MAYUR KONDIRAM ADANE
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Case Citation: (2026) ibclaw.in 6458 HC

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

WRIT PETITION NO. 4824 OF 2025

1. Om Shanti Properties
2. Bharat Chhaganlal Jain
3. Kishore Chhaganlal Jain ...Petitioners

Versus

1. The Municipal Corporation of Greater Mumbai,
2. The Commissioner,
   The Municipal Corporation of Greater Mumbai,
3. The Assistant Commissioner Estates Department,
4. Parijat Co-operative Housing Society Limited,
5. The State of Maharashtra ...Respondents

...

Mr. Rohan Sawant a/w Mr. Raunak Shirsekar, Ms. Gauri Joshi, Mr. Sushant Pandey i/b. Ganesh & Co. for the Petitioners.

Ms. K.H. Mastakar for the Respondent Nos.1 to 3.

Mr. Ashish Kamath, Sr. Counsel a/w Mr. Shlok Parikh i/b. Mr. Abhay Parab for Respondent No.4.

Smt. Lavina Kripalani, AGP for Respondent – State.

...

CORAM : MAHESH CHANDRA TRIPATHI, CJ. &
ADVAIT M. SETHNA, J.

RESERVED ON : 29th SEPTEMBER, 2026.

PRONOUNCED ON : 26th OCTOBER, 2026.

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JUDGMENT (Per Advait M. Sethna, J.) :-

1. Rule. Rule made returnable forthwith with the consent of parties.

2. This Writ Petition is preferred by the Petitioners for the following substantive reliefs:

> *"(a) That this Hon'ble Court by issuing Writ of mandamus or any other Writ in the nature of mandamus, Order and Direct the Respondent No.1 to forthwith mandatorily renew the LOI bearing No.AC/Estates/341/AO (Soc.) being Exhibit N-2, which was last renewed till 2022 and deemed to have been renewed till April 2024 with regard to the project for redevelopment on the Plot bearing C.S. No.761 situated at 151, Sanaswadi, Dr. Babasaheb Ambekar Road, Kalachowki, Chinchpokli, Mumbai-400 033;*
>
> *(b) That this Hon'ble Court by Writ in the nature of mandamus order and direct the Respondent No.1 to 4 to cancel and set aside the decision and order of Termination Letter dated 11th February, 2025 being Exhibit H with regard to redevelopment project of the plot bearing C.S. No.761 situated at 151, Sanaswadi, Dr. Babasaheb Ambekar Road, Kalachowki, Chinchpokli, Mumbai – 400033;*
>
> *(c) That appropriate Writ or direction or order be passed declaring that the consent given by the individual tenants and the Development Agreement dated 7th June, 2024 being Exhibit-D signed and executed by the Respondent No.4 Society is irrevocable and binding upon the Respondents and that the Petitioners is entitled for renewal of LOI being Exhibit N-2 and is further entitled for setting aside and cancellation of the Termination Letter dated 11th February, 2025 being Exhibit H with regard to project for the plot bearing C.S. No.761 situated at 151, Sanaswadi, Dr. Babasaheb Ambekar Road, Kalachowki, Chinchpokli, Mumbai – 400033;*
>
> *(d) That appropriate Writ or direction or order be passed declaring that the consent given by the individual tenants and occupants of the said property and the Development Agreement dated 7th June, 2024 being Exhibit-D signed and executed by the Respondent No.4 Society is irrevocable and binding upon the Respondent No.1 to 3 thereby entitled the Petitioners to undertake the re-development of the said Plot bearing C.S. No.761 situated at 151, Sanaswadi, Dr. Babasaheb Ambekar Road, Kalachowki, Chinchpokli,*

Mumbai – 400033;"

(e) That by exercising the writ jurisdiction, this Hon'ble Court may call for all the papers related to re-development of the project on the Plot bearing C.S. No.761 and LOI bearing No.AC/Estates/341/AO.

I. Factual Matrix:

3. The facts necessary for adjudication of this Petitions are noted below:-

4. The present case concerns the redevelopment of property on plot bearing C.S. No.761 of Mazgaon Division, "E" Ward situated at 151, Sanaswadi, Dr. Babasaheb Ambedkar Road, Kalachowki, Chinchpokli, Mumbai – 400 033 (***"Subject Property"*** for short). The subject property comprises of two buildings, first Building, known as 151 - the Sanas Building with 14 shops, and the Second Joint Building, known as "A" and "B" Buildings. Apart from these buildings, there are other structures, including one Baithi Chawl, 19 garages, two temples, one gymnasium, two godowns, etc. Respondent No. 4 – Society is the Co-operative Housing Society having around 181 members who are the occupants of their respective tenements on the subject property under redevelopment.

5. The record bears out that such redevelopment of the subject property is governed by the provisions of the Regulation of 33(7) of

the Development Control Regulations, 1991 (***"DCR, 1991"***, for short).

6. On 31st March 2008, the erstwhile partners of the Petitioners No.1 - firm were formally appointed as Developers for re-development of the subject property. Accordingly, the Improvement Committee of the Respondent – Corporation issued a Resolution in this regard, on 31st March 2008. Pursuant to the above, the initial Letter of Intent (***'LOI'*** for short) dated 10th April 2008 was issued by the Respondent - Corporation in favour of the erstwhile partners of the Petitioner No.1 - firm, in respect of redevelopment of the subject property.

7. The Respondent – Corporation issued a Show Cause Notice dated 19th June 2017 to the erstwhile partners of the Petitioner No.1 - firm setting out their inaction in regard to the redevelopment of the subject property. Subsequently, by a letter dated 16th July 2018, the Respondent – Corporation communicated termination of the erstwhile partners of the Petitioner No.1 *qua* the redevelopment of the subject property.

8. A Deed of Reconstitution of Partnership dated 2nd August 2018 came to be executed whereby the erstwhile partners exited from the Petitioner No. 1 - firm and in their place, Petitioner Nos. 2

and 3 were inducted as new partners. By a letter dated 20th November 2018, the Respondent – Corporation ordered reinstatement of the present Petitioners as the Developers for redevelopment of the subject property, with the condition that the Petitioners will pay the capital value of Rs. 27,68,00,000/-. The aforesaid amount was paid by the Petitioners as on 28th February 2019.

9. Thereafter, the Respondent – Corporation issued a revalidated LOI dated 15th December 2018, valid up to 9th April 2019 in favour of the present Petitioners.

10. On 17th December 2018, the Petitioners addressed a letter dated to the Estate Department of the Respondent – Corporation requesting it to issue a provisional NOC, in favour of the Petitioners, for approval of its plan. Thereafter, by a letter dated 4th June 2019, the Petitioners sought clarification of municipal tenanted plots in regard to the subject property, with the buildable reservation under DCR, 1991, from the Urban Development Department of the Respondent – Corporation.

11. The Petitioners by a Communication dated 11th June 2019 addressed to the Respondent-Corporation requested that no penalty be levied on the Petitioners/Developers for delayed

payment, reiterating their commitment to redevelop the subject property.

12. The Petitioners forwarded letters dated 9th April 2019, 18th September 2019 and 6th February 2020 to the concerned department of the Respondent-Corporation, requesting for re-validation of the LOI, in favour of the Petitioners. Thereafter, a communication was issued by the Respondent - Corporation on 14th September 2020, *inter alia* recommending the revalidation of the LOI, in favour of the Petitioners for a further period of three years, from 10th April 2019 to 9th April 2022, subject to certain terms and conditions stipulated therein.

13. Accordingly, on 17th December 2020, a re-validated LOI was issued with retrospective effect by the Respondent-Corporation for three years i.e. 10th April 2019 to 9th April 2022. Prior to the above, the Petitioners had submitted an Undertaking dated 3rd December 2020, to the Respondent-Corporation categorically stating that if the Petitioners fail to complete the redevelopment project within the re-validated period i.e. until 9th April 2022, the LOI issued in favour of the Petitioners shall stand terminated.

14. The Respondent-Corporation issued various letters to the Respondent No.4-Society dated 29th January 2020, 2nd June 2020,

etc., noting that the subject property/structure is in a dilapidated condition.

15. The Respondent-Corporation issued an amended Intimation of Disapproval (‘***IOD***’ for short) dated 27th April 2021 under Section 436 of the Mumbai Municipal Corporation Act, 1888, subject to various conditions stated therein including the issuance of the NOC for the purposes of Completion Certificate in favour of the Petitioners, which would be subject to the Petitioners complying with the necessary conditions. Thereafter, the Respondent-Corporation issued a layout IOD and sanction plan vide amended plan approval dated 12th January 2022, in favour of the Petitioners.

16. The Petitioners addressed letters dated 3rd March 2023, 13th March 2023 and 22nd April 2023 to the Respondent No.4-Society and the Respondent – Corporation, offering 3 years of rent and to immediately carry out repairs of the subject property/structure, stating about the safety of the tenant/occupants.

17. The Respondent-Corporation issued a Show Cause Notice dated 27th April 2023 to the Petitioners, calling upon them to show cause as to why the LOI dated 10th April 2008, should not be

terminated. In the said Show Cause Notice, it was also stated that during the preceding period of about 11 years, the project was supposed to be completed in all respects. However, there was no commencement on site by the Petitioners, in this regard, until 27th April 2023 i.e. the date of issuance of this Show Cause Notice. The Respondent – Corporation therein proposed not merely termination of the LOI dated 10th April 2008 but also the forfeiture of the capital value paid by the Petitioners to the Respondent – Corporation, including the action of blacklisting, to be initiated against the Petitioners.

18. The Petitioners replied to the Show Cause Notice by a Letter dated 23rd May 2023 denying all allegations therein. The Petitioners then furnished an action plan vide letters dated 6th April 2023 and 1st June 2023, addressed to the Respondent-Corporation, calling upon it to issue the Completion Certificate.

19. A Development Agreement dated 7th June 2024 was claimed to be executed by the Petitioners with members of the Respondent No.4-Society and a draft PAAA dated 10th June 2024 was claimed to be circulated by the Petitioners amongst the society members. The Petitioners, thereafter, made repeated correspondences with the Respondent – Corporation vide letters dated 30th June 2024,

19th July 2024, 16th December 2024 requesting it to reconsider the claims of the Petitioners.

20. The Respondent – Corporation issued the Termination Notice dated 11th February 2025 (***"Impugned Termination Notice"*** for short) addressed to the Respondent No.4 – Society, stating that the Corporation has terminated the LOI dated 10th April 2008.

21. The Petitioners, pursuant to the above, addressed a letter dated 24th February 2025 to the Respondent - Corporation, placing reliance on the remark of the Corporation stating, *'put up to examine'*.

22. On 24th March 2025, a hearing was held by the Deputy Municipal Commissioner of the Corporation which was duly attended by the Petitioners and the representatives of the Respondent No. 4 – Society, where the redevelopment of the Subject Property appears to be considered and discussed.

23. Pursuant to the above, on 7th April 2025, the Petitioners filed their say/reply asking for reinstatement of their terminated LOI in light of their commitment of the redevelopment of the subject property, despite delays allegedly beyond the Petitioners' control.

24. On 9th April 2025, the Respondent No. 4 - Society also filed a detailed response, addressed to the Deputy Commissioner

(Improvements) of the Respondent – Corporation seeking implementation of their redevelopment plan and request for extending the validity of the LOI and IOD issued to the Respondent No. 4 - Society, by the Respondent – Corporation.

25. In the above backdrop, the Petitioners preferred the instant Writ Petition on 10th September 2025, before this Court.

26. After filing of the instant Writ Petition, certain events transpired, which are summarized below:

A. On 30th December 2025, the Respondent No.4 – Society issued a letter addressed to the Petitioners terminating their Development Agreement dated 7th June 2024 for the reasons incorporated therein.

B. Pursuant to the termination of the Development Agreement, the Petitioners filed a Commercial Arbitration Petition bearing No. 1950 of 2026, under Section 9 of the Arbitration and Conciliation Act (**"ACA"** for short). The principal relief sought therein being to restraint the society from appointing a new developer in regard to the Subject Property.

C. Subsequently, in the said arbitration proceedings, a learned Single Judge of this Court has passed an order dated 13th February 2026, converting the said Petition into an Application under Section 17 of ACA. It was also directed that in the event the Respondent No. 4 – Society takes a decision for appointment of a new developer, it shall give 10 working days' Notice to the Petitioners and shall not act on

appointment of a new developer during the said 10-day period.

D. Pursuant thereto, the Respondent No. 4 - Society, issued a letter dated 6th April 2026 to the Petitioners, informing them that the Respondent No. 4 - Society would appoint a new developer after the stipulated 10-day period, as directed by this Court vide order 13th February 2026.

E. The Application of the Petitioners seeking stay on the termination of Development Agreement dated 7th June 2024 under Section 17 of ACA was dismissed by the learned Sole Arbitrator on 19th August 2026. Aggrieved by the same, the Petitioners have filed a Commercial Arbitration Petition bearing No. 1022 of 2026 under Section 37 of ACA, which is pending adjudication before this Court.

II. Rival Contentions:

A. Submissions on behalf of the Petitioners:

27. Mr. Rohan Sawant, learned Counsel for the Petitioners, would at the outset submit that the Impugned Termination Notice dated 11th February 2025, whereby the LOI granted in favour of the Petitioners for redevelopment of the subject property came to be terminated, is arbitrary, procedurally infirm and violative of the principles of natural justice. He would submit that the decision has been taken without affording the Petitioners an effective opportunity of personal hearing, despite the same having serious civil consequences, including the proposed forfeiture of

substantial amounts paid by the Petitioners.

28. Mr. Sawant would contend that the Petitioners had addressed successive letters dated 13th July 2024, 19th July 2024, 6th December 2024 and 16th December 2024, seeking revalidation of the LOI and an opportunity of hearing. However, none of the said requests was answered before the Impugned decision was taken.

29. Mr. Sawant would place reliance upon the subsequent communication of Respondent No. 4 - Society dated 9th April 2025, wherein it was recorded that a pre-decisional hearing could have prevented the termination. He would submit that the said communication supports the Petitioners' contention that the decision was taken without granting them an effective opportunity of being heard. In this regard, reliance is placed upon ***Krishnadatt Awasthy v. State of Madhya Pradesh & Ors***[1]**.**

30. Mr. Sawant would further submit that the Impugned Termination Notice is bereft of adequate reasons and does not demonstrate due consideration to the contentions of the Petitioners. According to him, the mere reference to the response of the Petitioners, without dealing with the substance thereof, does not satisfy the requirement of a reasoned decision. He would rely

[1] (2025) 7 SCC 545.

upon ***Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan & Ors***[2] in support of the proposition that recording reasons is an essential facet of fair decision-making.

31. Mr. Sawant would next submit that the Show Cause Notice forming the basis for the Impugned termination proceedings was issued 27th April 2023, whereas the final termination was effected on 11th February 2025, after a substantial lapse of time and after material developments had taken place. During the intervening period, the Petitioners and Respondent No. 4 - Society had executed a fresh Development Agreement dated 7th June 2024, and the Petitioners had continued to pursue revalidation of the LOI. He would contend that the authorities could not have proceeded on the basis of the earlier Show Cause Notice without considering the subsequent developments and affording the Petitioners a fresh and effective opportunity to explain their position.

32. Mr. Sawant would further submit that the Impugned Termination Notice cannot be sustained by placing reliance upon the registered Undertaking dated 3rd December 2020, which was not referred to in the Show Cause Notice dated 27th April 2023, the resolutions recommending and effecting cancellation, or in the

[2]. (2010) 9 SCC 496

Impugned Termination Notice itself. He would contend that the said Undertaking was sought to be introduced subsequently in the Affidavit-In-Reply of the Respondent - Corporation and cannot be relied upon to supplement the reasons underlying the Impugned decision. In this context, he would place reliance upon ***Mohinder Singh Gill v. Chief Election Commissioner***[3], and ***UMC Technologies Pvt. Ltd. v. Food Corporation of India***[4].

33. Mr. Sawant would also refute the allegation that the Petitioners have suppressed the undertaking dated 3rd December 2020. He would submit that the Undertaking formed part of the record of Respondent - Corporation and was not the basis on which the Impugned Termination Notice was issued. According to him, the omission to separately refer to the Undertaking in the Petition cannot, by itself, be treated as deliberate suppression of a material fact, particularly when the validity of the impugned action must be examined with reference to the reasons stated in Impugned Termination Notice.

34. Mr. Sawant would then invite the attention of the Court to the sequence of events preceding the issuance of Impugned Termination Notice. He would submit that the LOI was originally

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3 (1978) 1 SCC 405
4 (2021) 2 SCC 551

issued in favour of the Petitioners on 10th April 2008 under Regulation 33(7) of the DCR, 1991. Although the LOI was terminated in 2018, it was subsequently reinstated subject to payment of the stipulated capital value and interest. The Petitioners duly paid the capital value of approximately Rs.27.68 crore, together with interest of approximately Rs. 2.5 crore, and the LOI was thereafter revalidated on 17th December 2020.

35. Mr. Sawant would contend that the Petitioners had taken steps towards implementation of the redevelopment proposal, including obtaining the IOD on 27th April 2021 and the sanctioned layout in January 2022. He would submit that the Petitioners thereafter addressed communications to Respondent No. 4–Society, calling upon it to initiate the process for execution of PAAAs and handover of possession. However, the Respondent No. 4 - Society sought renegotiation of the terms, culminating in the execution of a fresh Development Agreement dated 7th June 2024. According to him, the delay in commencing redevelopment cannot be attributed exclusively to the Petitioners, particularly when the implementation of the project was dependent upon several steps involving the Respondent Society and the concerned authorities.

36. Mr. Sawant would further rely upon the Respondent No. 4 -

Society's communication dated 9th May 2025, wherein it was acknowledged that numerous factors had posed obstacles to the smooth implementation of the redevelopment scheme. He would submit that the Petitioners had repeatedly sought revalidation of the LOI and that the authorities ought to have considered the circumstances contributing to the delay, instead of proceeding to terminate the LOI without an effective hearing.

37. Mr. Sawant would contend that the termination of the Development Agreement dated 7th June 2024 by Respondent No. 4 – Society is consequential upon the Impugned Termination of the LOI by the Respondent - Corporation. He would submit that, if the Impugned Termination of the LOI is set aside, the foundation on which the Respondent No. 4 - Society seeks to terminate the said Development Agreement would materially change. He would further contend that the consents obtained from the Society's members for redevelopment cannot be treated as having lost their efficacy merely on account of the impugned action, without examining the legal and contractual consequences thereof.

38. In the aforesaid circumstances, Mr. Sawant would urge that the Impugned Termination Notice be quashed and set aside and that appropriate consequential reliefs be granted to the

Petitioners, including reconsideration of the continuation and revalidation of the LOI in accordance with law.

39. Mr. Sawant would thus urge that the Petition be allowed and the Rule be made Absolute.

B. Submissions on behalf of Respondent No.4 – Society:

40. Mr. Ashish Kamat, learned Senior Counsel for Respondent No.4–Society, at the very outset, by way of preliminary objections has strongly opposed the very maintainability of this Petition. This on the ground of suppressing of vital and material facts concerning the Undertaking dated 3rd December 2020 furnished by the Petitioners, which is conveniently not disclosed in the Petition. The same categorically provides that if the Petitioners fails to complete the redevelopment within a specified period within the revalidated period of the renewed LOI, then the LOI issued by the Respondent Corporation shall stand terminated. Further, according to him, the dispute between the parties is principally and essentially contractual in nature and the Petitioners are clearly enforcing contractual rights through the reliefs sought in this Writ Petition which is legally impermissible.

41. On merits, Mr. Kamat would submit that the Petitioners have failed to redevelop the Society's property for nearly two

decades, despite repeated extensions and opportunities granted by the Respondent-Corporation. He would emphasise that the Society's building is approximately 86 years old, is in a dilapidated condition, and houses members belonging to the lower-income group who have suffered on account of the prolonged inaction of the Petitioners.

42. Mr. Kamat would contend that the first Development Agreement was executed on 28th February 2006 and the LOI was initially issued on 10th April 2008. Thereafter, the LOI was extended on several occasions, including in years 2012, 2013, 2014, 2015, 2017, 2018, 2019 and 2020. Despite these repeated opportunities, the Petitioners failed to commence redevelopment or obtain the requisite Commencement Certificate. He would contend that the repeated extensions granted by the Respondent - Corporation cannot confer an indefeasible right upon the Petitioners to seek further revalidation of the LOI.

43. Mr. Kamat would further submit that the LOI had earlier been terminated on 16th July 2018 and was subsequently reinstated upon the Petitioners' representation, subject to payment of the stipulated capital value of approximately Rs. 27.68 crores. According to him, such payment was necessitated by the

Petitioners' repeated defaults and does not create any equity or entitlement in their favour, particularly when redevelopment remained stuck without commencement for several years thereafter.

44. Mr. Kamat would draw the Court's attention to the registered Undertaking dated 3rd December 2020, furnished by the Petitioners to the Respondent - Corporation, whereby the Petitioners agreed that, in the event redevelopment was not completed within the revalidated period of the LOI, the LOI would stand terminated. He would contend that the Petitioners have suppressed this material Undertaking from the present proceedings. Since redevelopment has admittedly not commenced, the Petitioners cannot, seek reliefs contrary to the express terms of the Undertaking. He would submit that the suppression of such a material document independently warrants dismissal of the Petition, relying upon ***K.D. Sharma v. Steel Authority of India Ltd***[5], and ***Dalip Singh v. State of Uttar Pradesh***[6]***.***

45. Mr. Kamat would contend that the Impugned Termination Notice dated 11th February 2025 is a reasoned decision and that the principles of natural justice have been duly complied with. He

[5] (2008) 12 SCC 481
[6] (2010) 2 SCC 114.

would submit that the Respondent – Corporation had issued a Show Cause Notice dated 27th April 2023, to which the Petitioners submitted their Reply/Disclosure on 23rd May 2023. The Petitioners were thus afforded an opportunity to place their case before the authority prior to termination. He would further contend that, in view of the admitted failure of the Petitioners to commence redevelopment despite the undertaking furnished by them, a separate personal hearing would have been an empty formality. In support, reliance is placed upon ***State of Uttar Pradesh v. Sudhir Kumar Singh***[7], and ***State Bank of India v. Rajesh Kumar Agrawal***[8].

46. Mr. Kamat would next submit that the Petitioners have failed to demonstrate their readiness and willingness to perform their obligations under the Development Agreement and the LOI. He would point out that the Respondent - Corporation had repeatedly addressed communications to the Petitioners, including on 29th January 2020, 2nd June 2020, 28th September 2020, 15th October 2020 and 29th January 2021, calling upon them to undertake necessary repairs to the dilapidated building. However, the Petitioners failed to carry out the required repairs or demonstrate meaningful progress towards redevelopment. According to him,

[7] (2021) 19 SCC 706
[8] (2023) 6 SCC 1

such conduct disentitles the Petitioners from seeking equitable relief from this Court.

47. Mr. Kamat would further submit that the present dispute is essentially contractual and involves disputed questions of fact, including the extent to which the Petitioners performed their obligations and the reasons for the delay in redevelopment. He would contend that such disputes cannot appropriately be adjudicated in a summary writ proceeding, particularly when arbitral proceedings between the Petitioners and the Respondent No. 4 - Society are already pending. In support of the above, he would rely upon ***Bareilly Development Authority v. Ajai Pal Singh***[9] and ***State of Bihar v. Jain Plastic and Chemicals Ltd***[10]***.***

48. Mr. Kamat would also oppose the Petitioners' contention that the Respondent No. 4 - Society's consent to redevelopment is irrevocable or that the Development Agreement cannot be terminated. He would submit that, in terms of Section 39 of the Indian Contract Act, 1872, contractual obligations are subject to the consequences of breach. Further, redevelopment under Regulation 33(7) of the DCR, 1991 requires the consent of the

[9] (1989) 2 SCC 116
[10] (2002) 1 SCC 216

Society's members and such consent cannot compel the Respondent No. 4 - Society to continue indefinitely with a developer who has failed to implement the project for nearly twenty years. He would contend that these are contractual issues which cannot be conclusively determined in the present writ proceedings.

49. Mr. Kamat would further submit that the Respondent No. 4 - Society terminated the Development Agreement on 30th December 2025 after the Petitioners failed to fulfil their obligations. He would point out that the Petitioners' Application under Section 17 of the ACA seeking interim protection against such termination, was rejected by the Arbitral Tribunal on 19th August 2026, and that the Petitioners are yet to secure relief in the challenge stated to have been filed under Section 37 of the ACA. He would also submit that the Respondent No. 4 - Society has since executed a fresh Development Agreement dated 8th September 2026 with Tribecca Creators LLP, which has commenced the process of obtaining an LOI from the Respondent - Corporation. These subsequent developments, according to him, have also been suppressed by the Petitioners.

50. In the aforesaid circumstances, Mr. Kamat would submit

that the Petitioners have failed to establish any enforceable right to continuation or revalidation of the LOI. He would contend that the Respondent No. 4 – Society and its members cannot be made to suffer indefinitely on account of the Petitioners' prolonged failure to undertake redevelopment, and that no equity survives in favour of the Petitioners. He would accordingly urge that the Writ Petition be dismissed.

C. Submissions on behalf of Respondent Nos. 1 to 3 – Corporation:

51. Ms. K.H. Mastakar, learned Counsel appearing on behalf of Respondent Nos. 1 to 3 – Corporation, has opposed the Petition and supported the action taken by the Respondent-Corporation in terminating the LOI issued in respect of the redevelopment of the subject property. She would place reliance on the Affidavit-in-Reply to this Petition, dated 14th January 2026, in support of her contentions.

52. Ms. Mastakar would submit that the LOI was revalidated from time to time. Ultimately, it was revalidated for a further period of three years, from 10th April 2019 to 9th April 2022, subject to specific conditions. In particular, the Petitioners were required to obtain the commencement certificate on or before 10th

October 2021. Moreover, as per conditions nos. 15 and 29, the Petitioners were required to provide alternate accommodation to the existing occupants or pay rent in lieu thereof, secure vacation of the premises and maintain the existing structures in a safe and habitable condition until demolition, which is the priority. It was further stipulated that failure to comply with the conditions would entail termination of the LOI, calling upon the Petitioners to carry out the repairs as recommended by the structural audit. Several communications from 23rd November 2016 to 21st May 2021 were repeatedly addressed by the Respondent - Corporation to the Petitioners in this regard but it did not yield any positive outcome.

53. Ms. Mastakar would further submit that the Respondent - Corporation had repeatedly called upon the Petitioners to carry out necessary repairs and to safeguard the existing structures. However, despite that, the Petitioners failed to carry out the required repairs, provide alternate accommodation or pay rent to the existing occupants, and secure vacation of the premises.

54. Mr. Mastakar would contend that, in light of such continuing failure of the Petitioners to comply with the LOI, the Respondent - Corporation issued a Show Cause Notice dated 27th April 2023, calling upon them to show cause as to why the LOI

dated 10th April 2008 should not be terminated. The Petitioners responded to the said Show Cause Notice by submitting their Reply/Disclosure dated 23rd May 2023. The same was considered by the Respondent – Corporation, however, it was found unsatisfactory and insufficient to establish compliance with the conditions of the LOI.

55. Ms. Mastakar would then submit that, after consideration of the matter, a proposal for termination was processed and the competent authority sanctioned the termination of the LOI by communication bearing No. MGC/F/4979 dated 4th December 2024. Thereafter, on 30th January 2025, the Assistant Commissioner (Estates) informed the Deputy Chief Engineer (Improvement) for taking steps to invite tenders for redevelopment of the subject property. It is in such backdrop that the Impugned Termination Notice dated 11th February 2025 was issued by the Respondent – Corporation.

56. According to Ms. Mastakar, the Respondent - Corporation did not terminate the LOI immediately upon the first instance of default. Rather, the Petitioners were afforded repeated opportunities over the years, including revalidation of the LOI, and were repeatedly called upon to comply with its obligations

concerning redevelopment, alternate accommodation, rent and maintenance of the existing structures.

57. Ms. Mastakar would therefore contend that the impugned action cannot be characterized as arbitrary or unilateral. In light of the above, she would urge that the Petition is devoid of merit and is liable to be dismissed.

III. Analysis & Conclusion:

58. We have heard the learned Counsel for the parties and with their assistance, perused the record. The parties had taken liberty to submit their brief Written Submissions along with a compilation of judgments. The same has been tendered to this Court on 5th October 2026, which is duly considered by us in the judgment. We have also perused the pleadings of the parties on record to include the Affidavit-in-Reply to the Petition dated 14th January 2026, filed on behalf of the Respondent – Corporation, as also on behalf of the Respondent No. 4-Society dated 20th April 2026. The stand taken by the Respondents is summarized as reflected in their Written Submissions tendered in Court.

59. At the very outset, placing the issue before us in perspective, we are called upon to examine the validity, legality of the Impugned Notice dated 11th February 2025, issued by the

Respondent No 1-Corporation, which resulted in cancellation of the initial LOI dated 10th April 2008, in favour of the Petitioner No.1–Developer, which the Petitioners seek to renew.

60. In the aforesaid backdrop, we have examined the preliminary objection raised by Mr. Kamat. This mainly relates to suppression of relevant and material facts, within the knowledge of Petitioners, from this Court, in this Petition. The case espoused by Mr. Kamat in this regard is primarily premised on the well settled 'clean hands' doctrine which mandates that one who comes to court of equity must come with clean hands.

61. Mr. Kamat in the above context would urge that the Petitioners have suppressed their own Undertaking dated 3rd December 2020, by not disclosing this material document in the Petition. Further, certain subsequent developments taking place after filing of this proceeding relating to the termination of the subsequent Development Agreement dated 7th June 2024, between the Petitioners and the Respondent No. 4-Society and the ensuing arbitration proceedings including the pendency of the Commercial Arbitration Petition (*supra*) are deliberately not disclosed/pleaded by the Petitioners.

62. In the above context, we find that the Petitioners, admittedly,

had furnished an Undertaking dated 3rd December 2020 before the Respondent – Corporation, a copy of which is reproduced below:

UNDERTAKING

To,

The Municipal Commissioner,

Municipal Corporation of Greater Mumbai,

Fort, Mumbai-400 001.

Sub:- Redevelopment of Municipal acquired property known as Sanaswadi (Parijat Co-Op Housing Society (Proposed) on plot bearing C.S. No. 761 of Mazgaon Division, E ward situated at Dr. Babasaheb Ambedkar Road, Mumbai:- 400 033.

I, Mr. Kishor Chhaganlal Jain Partner of M/s Om Shanti Properties do hereby state on solemn affirmation, declare and undertake as follows.

I/We state that as per the approval from Additional Municipal Commissioner approved vide no AMC/CITY/D/7438 dated 27.10.2020, I / we hereby undertake as under / below:

(i) To adjust the payment made against C.V and penal interest thereon as per the then SDRR rates prevailing on date of actual payment and the balance Capitalized Value as per SDRR rates on date of actual payment at various stages of redevelopment project as stated in the approved policy dated 03.08.2019.

(ii) To extend the project period up to 09.04.2022 at this stage by levying penalty as per revised sanction policy dated 03.08.2019 for rehab component on entire plot and to recover it at appropriate stages of rehab component and to extend the project for further 2 years i.e. up to 09.04.2024 if the condition are fulfilled within specified time.

(iii) To pay the penalty towards non completion of rehab component within project period as per the outcome of proposal submitted to Improvement Committee & Corporation in regards to the same and the payment for the same will be made before grant of NOC to OC to 1st Rehab Building.

(iv) ***If I / we fails to complete the said redevelopment project within the revalidated period then the LOI shall be terminated.***

This undertaking is binding upon us, our legal heirs, executors, administrators and all past, present, and future assigns."

A perusal of the above would reveal that the Petitioners had

undertaken that if the subject redevelopment project is not completed within the revalidated period of the LOI i.e. till 9th April 2022, then the initial LOI dated 10th April 2008 shall be terminated. However, the Petitioners are unable to provide any satisfactory explanation to the effect that despite furnishing such categorical Undertaking, the Respondent-Corporation has acted in an unfair or unjust manner. Such unequivocal language of the said Undertaking would clearly bind the Petitioners at all times. More particularly, the said Undertaking was subsequently never modified by the Petitioners.

63. The Petitioners having evidently suppressed such Undertaking in this Petition also raises questions on their *bonafides* and/or gives an impression that the Petitioners have not approached this Court with true and correct disclosure of all material facts. Such disclosure forms the *sin qua non*, to invoke extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India.

64. We have carefully perused the decisions of the Supreme Court in ***Mohinder Singh Gill & Anr.*** *(supra)* and ***UMC Technologies (P) Ltd.*** *(supra)*, relied upon by Mr. Sawant to submit that the case cannot be improved after an order is passed,

by way of a fresh ground introduced later by way of an affidavit. Mr. Sawant has relied on the said judgments in the context of the Undertaking dated 3rd December 2020 furnished by the Petitioners, which was brought on record before this Court by way of an Affidavit filed on behalf of the Respondent-Corporation. In our considered view, the reasoning and ratio in the said decisions is of no assistance to the Petitioners. The Petitioners cannot take refuge under the said decisions by misconstruing the same to contend that such Undertaking was never specifically adverted to or relied upon by the Respondent-Corporation in the Show Cause Notice and/or the Impugned Termination Notice. Such position does not confer any right, much less legal right to the Petitioners to resile/retract from such legally binding Undertaking. This is neither required nor necessary in law, as accepting such a contention would lead to a situation where a solemn Undertaking furnished by the Petitioners themselves would be reduced to a mere piece of paper, a position which is not what the law mandates, and which this Court cannot countenance.

65. In the ensuing arbitration proceedings initiated by the Petitioners, the Application of the Petitioners for stay on the termination of the subsequent Development Agreement dated 7th June 2024 filed under Section 17 of ACA was dismissed by the

learned Sole Arbitrator on 19th August 2026. Such Order was assailed by the Petitioners in the Commercial Arbitration Petition *(supra)* under Section 37 of the ACA which is pending before this Court.

66. The record bears out that the Petitioners have, in the pending Section 37 Petition/Appeal before this Court, principally challenged the Order of the learned Sole Arbitrator dated 19th August 2026 rejecting the stay on the termination of the Development Agreement dated 7th June 2024. By taking such recourse the Petitioners have sought for its continuation as Developer pursuant to renewal of the initial cancelled LOI dated 10th April 2008, which is also the relief sought also in this Petition.

67. The Petitioners ought to have disclosed such material facts as the same would have a direct bearing on the issues raised and reliefs sought in this Writ Petition. Even if these are subsequent developments as urged by Mr. Sawant, nothing prevented the Petitioners from bringing the same on record, through appropriate pleadings.

68. Contextually, we may refer to the judgments of the Supreme Court in ***K.D. Sharma*** *(supra)* and ***Dalip Singh*** *(supra),* relied upon by Mr. Kamat. As held in the said decisions, the party

approaching the writ court must come with clean hands and is supposed to make a candid disclosure of all relevant and material facts before the Court, failing which the Petition may be dismissed at the threshold, without considering the merits of the claim.

69. At this juncture, we find it apposite to refer to the judgment of the Supreme Court in ***Bhaskar Laxman Jadhav & Ors. Vs. Karamveer Kakasaheb Wagh Education Society & Ors***[11]**.** In the said case, the Supreme Court has categorically held that it is not for a litigant to decide as to what fact is material for adjudicating a case and what is not material. It is the obligation of the litigant to disclose all the facts of a case and leave the decision making to the Court. Contextually, we find that the conduct of the Petitioners, in the present case, is not in conformity with such mandate of the Supreme Court. Accordingly, the decision relied on by Mr. Sawant in ***Government of NCT of Delhi vs BSK Realtors LLP***[12] cannot be stretched to submit that suppression/omission of material fact ought not to defeat the case of the Petitioners, even on the purported plea of breach of principles of natural justice.

70. We have duly considered Mr. Kamat's yet another preliminary objection that the Petition is nothing but a disguise to

[11] (2013) 11 SCC 531
[12] (2024) 7 SCC 370

obtain reliefs out of contractual obligations, stemming from contract/Development Agreement executed between the parties. Such disputes are predominately of contractual nature having consequences including that of termination of LOI resulting from the contractual agreement between the parties. It is settled law that such *lis* within sphere of private contracts between parties, the very source of legal rights being contractual, cannot be the subject matter of writ jurisdiction under Article 226 of Constitution of India. This in as much as when the dispute revolves around such contractual obligations having civil consequences, the same could be assailed in an appropriate civil proceeding before the competent civil court.

71. In the above context, we are in agreement with Mr. Kamat in his reliance on the judgments of the Supreme Court in ***Bareilly Development Authority*** *(supra)* and ***State of Bihar vs Jain Plastic and Chemicals*** *(supra).* The sum and substance of these judgments being that contractual disputes entail civil consequences which are to be adjudicated before a competent civil court and ordinarily are not to be entertained by a constitutional court exercising its jurisdiction under Article 226 of the Constitution of India.

72. Having dealt with the preliminary objections raised by Mr. Kamat, we now proceed to analyze the matter on merits of the rival contentions. The chronology of events would clearly demonstrate that the Petitioners have been given several opportunities to comply with the obligations in regard to the redevelopment of the subject property. Right from issuance of the initial LOI dated 10th April 2008, executed in favour of the Petitioner No. 1 by Respondent-Corporation, the same was extended from time to time, until 9th April 2022, on an assurance from the Petitioners that the statutory timelines in this regard would be complied with.

73. The thrust of the Petitioners case is, essentially, that that the Show Cause Notice does not remain open indefinitely as a license to act on stale material, without affording a fresh opportunity to the Petitioners. Such stand of the Petitioners does not cut any ice. This for the reason that such submission is belied by the fact that sufficient opportunity was accorded to the Petitioners right from the issuance of the initial LOI dated 10th April 2008 until issuance of the Show Cause Notice dated 27th April 2023 i.e. a period of almost 15 years. As the Show Cause Notice cannot remain open ended, considering the precarious condition of the subject buildings, the opportunities given to the

Petitioners to fulfill their obligations cannot be infinitely extended, more particularly after the Petitioners furnishing a categorical Undertaking dated 3rd December 2020 to complete the redevelopment by 9th April 2022 as stated therein.

74. Such Undertaking was never renewed and/or appropriately modified by the Petitioners. Pursuant to the issuance of such Undertaking by the Petitioners, the Respondents, more particularly, the Respondent No.4-Society was always under a *bonafide* belief that such solemn undertaking furnished by the Petitioners would be abided by in letter and spirit. However, the situation did not manifest in such manner. The Petitioners failed to comply with its commitment/obligation of redevelopment. In such background, the Show Cause Notice dated 27th April 2023 was issued to the Petitioners, to which, a detailed Reply/Disclosure dated 23rd May 2023 was furnished by the Petitioners. As there was no progress even thereafter, steps were taken by initiating the process to cancel the LOI issued in favour of the Petitioners, which, as the record bears out, consumed some time. The process ultimately culminated in the issuance of the Impugned Termination Notice dated 11th February 2025.

75. Adverting at this juncture to the Impugned Termination

Notice dated 11th February 2025, we find that there is a categorical finding based on survey/material considered by the Respondent-Corporation that there is no progress in the redevelopment scheme. The factual chronology above aligns with such finding. The Impugned Termination Notice records an admitted position with regard to the dilapidated and unsafe condition of the subject buildings/property, which necessitated timely action including redevelopment of the project. Moreover, the Impugned Termination Notice reflects that the cancellation of LOI was not a knee-jerk reaction as the Petitioners would project it to be.

76. From a perusal of the Impugned Termination Notice, we find that the due process in that regard was followed to include confirmation from the Administrator (Reform Committee, Municipal Corporation) through resolutions dated 6th January 2025 and another dated 15th January 2025, which culminated in the cancellation of the initial LOI dated 10th April 2008. In view thereof, it is apparent that the process of cancellation was not an *ipse dixit* of any officer/s and is taken after due and proper application of mind. As the Impugned Termination Notice does not suffer from the vice of non-application of mind and/or absence of reasons, as alleged by the Petitioners, the decision in ***Kranti Associates Pvt. Ltd.*** *(supra)* cited by Mr. Sawant on this issue,

will not assist the case of the Petitioners, in the given factual complexion.

77. The record bears out that the cancellation of the LOI took place after following due process and it did take time to reach to its logical end. Moreover, the Respondent-Corporation has specifically pleaded that the final revalidation of the LOI would require the Petitioners to obtain the Commencement Certificate on or before 10th October 2021, after making arrangements for alternate transit accommodation for the existing tenants, as also reflected in their Written Submissions noted *(supra)*. More significantly, it appears that the failure on part of the Petitioners to comply with the same, would result in *ipso facto* termination of the LOI.

78. We do not find any specific rejoinder of the Petitioners on record. Even if the Petitioners are permitted to proceed on the basis of denial, these vital factual issues remain uncontroverted. In view thereof, this would further demonstrate that the Respondent – Corporation, was not legally precluded from taking the necessary steps towards termination of the initial LOI dated 10th April 2008, issued to the Petitioners, in the given facts and circumstances. It is thus evident that the Impugned Termination

Notice was issued after giving more than adequate/sufficient opportunity to the Petitioners to complete the redevelopment, which, to the say the least is certainly not done in haste, in the given facts and circumstances. Thus, even on such count, there cannot be any *malafides* in the decision-making, attributed to the Respondents, in this case.

79. The submission of Mr. Sawant that the Petitioners were denied a hearing prior to the issuance of Impugned Termination Notice, and therefore, the Respondent – Corporation has acted in breach of the principles of natural justice, appears to be attractive at the first blush. However, considering the above chronology of events that has transpired, this is not a case where the Petitioners were prejudiced only because hearing was not accorded to him. The Petitioners were duly, adequately, properly and sufficiently represented, *inter alia*, through their Reply/Disclosure to the Show-Cause Notice which is clearly a part of the Impugned Termination Notice. In view thereof, the Petitioners have not been able to demonstrate and/or point out any provision/requirement which mandates grant of a personal hearing in the given fact situation.

80. Moreover, the Letter dated 17th December 2020 by which the

initial LOI dated 10th April 2008 was revalidated for the last time, clearly stipulates that if the Developer fails to complete the redevelopment project within the re-validated period i.e. by 9th April 2022, the LOI will be terminated. For convenience, the relevant portion of the Letter dated 17th December 2020 is reproduced below:

> "(E) If the developer fails to complete the said redevelopment project within the revalidated period then the LOI will be terminated."

A perusal of the above would make it clear that this is a self-operating clause which is binding on the parties. In view thereof, the insistence of the Petitioners on a personal hearing in the given case, would be nothing short of a futile exercise. It appears that the Petitioners are using the plank of natural justice as a bogie to cover up the breach of the terms of the revalidated LOIs by setting up a case of prejudice, on purported technical breach of natural justice. On the other hand, the core of the Respondent's case is that in such factual complexion, the Respondent No. 4 – Society ought not to be left at the mercy of such developer, who despite being afforded several opportunities, has consistently failed to fulfil its obligations and/or duties *qua* the redevelopment of the subject property, as the law would mandate. This more

particularly, in a case where, admittedly, the Developer/Petitioner No.1 is beneficiary of incentive FSI under Regulation 33(7) of DCR, 1991.

81. Pertinent it is to note that the Petitioners have not disputed the factual position that pursuant to the issuance of IOD in their favour by the Respondent-Corporation, no Commencement Certificate has been issued to them. This goes on to unequivocally demonstrate that there is no progress whatsoever as far as redevelopment is concerned. This Court cannot grant any further indulgence to such Petitioners who have in inordinately held redevelopment at the cost of the society members who are being made to endlessly suffer for some difficulty faced as projected by the Developer.

82. The Petitioners have also attempted to contend that the Respondent No.4-Society's communication dated 9th April 2025 itself records that a pre-decisional hearing could have inured to the benefit of the Petitioners. We find neither force nor substance in this contention. This is inasmuch as, in the given factual complexion, having taken the view that a proper, sufficient, adequate opportunity of making out their case was duly accorded to the Petitioners prior to the issuance of the Impugned Termination Notice. It is evident

that the Petitioners were fully aware of the timelines stipulated in the revalidated LOI, coupled with the Undertaking dated 3rd December 2020 furnished by the Petitioners, to complete redevelopment of the subject property. More particularly, having regard to the fact that the period of almost 15 years had lapsed since the issuance of the initial LOI in the year 2008 till the expiry of the LOI in the year 2022, reliance by the Petitioners on the said communication of 9th April 2025 does not take their case any further. Contextually, as also set out by the Respondent - Corporation in its Affidavit-in-Reply to this Petition, we do not fathom any prejudice caused to the Petitioners on account of the alleged failure of the Respondent – Corporation in furnishing the internal resolutions, that were passed as a matter of fairness in its procedure, prior to confirming cancellation of the LOI.

83. Insofar as the judgments cited *(supra)* by Mr. Sawant, learned Counsel appearing for the Petitioners, more particularly on the issue of the alleged infraction of the principles of natural justice are concerned, we have no quarrel with the settled legal principles enunciated in the said decisions. However, for the reasons narrated and discussed herein above, and the Supreme Court having repeatedly held that there the principles of natural justice cannot be put into a straitjacket formula, we are not

persuaded to accept the stand taken by Mr. Sawant *qua* his reliance on the said decisions. The same are, therefore, completely distinguishable in the given factual complexion of the present case.

84. On the other hand, we have perused the decisions cited by Mr. Kamat, learned Counsel appearing for Respondent No. 4-Society. Upon a careful perusal, in our considered view, the principles enunciated in ***State of Uttar Pradesh v. Sudhir Kumar Singh*** *(supra)* and ***State Bank of India v. Rajesh Kumar Agrawal*** *(supra) qua* the limitations on the applicability of the principles of natural justice, would squarely apply to the present case. More particularly, in ***State of U.P. v. Sudhir Kumar Singh*** *(supra)*, the Supreme Court has categorically observed that the principles of natural justice are flexible tools in the hands of the judiciary to remedy injustice in appropriate cases. A breach of the rule of *audi alteram partem* cannot, by itself and without more, would not lead to the conclusion that prejudice has been caused merely by reason of such breach. Where procedural and substantive provisions embody the principles of natural justice, their infraction *per se* does not necessarily render the orders passed thereunder as invalid. In our considered view, the aforesaid principles would equally apply to the facts and circumstances of

the present case and adequately address the case put forth by the Petitioners.

85. In the said decision of ***State of U.P. v. Sudhir Kumar Singh*** *(supra)*, the Supreme Court has gainfully referred to its decision in ***Dharampal Satyapal Ltd. vs CCE***[13] to emphasize that natural justice cannot be applied in a straitjacket formula and its principles are very flexible. Moreover, such approach was endorsed by Lord Wilberforce in ***Malloch vs Aberdeen Corpn.***[14], who said that:

> *".....A breach of principle procedure..... cannot give [rise to] a remedy in courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."*

Relying on these comments, Brandon L.J. opined in ***Cinnamond v. British Airports Authority***[15] that:

> *"... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."*

86. At this juncture, we find it necessary to refer to the decision of the Supreme Court in ***Union of India and Another v. P.K. Roy and Others***[16], which has been followed in a catena of decisions,

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13 (2015) 8 SCC 519
14 (1971) 1 WLR 1578 (HL)
15 (1980) 1 WLR 582
16 1968 AIR SC 850

including in ***K.L. Tripathi v. State Bank of India***[17]. The Supreme Court reiterated that the doctrine of natural justice, being flexible in nature, cannot be imprisoned within the straitjacket of a rigid formula. Its application depends upon the nature of the transaction, the functions conferred upon the administrative authority, the character of the rights affected, the scheme and policy of the statute, and other relevant circumstances disclosed in a particular case. Thus, the rules of natural justice are flexible and cannot be confined to any rigid formula, as also held by the Supreme Court in ***Dharampal Satyapal Ltd.*** *(supra).*

87. It is also apposite to refer to the decision of the Supreme Court in ***Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee***[18]. In the context of its observations on the principles of natural justice, the Supreme Court held as under:

> *"13..... Natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of the natural justice, without reference to*

[17] 1984 AIR SC 273
[18] (1977) 2 SCC 256

administrative realities and other relevant factors of a given case, can be exasperating ....."

88. We may also refer to the decision of a Coordinate Bench of this Court in ***Veena Estate Pvt. Ltd Vs. Commissioner of Income-Tax***[19] in the context of natural justice. In the said case, it was observed that if no case of prejudice is made out, a plea of breach of principles of natural justice would be a hollow plea or a plea in futility. The party complaining of breach of principles of natural justice needs to show that curing such breach, would culminate the proceedings with a different consequence. This is certainly not so in the present case.

89. Applying the aforesaid principles to the facts of the present case, it is evident that the Respondent-Corporation has acted in a manner that is fair and just, adhering to the principles of fairness and propriety, and have even shown a substantial degree of grace/leniency towards the Petitioners in complying with their mandatory obligations to redevelop the subject property. Therefore, in our view, the aforesaid decisions squarely apply to the facts of the present case and negates the submissions of the Petitioners, *qua* the alleged violation of the principles of natural justice.

90. In such situations, when fair procedure which is otherwise

[19] 2024 SCC OnLine Bom 77

complied with in the given factual complexion, what is significant is to ensure whether merely not giving a personal hearing would serve any purpose, since the 'right' result can be secured even without according such treatment to the Petitioners. This is the litmus test and the gravamen of the decisions which we have also referred to and relied upon, in the course of our analysis and judgment.

91. It is pertinent to take cognizance of the fact that on 16th July 2018, the Respondent – Corporation had even on an earlier occasion, terminated the LOI executed with the Petitioner No. 1. However, after reconstitution of the Petitioner No.1 - firm and on representation made by the new partners of the Petitioner No.1 – firm, on 20th November 2018, the LOI was renewed. This, with the condition that the Petitioners shall pay the capital value of Rs.27,68,00,000/-. The record in the given case unequivocally indicates that the Petitioners have at all times, failed and neglected to redevelop the subject property from February 2006 i.e. execution of first Development Agreement until November 2018 i.e. renewal of the LOI. Moreover, even thereafter for a period of 8 years until 2026 there has been no improvement in the situation *qua* the said Developers/Petitioners herein.

92. As noted in the factual matrix narrated above, the Show Cause Notice dated 27th April 2023 also proposes forfeiture of the capital value paid by the Petitioners including action of blacklisting *(supra)* against the Petitioners. In light of the observations and findings set out above, the Petitioners have clearly failed to obtain the commencement certificate from the Respondent – Corporation so as to commence the redevelopment of the subject property which ultimately resulted in termination of LOI vide the Impugned Termination Notice dated 11th February 2025 after more than 15 years after issuance of the LOI on 10th April 2008. We are unable to persuade ourselves, let alone accept that on the one hand, is the abject failure of the Petitioners to comply with their obligations *qua* the redevelopment and on the other, the Petitioners attempt to project payment of capital value of Rs.27,68,00,000/- as their *bonafides.* This coupled with the fact that such Petitioners/Developers being the beneficiaries, *inter alia* of incentive FSI under Regulation 33(7) of DCR 1991 *(supra)*, cannot be permitted to unjustly enrich itself. Such self-contradictory stand in our opinion, is, thus misconstrued and unsustainable.

93. At this juncture, we may advert to the submission of Mr. Sawant that the Impugned Termination Notice also proposes

forfeiture of the capital value of Rs. 30 Crore admittedly paid by the Petitioners and their blacklisting. As observed above and supported by record, such action was only proposed in the Show Cause Notice dated 27th April 2023 to which the Petitioners have, admittedly, filed a detailed Reply/Disclosure. The Impugned Termination Notice makes no reference to such forfeiture. Thus, Mr. Sawant's contention does not appear to be factually correct/accurate. Contextually, therefore, the decision in ***Kulja Industries Ltd. Vs. Chief General Manager, BSNL,***[20] cited by Mr. Sawant on blacklisting and forfeiture of capital value is in completely different set of facts and circumstances. In view thereof, reliance on the same, would render no assistance to the case put by the Petitioners.

94. We may observe that Respondent No.4-Society has taken a specific objection to the effect that it has executed a Development Agreement dated 8th September 2026 with a new developer for redevelopment of their society. The procedure for obtaining the LOI from the Respondent-Corporation in this regard, has already begun.

95. According to the Respondent No.4-Society, the above material fact is also not disclosed by the Petitioners despite being

[20] (2014) 14 SCC 731

aware of the same. Moreover, these developments have taken place after termination of the Development Agreement dated 7th June 2024, between the Petitioners and the Respondent No. 4 Society, pursuant to the Society's Letter dated 30th December 2025. In such backdrop, the contention of Mr. Sawant that consents already obtained from the society members cannot be treated as ineffective, would amount to taking the clock back and therefore, pales into significance.

96. The Respondent No.4-Society cannot be compelled to continue only with the Petitioner No. 1 as the Developer, more so in the given fact situation. Moreover, when the redevelopment project falls under Regulation 33(7) of the DCR, 1991, there are commercial benefits/incentives like additional FSI, which are available to the Developer. It is even for such reason that the redevelopment ought to be completed within time, which is of essence and this ought not to be procrastinated indefinitely, on some pretext or the other.

97. Pursuant to the termination of the Development Agreement dated 7th June 2024, as noted *(supra)* the Petitioners assailed such termination in arbitration proceedings and even sought for a stay on the termination of the said Development Agreement which was

rejected by the learned Sole Arbitrator on 19th August 2026. We are conscious of the fact that there is a pending Petition/Appeal under Section 37 of ACA before this Court against such rejection by the learned Sole Arbitrator in Section 17 proceedings, initiated at the behest of the Petitioners. However, we do not find it necessary and/or apposite to make any observations on this count as such Petition/Appeal is an independent statutory proceeding, to be decided on its own merits and in accordance with law.

98. At this juncture, we deem it apposite to advert to the decision of this Court in ***Yash Developers vs. Harihar Krupa Co-operative Housing Society Ltd. & Ors***[21], which was upheld by the Supreme Court in ***Yash Developers vs. Harihar Krupa Co-operative Housing Society Ltd. & Ors***[22]***.*** This Court, having considered the decisions of the Supreme Court in ***Union of India & Anr. vs. Mustafa & Najibai Trading Co.***[23] and ***Bharat Sanchar Nigam Ltd. vs. Bhurumal***[24], held that a Developer cannot espouse a total fact-finding exercise of an adversarial position, not bereft of disputed facts, against the Society. This is certainly not within the scope of writ jurisdiction of the Court.

99. We cannot countenance a situation where the Petitioners

21 2022 SCC OnLine Bom 3712
22 (2024) 9 SCC 606
23 (1998) 6 SCC 79
24 (2014) 7 SCC 177

who by adopting a novel device before this Court by advancing a maze of technical objections, can deprive substantive justice to the Respondent No. 4 - Society and its tenants/members. In our considered view, this is not a case where justice lies on the side of the Petitioners. In this context, we would gainfully refer to a decision of the Coordinate Bench of this Court in ***The State of Bombay vs. Morarji Cooverji***[25], the relevant portion of which is reproduced below:

> *"41. ...In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his side....."*

100. In our overall assessment of the case as narrated above, we find no merit in the Petition. Accordingly, the instant Writ Petition is Dismissed. Rule is Discharged.

101. Before parting with this case, we are reminded of the famous adage, *"Home is where the Heart is."* Mumbaikars, in their dream city of Mumbai, have immense hope and aspirations in regard to their dwelling house, which may manifest itself by way of a flat, apartment, etc. Besides the hard-earned money that is put in for a house in Mumbai, there is an investment of emotions, feelings and

[25] 1958 SCC OnLine Bom 188.

sentiments attached to having a home in their city of dreams, which cannot be procrastinated. In such context, developers/ builders have a huge responsibility cast upon them in law to ensure that their obligation in terms of handing over possession of the flats through redevelopment scheme or otherwise is done in a timely manner. Inordinate delays in this regard, does not only augment the plight of the tenants/flat owners/occupiers/ beneficiaries of a redevelopment scheme, but also defeats the purpose which the statute/law in this regard intends to achieve. The inevitable fallout being a slugfest to claim their rights over their home, resulting in prolonged litigation which ought to be avoided. We conclude with this solemn hope.

[ADVAIT M. SETHNA, J.] **[CHIEF JUSTICE]**