an appropriate redevelopment.

4. On 21st August 2023 when the matter was first before us, Respondent No. 6, Dwivedi appeared in person. We noted some of the facts including that the present condition affects over 100 persons, many of them senior citizens, all forced to vacate their homes five years ago and with no visible prospect of rehousing or redevelopment. We required an Affidavit from Dwivedi as to what he proposed to do in regard to the property.

5. There was no answer.

6. The matter came up again on 29th August 2023. We noted in paragraph 2 that there was still no proposal for redevelopment. Dwivedi was now represented by Mr Chavan. We said that he was free to meet with a representative of the Petitioner, but that a proposal must be placed before the Court.

7. Today, Mr Dwivedi has instructed Mr Chavan to make an altogether different submission. The attempt is to divert this entire Petition into a completely unintended course. He now says for the first time that on this plot that he owns, there are residential chawls. Unless there is what he calls a 'composite development', the Chandralok building cannot be redeveloped. A so-called composite redevelopment will benefit all is the submission made before us.

8. What is not pointed out is what steps, if any, Dwivedi has taken towards this much-vaunted composite development and why it required a Petition to be filed and directions of the Court. To our great surprise, he seems to have instructed Mr Chavan to suggest that he is not aware of exactly who the tenants are. There are undoubtedly rent suits filed one against the other and we find it astonishing that in a city like Mumbai a landlord does not know who is in occupation and who is a tenant. This is all the more surprising because Dwivedi claims to be a practicing advocate. That certainly gives him no immunity from the requirements of either the Rent Control Act or the planning law in question.

9. We also disapprove of the manner in which Dwivedi has conducted himself in Court despite having engaged the services of Mr Chavan. If he is a practicing advocate, we expect him to know better, and not parade such hubris. As a litigant, he has no special privileges just because he is an advocate. He is here in his capacity not as an advocate appearing for a client nor is he appearing in person, which we do not now propose to allow in any case, but he is here in his capacity as an owner of a tenanted immovable property. We will not permit him to constantly interrupt Mr Chavan, elbow him aside and to directly address the Court.

10. The chawls in question, Mr Sawant for the Petitioners confirms, are only ground floor residential structures and there is no great complexity as is sought to be suggested by Dwivedi through Mr Chavan.

11. At Mr Chavan's request, and since we appreciate his difficulty and predicament and to enable him to get appropriate instructions as also to advise Dwivedi correctly of where precisely he stands, we will take up the matter again on Friday, first on board. By that time, we expect at least a basic proposal with some details. This must include

finance sources, list of tenants and all other particulars including time frames. We do not insist that a proposal must necessarily be of a particular form. It may be separate for Chandralok building and separate for the chawls. It may be one for Chandralok building and none at all for the chawls or it may be a composite development as is being suggested. But we will not accept this position that Dwivedi just goes on seeking dates one after the other, with one excuse after the other but without adhering to the directions of this Court just because he is a 'practicing advocate'.

12. List the matter first on board on Friday, 15th September 2023."

7. Obviously, this was building up constantly. On 20th September 2023 we passed a more detailed order. We began by reproducing the previous orders and since we have already done that we will not reproduce the whole of that order again. Instead we reproduce paragraphs 4 to 10 of our order of 20th September 2023:

"4. We adjourned the matter on that date, as paragraph 11 quoted above shows, to enable Mr Chavan to get appropriate instructions and to advise Dwivedi. We made it clear that we expected a basic redevelopment proposal. We indicated broadly what that proposal should have although we were not insistent that it must be in any particular form.

5. What has happened thereafter is that Mr Chavan is said to have withdrawn from the matter. Whether he has withdrawn or was discharge is unclear to us, but that is irrelevant. Dwivedi now seeks to represent himself. We will not permit this. It will not distract from the essential facts that we have noted, namely, as the building owner and landlord, Dwivedi has obligations. His obdurate refusal to show us a proposal causes the tenants a significant amount of prejudice. They are out of possession for a long time. We

do not believe that this is the state of the law that a property owner can contrive a situation where a tenant loses a tenanted residence and is then left with nothing at all simply because the property owner sits on his hands and does not come forward with any proposal for redeveloping the property.

6. We noted that it was only after this Court made an order that Dwivedi suddenly woke up to the realisation that there are ground floor chawl structures on the same plot. He then propounded, for the first time, some theory of a composite development. But even on that, he offers no details today.

7. If Dwivedi has an Affidavit, we do not see why we should receive it. Regrettably, Dwivedi seems to believe because he holds a law degree, therefore our rules and procedures do not apply to him, for example, that he does not need to serve a copy of his Affidavit in advance to other side. He can simply tender to it in Court and we are supposed to accept it. He also seems to believe that our established rules regarding allowing a party to appear in person have no application to him at all. He seems to believe that he can engage and discharge advocates at will and will get a hearing whenever he desires either in person or through an advocate momentarily engaged.

8. We decline to take Affidavit on file simply because it has not been served. Dwivedi will need to appear before the stipulated Committee to obtain leave to appear in person. If he desires, he is at liberty to engage another Advocate. We make it clear that we will not permit him to discharge Advocates freely at will like this.

9. This is a final opportunity to Dwivedi. We reiterate our insistence that a basic proposal must be place before us as earlier indicated. If that is not done, we will have little

choice but to render a judgment on the state of law and rights of tenants in a situation such as this.

10. List the matter high on board on 4th October 2023."

8. On the next date, 4th October 2023, we noted that Respondent No 6 had prepared an affidavit dated 3rd October 2023. We passed directions for service and for filing that affidavit.

9. The matter was before us yesterday and finding that the papers were in disarray, we directed that they be arranged and properly paginated. Respondent No 6, appearing in person sought a longer adjournment. We refused and we did so in view of the facts that we have set out above.

10. We turn to the facts of the matter. The Petitioner is a Welfare Association. It says or claims to have as its membership, seven persons who are in its Managing Committee and fully 103 persons who are or were monthly tenants of the Chandralok building at Sudhakar Dubey Compound. The Association is registered under the Maharashtra Public Trusts Act, 1950.

11. A few dates and events are necessary. They are not contentious. The building was constructed in 1965. It outlived its life. It does not seem to have been subjected even to normal or routine repairs and certainly not to more intensive repairs as the passage of time may have required. By 2014, the building had deteriorated considerably. There then came to pass the usual process of obtaining structural audit reports of the construction. Ultimately these resulted in the second Respondent, the MCGM

represented by Mr Waghmare categorizing the building in the C-1 category. This meant that it was dilapidated, dangerous, uninhabitable and required to be pulled down. This categorization and the formation of a Technical Advisory Committee ("**TAC**") has its own jurisprudence. They go back to the year 2014 and an interim order of this Court. We need not detain ourselves over that aspect of the matter since there is no claim for reference to the TAC. Indeed they cannot be, because as we shall presently see the old building no longer exists.

12. That the building received notices *inter alia* under Section 353-B on 10th April 2019 and then a notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 ("**MMC Act**") on 24th June 2019 is not in dispute. The building was vacated on 16th July 2019 and was demolished.

13. Respondent No 6 claims that this demolition is in violation of orders of the City Civil Court, particularly an order dated 11th July 2019 which ordered status quo. There is not much that can be done about that. If the 6th Respondent has adopted proceedings against the municipal officers in the City Civil Court those will obviously have to proceed. We are concerned with the public law element, and we will take the facts as we find them namely, that the building has now been razed to the ground. Since July 2019 all 103 tenants are off-site, scattered across the city, their once tightly-knit community fractured. Since then, and this is the nub of the complaint, they have seen no vestige or semblance of any proposal for reconstruction or redevelopment. That in fact is the substance of the relief that they

seek in this Petition. There are only two prayers. These are set out at pages 30 and 31. The second is an alternative to the first. They directly invoke provisions under the MMC Act. They read:

> "a. This Honourable Court be pleased to issue Writ of Mandamus or writ in the nature of Mandamus, or any other writ, directions, orders be passed directing the Respondents Nos. 1 to 5 to take appropriate steps to direct the Respondents Nos. 6 to 8 to comply with the provisions of Section 489 of the MMC Act read with section 354 and Section 499, of the MMC Act, 1888, DCPR Regulation 33(7)(A), by reconstructing/redeveloping the building on the land of the building situated at CTS no. 872, 872/1 to 46, Dubey Wadi, (Sudhakar Dubey Compound), admeasuring about 2702.5 sq.mt., Aarey Road, village Pahadi, Goregaon (West), Mumbai- 400 104 granting compensation in lieu of the transit accommodation and making provisions and allotting Permanent alternate accommodation in accordance with the D.C.P.R., 2034.
>
> b. In alternative of prayer clause (a), this Hon'ble court be pleased to allow the Petitioner to call for tender seeking offers from developers and further appoint a Developer to redevelop the said Building for providing permanent alternate accommodation to all existing tenants."

14. Annexed to the Petition at page 107 is a notice of 17th May 2023 from the solicitors of the Petitioners to the present Respondent Nos 6 to 8. Paragraph 7 at page 109 notes that even then there was no progress on redevelopment. Paragraph 8 notes a previous letter of 2nd November 2020 which went without a reply. Paragraph 9 mentions that the 100 plus members of the Association, all from the lower middle classes, were out of possession, without transit rent and were barely surviving. Many of them were house

helpers, cooks, etc. Several were senior citizens. Paragraph 9 also mentions that without any provision for transit rent (as would have been the case had the owners/lessees tied up with the developer) these families were forced to fend for themselves in making their own arrangements for temporary accommodation. This was becoming increasingly difficult. Paragraphs 10 and 11 contain the demands addressed to Respondent Nos 6 to 8 to undertake redevelopment. To this there was no reply.

15. At page 113 is a notice of 6th June 2023 from the Petitioner's Solicitors to the MCGM. It restates the contents of the previous notice. It mentions the issuance of Section 354 notice. In paragraphs 11 and 12 at page 118 this notice specifically invokes the provisions of Section 499 of the MMC Act. There is no reply from the MCGM to the Petitioners' notice.

16. One further document in the Petition needs to be referenced. This is Exhibit "G" at page 101. This is called a measurement sheet. It is signed by the Assistant Engineer (Building & Factory)-II, P/South Ward on 8th July 2019. The listing in this measurement sheet is of 100 persons. It mentions the areas under occupation, the nature of the occupancy, whether it is residential or non-residential, details of the rooms or the shops in question, the carpet area and the total carpet area in square meters. There is no challenge that we know of to the measurement sheet by Respondents Nos. 6 to 8.

17. The MCGM has filed two Affidavits in Reply. One is dated 25th August 2023. The second is dated 28th August 2023. The first

MCGM Affidavit of 25th August 2023 is in response to this Court's query. It confirms that the MCGM has received no redevelopment proposal for the CTS numbers of the property that is the subject matter of this Petition.

18. The second Affidavit is by the Assistant Engineer in Charge, (Building & Factory), P/South Ward. Paragraph 5 mentions the notice under section 353-B of the MMC Act. Paragraphs 6 and 7 mention the details regarding the structural audit, the reference to the TAC and so forth. Paragraph 8 has referenced to an Appeal from Order filed by one of the parties for restoring some water connections. Again, that is not our immediate concern.

19. There is an Affidavit in Reply by Respondent No 6. He appears in person. The Affidavit is dated 3rd October 2023. The first reference at page 223 is to the City Civil Court's status quo order of 11th July 2019. As we noted, the 6th Respondent's remedies as against the MCGM are entirely open for appropriate proceedings. We are not dealing with that aspect of the matter at all. Then our attention is invited to paragraph 20 of the Affidavit. As the previous narrative shows, in order after order we had asked the 6th Respondent to tell us affirmatively what steps were being taken and what plans were proposed for redevelopment or reconstruction. We had not demanded actual redevelopment or reconstruction overnight. Obviously, we could not. But we needed to know whether there was even a proposal to that effect. This was undoubtedly necessary because as the MCGM's first affidavit shows us that the 6th Respondent had made no application whatsoever to the MCGM.

Paragraphs 20 and 21 of the 6th Respondent's Affidavit are said to address the Court's queries. This is all that they say (reproduced verbatim):

> 20. I say that the Respondent no.6 to 8 is positively **approaching and working in direction** to redevelop the demolished chandralok building u/s 354 r/w sec 489 of the M.M.C Act, 1888 along with the existing structure i.e garage and chawl rooms present in the chandralok building compound and further to have conveyance from the Land owner from 2015. I say that the redevelopment project is huge and composite including tenants of the present chawls and garage premises situated in the chandralok building compound and the tenants of the completely demolished Chandralok building u/s 354 r/w 489 of the M.M.C Act, 1888 **hence it may take considerable time** to settle all the issue in good faith before full fledge redevelopment.
>
> 21. I say that Respondent no.6 to 8 were in talks with the developer through agent for the redevelopment proposal of the demolished Chandralok Building and Respondent sought time of the court for the submission of the same. **I say that agent of Developer *due to the present writ petition* of the petitioner started putting unfair condition against the interest of the respondent n6.6 to 8 for the redevelopment of the Chandralok Building and for this reason the talks has fail and proposal cannot be submitted till to date. I say that the Respondent No.6 to 8 is in consultation and talks with other developers and also exploring other option of redevelopment of the demolished chandralok building**.
>
> (*Emphasis added*)

20. To describe this as wholly unsatisfactory is the mildest understatement. There are only generalities. Not one developer is

identified. Not one issue is identified. No specifics are presented. Astonishingly, these Petitioners, tenants who are adversely affected by the 6th Respondent's indolence, intransigence and total failure to take any steps, are themselves being blamed. What we are really being presented with here is an utterly remarkable proposition from Respondent Nos 6 to 8, who claim to have rights including of development and redevelopment over the property, that they have no obligation in law to redevelop or even reconstruct the building. Supposedly, the owners can sit on their hands and do nothing, and the tenants cannot complain.

21. It is hardly contentious that ownership of a property necessarily entails a right to enjoy the benefits and fruits of development of that property. Nobody is denying Respondent No 6 these rights at all. But in law, and especially when there are tenants, these rights come with obligations. If we cast about to look for these obligations, we should find them in two places running in parallel. The first is of course under Section 17 of the Maharashtra Rent Control Act, 1999. We notice this not because we proposed to fashion any order under that section; clearly we cannot. We do so only to note that there is not, as the 6th Respondent implicitly suggests, an entire vacuum regarding the rights of tenants whose homes have been demolished, and specifically, their rights to have those homes rebuilt, reconstructed or included in a redevelopment. Section 17 of the Maharashtra Rent Control Act, 1999 reads as follows::

> **"17. Recovery of possession for repairs and re-entry-**
>
> (1) The court shall, when passing a decree on the ground specified in clause (h) of subsection (1) of section

16, ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election, in the decree and specify in the decree the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

(2) If the tenant delivers possession on or before the date specified in the decree, the landlord shall, two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work shall be completed. Within thirty days from the date of receipt of such notice the tenant shall intimate to the landlord his acceptance of the accommodation offered and deposit with the landlord rent for one month. If the tenant gives such intimation and makes the deposit, the landlord shall, on completion of the work of repairs, place the tenant in occupation of the premises or part thereof on the terms and conditions existing on the date of the passing of the decree for eviction. If the tenant fails to give such intimation and to make the deposit, the tenant's right to occupy the premises shall terminate.

(3) If, after the tenant has delivered possession on or before the date specified in the decree, the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in accordance with subsection (2) the court may, on the application of the tenant made within one year of the specified date, order the landlord to place him in occupation of the premises or part thereof on the terms and conditions existing on the date of passing of the decree for eviction and on such order being made, the landlord and any person who may be in occupation shall

> **give vacant possession to the tenant of the premises or part thereof.**
>
> **(4) Any landlord who, when the tenant has vacated by the date specified in the decree, without reasonable excuse fails to commence the work of repairs and any landlord or other person in occupation of the premises who fails to comply with the order made by the court under sub-section (3), shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.**
>
> (*Emphasis added*)

22. For our purposes though, and given the frame of the prayers and the Petition, we are concerned with the other public law interface and that is with Municipal Law. The Municipal Cooperation is not only a planning authority under the Maharashtra Regional Town Planning Act, 1966 ("**MRTP Act**") but it is also a local authority governed by a dedicated Statute namely the Mumbai Municipal Corporation Act, 1888 ("**the MMC Act**").

23. As we have seen, the prayer is framed under Section 499 of the MMC Act. This is a Section that falls under Chapter XIX of the MMC Act which deals with procedure and, specifically, a sub section relating to recovery of expenses by the Commissioner and the General Manager. Section 499 of the MMC Act reads thus:

> **499. In default of owner the occupier of any premises may execute required work and recover expenses from the owner.—**

(1) Whenever, the owner of any building or land fails to execute any work which he is required to execute under this Act or under any regulation or by-law made under this Act, the occupier, if any, of such building or land shall be entitled to execute such work in the manner set out in subsection (2).

(2) **The occupier or occupiers interested in such work may seek the approval of the Commissioner for executing such work. The Commissioner shall grant the approval unless other measures are taken by him to execute the said work. While granting the approval the Commissioner shall specify the nature of the work. Upon such approval being granted, the occupiers shall be entitled to execute the said work and the expenses incurred for such work shall for all purposes be binding on the owner. The occupiers shall also be entitled to deduct amount of expenses incurred for such work from the rent which from time to time become due by them to the owner or otherwise recover such amount from them:**

Provided that, where such work is jointly executed by the occupiers the amount to be deducted or recovered by each occupier shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such work:

Provided further that, the total amount so deducted or recoverable shall not exceed the amount of expenses incurred for such work.

(3) **If the owner fails to commence the reconstruction of the building which is pulled down in pursuance of section 489 read with section 354, within the period of one year from the date of demolition, the tenants shall be entitled to form an association or society and take appropriate steps for reconstruction of the building.**

(4) **The owner of the building, which is pulled down in pursuance of section 489 read with section 354, shall complete the reconstruction or redevelopment within a period of three years from the date of demolition of such building or such extended period as may be granted by the authority specified by the Government, by notification in the Official Gazette. If the owner fails to complete the reconstruction or redevelopment within the said period, then the tenants shall be entitled to form an association or society and take appropriate steps for reconstruction of such building.**

(5) After reconstruction or redevelopment of such building as per sub-section (3) or (4), as the case may be, the area equivalent to the area occupied by the tenant shall be handed over to him by the owner, association or, the society, as the case may be, without any further delay and within one month from the date of completion of reconstruction or redevelopment, as the case may be, of such building.

(6) **The right of reconstruction to the tenants under sub-section (3) or (4) shall only be for reconstruction to the extent of the area of demolished building. The ownership rights and title to the land including reconstructed or redeveloped building shall continue to remain with the owner and the status of the tenants shall remain as tenants only.**";

Explanation I.—-For the purposes of this section, the expression "expenses incurred for such work" means the total cost as certified by the Commissioner or an architect from the panel of architects notified by the State Government for the purposes of the *Bombay Rents, Hotel and Lodging Houses Rents Control Act, 1947, together with simple interest at ten per cent. per annum on such amount

calculated from the date of completion of such- work till the date of deduction or recovery thereof.

Explanation II.—The approval of the Commissioner given under this section shall include the right to enter the building or land for the purpose of execution of work.]

***Explanation III.*—For the purposes of this section, "the tenant" shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999.**"

(*Emphasis added*)

24. Sub-sections (3) to (6) and Explanation III were added by the amending Mumbai Municipal Corporations (Amendment) Act, 2017, Maharashtra Act No XXII of 2017 dated 19th January 2017 with effect from that date.

25. This Section will necessarily have to be read with Sections 489 and 354. Section 489 also falls under Chapter XIX of the MMC Act. Sub-section (2) of Section 489 has a tabulation of various sections to which sub-section (1) relates. Section 354 is one of the sections in the tabulation of Section 489(2). Section 354, however, is under a different chapter. This is under Chapter XII and specifically under the sub-category of 'dangerous structures'. Section 354 speaks of removal of structures which are in ruins or likely to fall. Section 354 reads as follows:

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 condition, 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, 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 hand-rail, 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.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by subsection (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the inter-se rights of the owners or tenants or

occupiers, including right of re-occupation in any manner.

***Explanation.*—For the purposes of this section, "the tenant" shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999.**"

(*Emphasis added*)

26. Now if we have a look at this, chaining of these three sections, we can see at once that it is the obligation of the MCGM under Section 354 as part of its wide civic duties in city management to remove structures that are in ruins or likely to fall. Then under Section 499, where a requisition or an order is made *inter alia* under Section 354 and the person does not comply, that work may be got done at the cost of the noticee under Section 354. Had matters stopped at that, as Respondent No 6 seems to suggest, then perhaps the Petition would have stood differently. But that is not the situation at all. Section 499 deals specifically with a situation of Section 354 and 489 being applied. Sub-section (3) was added by a recent amendment. It can safely be presumed that this amendment was necessitated finding that there was a lacuna in the statute that required to be filled, namely, the protection of persons who were affected by a Section 354 demolition or bringing down of a structure. Where those persons, not being owners were affected, the introduced sections, sub-sections (3) to (6) of Section 499 provided relief. Notably Section 499(3) mentions the word *"tenants"* and confers on them an entitlement to form an association and take appropriate steps for *"reconstruction"* of the building.

27. The 6th Respondent may be correct to this extent that sub-section (3) of Section 499 does not speak of *"redevelopment"*. Redevelopment may be a much wider concept because it may involve the acquisition, distribution and utilization of additional FSI of various kinds. *Reconstruction*, at least for the purposes of this section would necessarily mean replacing that which once existed and was brought down. We believe that is a reasonable construction in the facts and circumstances of the case. This is *inter alia* clear from Section 499(6) because this speaks of the *'right of reconstruction'* to tenants under sub-sections (3) and (4) of Section 499.

28. Explanation III to Section 489 and the Explanation to Section 354(4) tell us that for the word *'tenant'* carries the same meaning as under Section 7(15) of the Maharashtra Rent Control Act, 1999.

29. If there is any dispute in regard to this distinction between *"redevelopment"* and *"reconstruction"*, we imagine that it ends with a plain reading of sub-section (5) of Section 499, because this then speaks of 'equivalent areas' being 'reconstructed'. Of course sub-section (5) uses the words *"or redevelopment"* as well but that would have to be assessed on a case to case basis. Sub-section (6) of Section 499 then speaks of *"the right of reconstruction to tenants"* under sub-sections (3) and (4) above and it clarifies that the extent of reconstruction is only to **the extent of the area of the demolished building** i.e., not redevelopment with loading of additional FSI but only to the extent of the FSI that was consumed by the now demolished structure. Again, the second sentence of

Section 499(6) preserves the rights of the owners of the property and keeps the tenants as tenants. This is important because in the course of redevelopment, particularly under some provisions of the DCPR 2034 tenancies may be converted optionally to ownership. The statute does not give the tenants rights to convert tenancy into ownership. What it does is to preserve the rights of tenants as tenants.

30. This aspect of the matter really needs no further explanation. The question of law regarding the survival of tenancies after the demolition or bringing down of a building is no longer *res integr*a. It has been conclusively decided by a decision of the Supreme Court i *Shaha Ratansi Khimji & Sons v Kumbhar Sons Hotel Pvt Ltd & Ors*:[1] the fact that a tenanted building is brought down does not mean that a tenancy is extinguished or comes to an end.[2]

31. In this view of the matter, and having regard to the complete failure of Respondent No 6 to produce before us on affidavit or otherwise evidence of any tangible steps towards either reconstruction or redevelopment, and which, had it been before us, would only have resulted in orders and directions to the MCGM as the public authority, we turn instead to an examination of what is it that the authority has done in this regard. This has to be seen with

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1 (2014) 14 SCC 1.

2 See also: *Hind Rubber Industries Pvt Ltd & Ors v State of Maharashtra & Ors*, 2022 SCC OnLine Bom 1640 : (2023) 1 Bom CR 342; *Andheri Purab Paschim Cooperative Housing Society Ltd v Municipal Corporation of Greater Mumbai & Ors*, Original Side Writ Petition (L) No 4234 of 2023, order dated 12th September 2023; *Drishti Hospitality Company Pvt Ltd & Anr v Municipal Corporation of Greater Mumbai & Ors*, and connected matters, order dated 25th September 2023 in Writ Petition (L) 15351 of 2023.

the prayers in the Petition. They invoke, as we have noted Sections 489 and 499 of the MMC Act. The latter section gives bodies such as the Petitioner the right to come together in an association and the right to apply for and obtain a reconstruction permission. Obviously that permission must conform to all building regulations and to the limitations imposed by Section 499 itself as to the area proposed to be reconstructed etc. Ownership does not change as a result of that reconstruction. But we see no reason why the MCGM should remain a silent bystander for years and years together when it finds that there is a building that has been brought down, tenants have been evicted and there is no proposal before it for either reconstruction or redevelopment at the instance of the property owner. It seems to us to stand to reason that the MCGM can certainly demand from the property owner that the reconstruction or redevelopment be taken up in a stated time frame and if not the MCGM can cause steps to be taken under the MMC Act. Indeed, we believe that the MCGM *must* make such a demand. We reject out of hand any proposition that the MCGM does not have the power to compel or permit reconstruction at the instance of tenants affected by the bringing down of a tenanted building.

32. The submission on maintainability by the 6th Respondent is simply that there is a dispute as to the tendencies of some of the Petitioners' members and secondly that the prayer (a) speaks of reconstructing or redeveloping and the alternative prayer speaks of the appointment of a developer to redevelop the property. The submission by Mr Dwivedi is that tenants have no right of redevelopment. They only have a right to reconstruct inch for inch and area for area. He is correct. But that does not affect the

maintainability of the Petition. At best, we would be granting the *lesser* relief and moulding the prayer in doing so. It can hardly be suggested that granting a lesser relief than that which is sought is beyond the powers of a Writ Court under Article 226 of the Constitution of India.

33. Having regard to these circumstances and finding no answer at all to either the Petition or even to queries of this Court in the Affidavit of Respondent No 6, we make Rule partly absolute in terms of prayer clause (b) permitting the Petitioner Association to apply to the MCGM for permission for reconstruction of the demolished building at CTS No 872, 872/1 to 46, Dubey Wadi, Sudhakar Dubey Compound, Aarey Road, Village Pahadi, Goregaon (West), Mumbai - 400104.

34. As to the question of transit accommodation or transit rent, we do not find a specific provision to that effect in the MMC Act. If the Petitioners or their members have remedies under the Maharashtra Rent Control Act, 1999 they are at liberty to pursue those or, alternatively, to adopt such proceedings in a jurisdictionally competent civil court as they may be advised.

35. If the association through its consultants submits plans for reconstruction (as interpreted above), to the MCGM, the MCGM is to consider those and to process them in accordance with law in no more than six weeks from the date of submission. No consent is necessary from Respondents Nos. 6 to 8 for such reconstruction permission and the MCGM is not entitled to delay the

reconstruction further by insisting on any no-objection from or the consent of Respondents Nos 6 to 8. Those Respondents are not entitled to oppose the reconstruction of the demolished building. Subject to any orders in Rent Act proceedings, all tenants will continue as tenants in the reconstructed building. The mere pendency of a rent proceeding will not disentitle any tenant to possession of reconstructed premises. The association must make its own arrangements for financing the reconstruction. We have only affirmed their statutory right to reconstruction and the MCGM's obligation to permit it without requiring the prior consent of Respondents Nos. 6 to 8, and, consequently, rejected as untenable and unreasonable the contentions of Respondents Nos. 6 to 8 that (i) neither they have no obligation to reconstruct (or, at their option, redevelop), and (ii) that the MCGM has no authority or power to compel or permit the reconstruction by the tenants on a demonstrated default/failure by the property owners, Respondents Nos. 6 to 8.

36. Any proceedings between Respondent No 9 and Respondents Nos 6 to 8 will continue unaffected by this order.

37. The Petition is disposed of these terms. There will be no order as to costs.

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