



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

WRIT PETITION NO.204 OF 2025

Vivek Madhavlal Pittie,]	
Indian Inhabitant, residing at Suket,]	
29-B, Dongersey Road, Malabar Hill,]	
Mumbai – 400 006, in his capacity as]	
the Receiver appointed by the High]	
Court of Judicature at Bombay in]	
Suit No.224 of 1961]	...Petitioner.

V/s.

- | | | |
|----|---|---|
| 1. | State of Maharashtra |] |
| | Through its Secretary, Ministry of |] |
| | Urban Development/Housing Department |] |
| 2. | Slum Rehabilitation Authority |] |
| | an authority established under the |] |
| | provisions of the Maharashtra Slum |] |
| | Areas (Improvement, Clearance and |] |
| | Redevelopment) Act, 1971, through |] |
| | Chief Executive Officer. |] |
| 3. | Omkar Realtors & Developers Pvt. Ltd., |] |
| | a company incorporated under the |] |
| | Companies Act, 1956 having its registered |] |
| | office at Omkar House, Opp. Sion- |] |
| | Chunabhatti Signal, off. Eastern Express |] |
| | Highway, Sion (East), Mumbai – 400022. |] |
| 4. | Piramal Capital and Housing Finance Ltd. |] |
| | a company within the meaning of the |] |
| | Companies Act, 2013, having its registered |] |
| | office at 601, 6 th Floor, Amity Building, |] |
| | Agastya Corporate Park, Kamani Junction, |] |
| | LBS Marg, Kurla (W), Mumbai- 400070. |] |
| 5. | Alpertor Developers and Contractors Pvt. |] |
| | Ltd. a company incorporated under the |] |
| | Companies Act, 2013, having its registered |] |
| | office at 4 th Floor, Commerce House 3, |] |

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Currimbhoy Road, Ballard Estate,
Mumbai – 400001.

]] ... Respondents

Mr. Darius Khambata, Senior Advocate, a/w Mr. Mustafa Doctor, Senior Advocate, Mr. Jehangir Jeejeebhoy and Ms. Aishwaryageeta Tawde, i/by Kanga & Co. for the Petitioner.

Dr. Birendra B. Saraf, Advocate General, a/w Ms. Prachi Tatake, Addl. GP, Mr. Vaibhav Charalwar and Ms. Usha Rahi, AGP for the Respondent No.1-State.

Mr. Mayur Khandeparkar, i/by Mr. Anoop Patil for the Respondent No.2-SRA.

Mr. Bhushan Deshmukh, a/w Mr. Haaris Reshamwala, i/by Diamondwala & Co. for Respondent No.3.

Mr. Dinyar Madon, Senior Advocate, a/w Mr. Chirag Kamdar and Ms. Gauri Joshi, i/by Ganesh & Co. for Respondent No.4.

Mr. Ravi Kadam, Senior Advocate, a/w Mr. Rohaan Cama, Mr. Anish Karande, Mr. Dhawal Mehta, Ms. Jasmin S., Mr. Viren Mandhale and Mr. Sahil Singh, i/by Wadia Ghandy & Co. for Respondent No.5.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 26th February, 2025.

PRONOUNCED ON : 23rd April, 2025

Judgment (Per : Kamal Khata, J) :-

1) Rule. Rule made returnable forthwith and heard finally with the consent of parties.

2) By this Writ Petition under Article 226 of the Constitution of India the Petitioner seeks a Writ of Certiorari to quash and set aside the Order dated 29th April, 2024 derived from the Minutes of the Meeting dated 13th February, 2024 and the communication to the Slum Rehabilitation Authority

(SRA) by letter dated 14th March, 2024.

BRIEF FACTS :

3) The Petitioner a successor of one Mr. Madhavlal Pittie (hereinafter referred to as “Pittie”) is the owner of the land bearing Cadastral Survey (CS) No.426 admeasuring approximately 19,741.51 sq. mtrs. at Parel (Pittie Plot). It was notified as a slum on 14th March 2006.

3.1) Omkar Realtors and Developers Pvt. Ltd. (‘ORDL’) a developer, who was developing an adjoining slum property admeasuring 79,176.95 sq. mtrs. (ORDL’s plot), proposed an amalgamation of Pittie’s plot for development in the Scheme in 2013. Pittie and ORDL agreed to amalgamate their respective plots for the existing Scheme on the terms and conditions stated in the MoU dated 24th February 2014. On the basis of the application dated 3rd May 2014 ORDL was granted a revised Letter of Intent (‘LoI’) by the SRA for amalgamation of the two plots in the Scheme. Pursuant thereto on 8th September 2015 a Development Agreement between ORDL and Pittie was executed and registered.

3.2) Similarly, unknown to Pittie, after execution of their Development Agreement, ORDL acquired and amalgamated various other lands to form a part of the Slum Rehabilitation Scheme (SRS) which now aggregately measures 1,07,988.64 sq. mts. From 3rd March, 2016 to 1st February, 2019 the SRA issued further LoIs to ORDL recording the enhanced FSI available for construction of saleable area in the SRS.

3.3) Since ORDL breached the Development Agreement and failed to commence work for the Pittie's building, they held several negotiations to work out alternate solutions between October 2018 to August 2019. It is important to note that these meetings were attended by a common Advocate for ORDL and M/s. Piramal Capital and Housing Finance Ltd. ('Piramal'). Pittie recorded these breaches by ORDL under the Development Agreement by their letter dated 2nd January, 2020 to the SRA.

3.4) During the arbitration proceedings initiated by Pittie against ORDL, they obtained a Commencement Certificate Report, on an application under Right to Information (RTI) 2020. The report revealed that, ORDL had consumed all the FSI generated from rehabilitation tenements on the amalgamated land and therefore, further FSI for construction of free sale buildings would necessarily be generated from the construction of additional rehabilitation tenements solely on Pittie's plot. The project stalled.

3.5) On 25th May 2022, the Government of Maharashtra ("GoM") implemented the Abhay Yojna Amnesty Scheme ("Amnesty Scheme"). Under the Amnesty Scheme SRA was authorised to permit Financial Institutions who have invested funds with the defaulting developers, to complete stalled project as a "Co-Developer" recorded in the same LoI. Apparently on 9th December, 2022 the Amnesty Scheme was partially amended by a Government corrigendum.

3.6) In the meantime on 29th July 2022, unknown to Pittie, Piramal executed a Development Agreement with Vistra ITCL India limited (a Debenture trustee acting on instructions of (Piramal) Alperon and ORDL (as the confirming party). By this agreement, Alperon was appointed as the new developer for the project, thereby being entitled to all rights, title, interest and benefits in respect of the free sale component.

3.7) On 4th December 2023, 29th January 2024, and 13th February 2024 meetings were held by GoM to consider Piramal's proposal.

3.8) On 5th April 2024, ORDL and Piramal were informed about hearing before the CEO, SRA on 12th April 2024 under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slums Act"). It was only in mid-June 2024 that the Pittie became aware of the impugned Order dated 29th April, 2024 passed by the SRA. Piramal filed an Appeal before the Apex Grievance Redressal Committee ('AGRC') against the impugned Order.

3.9) In these circumstances, the Pittie filed this Petition on 4th September, 2024.

4) Mr. Darius Khambata, the learned Senior Counsel appearing for Pittie argued that, Pittie appointed ORDL to develop the subject property since ORDL was developing the surrounding areas under the Slum Scheme. It was ORDL who failed complete the development of the slum, that the SRA decided to terminate ORDL as the developer for the SRS. Now, by the

impugned Order, Pittie's rights to their land, which is now a part of the Slum Scheme - partially implemented, is sought to be nullified by the appointment of the new developer by the SRA.

4.1) Upon taking into consideration the State's Amnesty Scheme called the Abhay Yojna Scheme, SRA passed the impugned Order which effected in the following:

- i) Terminated ORDL as developer of the SR Scheme under Section 13(2) of the Slums Act.
- ii) Confirmed the appointment of Lender - M/s Piramal Capital and Housing Finance Private Limited (Piramal) as the Co-Developer along with developer M/s Alperton Developers (Alperton) authorised by Lender.
- iii) directed Piramal to take steps in accordance with Circular No. 210.

4.2) He asserted that, prior to the Amnesty Scheme, in the event of default by the developer, proceedings under Section 13(2) of the Slums Act could be initiated and the defaulting Developer would be removed and a new developer would be appointed through a transparent tendering process. Needless to say that the Financier too stood removed. In such scenario, the Financial Institution who had invested in the project would suffer a complete financial loss of the monies invested.

4.3) Under the Amnesty Scheme, the financier of the developer is

sought to be protected. The financier therefore is given an opportunity to introduce its own developer, who would not only secure their finance but also complete the Scheme. In this case, Piramal who were financing ORDL were allowed to choose developer of their choice. Consequently, Alperton was appointed as the new developer.

4.4) He asserted that, the SRA's termination of ORDL as developer by the impugned Order, is contrary to the provisions of the Amnesty Scheme (read with the Corrigendum) under which Piramal made its application to be appointed as a Co-Developer. According to him, the Amnesty Scheme enables such Financial Institution to come forward to complete a stalled Scheme by being recorded as a Co-Developer in the LoI. In doing so, the Amnesty Scheme in Clause 11, expressly states that action cannot be taken against the developer under Section 13(2) of the Slums Act during the prescribed period of the Scheme. Therefore necessarily, Piramal was required to be appointed as the Co-Developer with ORDL in the LoI. Thus by appointing Alperton, the Scheme is misread and misinterpreted resulting in Piramal and Alperton being entitled to all the benefits, in the form of free sale area, arising from the project, without any obligations to pay consideration to Pittie for ownership rights.

4.5) Mr. Khambata submits that, the ORDL obtaining finance from Piramal did not concern them since their rights were not affected. He therefore submits if Piramal chooses to substitute Alperton Developers for

ORDL they would have no objection. However, Alperton would be bound and liable for all the terms and conditions in place of ORDL and must adhere to it in its true letter and spirit.

4.6) Mr. Khambata contends that, the Respondent No.1-State in paragraphs 3 and 6.5 of its Affidavit in Reply dated 10th February, 2025 has supported the Pittie. It states that the Piramal and Alperton are not absolved of the obligations towards the Pittie, if any, and are bound to execute all terms and conditions stipulated in the registered Development Agreement dated 8th September, 2015.

4.7) He submits that, the Amnesty Scheme does not dilute the rights of the Pittie in any manner by virtue of the removal of ORDL, who has failed to complete the Scheme. The Scheme's object is to protect all concerned in this situation, which is the owner, the financier/s as well as the slum dwellers. He submits that merely because a new developer is appointed, he cannot claim all the benefits that are available under the Scheme and eliminate or dilute all the liabilities that were agreed to by the original developer. The Amnesty Scheme cannot be interpreted in a manner that would render the Scheme contrary to the provisions of the Slums Act.

4.8) The contentions of both Piramal and Alperton are that, they did not inherit the contractual commitments and obligations of ORDL. The Amnesty Scheme entitled them to take the Scheme on a 'clean slate'. He countered this by pointing out their statements in the 'Questionnaire' and

other documents annexed to the letter dated 10th October, 2023 where they acknowledged their liability towards the outstanding obligations of ORDL to the Pittie under the Development Agreement dated 8th September, 2015 including the obligation to provide additional area to the Pittie. He relied on the Alperton's Development Agreement dated 29th July, 2022, its application to the SRA dated 8th July, 2022 and on 1st February, 2022 for issuance of the amended LoI and communication dated 10th October 2023, to submit that, the present stand is contrary to their own stated position and conduct while applying under the Amnesty Scheme to avail the benefits. He submits that, even in the Appeal, Piramal has taken stand that is at complete odds with both, the Amnesty Scheme and the position taken while applying to avail benefits thereunder thereby trying to renege on its representations to the State and SRA.

4.9) Mr. Khambata submits that, ORDL too has taken a stand in the Arbitration proceedings that, by virtue of its termination as a developer, it is absolved of its obligations under the Development Agreement. Resulting in the Pittie losing its inherent right to the property both from ORDL - Piramal and Alperton without any compensation whatsoever while all benefits accruing therefrom will be available to Piramal /Alperton and the slum dwellers – who are trespassers on Pittie's plot.

4.10) Mr. Khambata asserted that, the impugned Order was passed without their knowledge and intimation despite all concerned parties being

well aware of Pittie's ownership rights to the subject property. In support of his contention he relied upon the communication dated 23rd January, 2020 (Exhibit 'T' at page 229), Piramal's response to GoM's Questionnaire in October 2023 particularly Annexure 1 (Exhibit 'UU' at page 706 at Sr. Nos. 23 and 24) and Annexure 22 (Exhibit 'WW' at page 722 paragraph B.9), Fact Sheet prepared by SRA on 23rd April 2024, SRA's notice dated 5th April 2024. He added that ORDL who continued to participate in the arbitral proceedings failed to even disclose Piramal's Application under the Amnesty Scheme and the existence of Alperton's Development Agreement with Piramal. In view of the above, he contended that there was collusion between ORDL, Piramal and Alperton to deprive the Pittie of its property without any consideration.

4.11) In response to the contention raised by Piramal – Alperton that the Pittie can prefer an Appeal under Section 35 of Slums Act, he contended that no appeal was available in relation to the impugned decision taken in the Minutes of Meeting dated 13th February, 2024 of GoM, impugned communication dated 14th March, 2024 by GoM to SRA and impugned Order dated 29th April, 2024 passed by SRA. Alternately, he submitted that, the present case was an exception to the discretionary rule of alternate remedy.

4.12) Mr. Khambata relied upon the judgements of the Supreme Court in the case of *Dharampal Satyapal Limited V/s. Deputy Commissioner*

of Central Excise, Gauhati and Others reported in (2015) 8 SCC 519, particularly paragraphs 18, 28-32, 34, 36 and 37 and *State of U.P. V/s. Mohammad Nooh reported in AIR 1958 SC 86*, paragraphs 10 and 11 in support of his contentions.

4.13) Finally Mr. Khambata submitted that, undisputedly all existing (unused) and future free sale FSI was demonstrably and necessarily generated from the construction of rehabilitation tenements on the Pittie Plot which Piramal and Alperton seek to usurp and they moreover have a legitimate expectation that the State of Maharashtra would acquire Pittie Plot under the Slums Act resulting in usurpation of Pittie's right at the expense of State while retaining huge benefits from the Scheme.

5) Dr. Saraf, the learned Advocate General representing Respondent No.1-State asserts that, the State has not in any manner sought to dilute the rights of the landowners. He drew our attention to the Affidavit in Reply dated 10th February, 2025 and particularly pages 836 and 843 thereof. In support of his contention and the clear stand of the State that the Amnesty Scheme does not absolve the new developer of the obligations towards the owners, if any. Consequently, it was in this context, he submitted that in the Affidavit it is stated that the Petition is misconceived and requires to be dismissed.

6) Mr. Ravi Kadam, learned senior counsel appearing for Respondent No.5-Alperton, the new developer, submits that, they are

appointed by the SRA pursuant to the Order under Section 13(2) of the Slums Act and therefore the liabilities of the earlier developer cannot be foisted upon them. He submits that they are not liable to adhere to all the terms and conditions that were agreed to by the erstwhile Developer-ORDL to the Pittie-owner else the Scheme may be unviable for implementation.

6.1) He contends with reference to the Scheme of the Slums Act that, any slum area declared under Section 4 of the Slums Act is now covered by Chapter 1A and is treated as a slum rehabilitation area under Section 3C of the Slums Act for the purpose of implementation of a Slum Scheme. Therefore Chapter 1A applies to the Slum Rehabilitation Area. He contends that Section 12(10) of the Slums Act contemplates that the owner of the land may redevelop the land in accordance with the plans approved by the competent authority and subject to the restrictions and conditions, if any, that the authority may think fit to impose.

6.2) Mr. Kadam submits with reference to the right of an owner of land declared as a Slum Rehabilitation Area that, this right of the owner is contemplated as being a one-time preferential right that lapses under certain conditions of the Slums Act and cannot be exercised again and again as held in the case of *Rajan Garg, Resolution Professional of Truly Creative Developers Pvt. Ltd. V/s. Chief Executive Officer, Slum Rehabilitation Authority* reported in *2024 SCC OnLine Bom 1060, Veekaylal Investment Company Private Limited V/s. State of Maharashtra and Others* in *Writ*

Petition No. 995 of 2018 Order dated 22nd October 2019 and *Deena Pramod Baldota V/s. State of Maharashtra* reported in 2022 SCC OnLine Bom 5102.

6.3) Mr. Kadam submits that, upon removal of the developer under Section 13(2) of the Slums Act as applicable under Chapter 1A the CEO SRA may determine to develop the land declared as Slum Rehabilitation Area by entrusting it to any agency or other developer recognised by him for the purpose. Section 13(2) of the Slums Act does not contemplate any rights continuing in respect of the erstwhile developer or any person claiming through such erstwhile developer or to whom the erstwhile developer may have entered into any private contractual obligations. The Scheme under Section 13(2) of the Slums Act contemplates that the new developer would complete the Scheme that was left incomplete by the erstwhile developer and the State and SRA would value the expenses that were incurred by the erstwhile developer and reimburse the same in accordance with Section 13(2) of the Slums Act. In this process, the landowners also loose their right to develop this property. Referring to Sections 14, 16 and 17 he submitted that, the State may then acquire the land from the owners under Section 14 of the Slums Act and the owner and developer may be entitled to the compensation contemplated under the Statute and substantiated by the judgement in the case of *Sara Harry D'Mello V/s. State of Maharashtra* reported in 2013 SCC OnLine Bom 662 that, held that the compensation contemplated thereunder is not illusory.

He accordingly submits that the new developers would have a 'clean slate' and will not be foisted with the liabilities of the erstwhile developer.

6.4) He then drew our attention to the conduct of the Pittie in attempting to obfuscate the SRS and monetize the said land at the expense of the slum dwellers. He submitted that, the Pittie has failed twice in implementing the Scheme first through Darshan Group and then through ORDL. Therefore referring to Section 226 of the Contract Act, 1872 he submitted that the actions of the agent bind the principal and on that analogy Pittie has failed twice already and therefore too is not entitled to one more chance and are only entitled to compensation as contemplated under the Act from the State upon acquisition of the land. Consequently, the Pittie's right under Article 300A of the Constitution of India also lapses after their failure to develop under the Scheme.

6.5) With regard to the Amnesty Scheme, he submits that Alperton is not required to take over ORDL's contractual obligations with Pittie. He placed reliance on the Government Resolution No. Miscellaneous-2021/C.No.135/S.I.-1 issued by the GoM dated 25th May, 2022 to submit that it provides for two measures for completion of delayed Slum Rehabilitation Schemes viz. (i) appointment of a new developer through the process of tender and (ii) appointment of the Financial Institutions who have invested in Slum Schemes and induction of a new developer at their instance. According to him neither alternative requires the new developer –

Alperton to meet with all the contractual liabilities and promises of the defaulting developer. If therefore just as the liabilities of the defaulting developer are not foisted on the new developer who steps in through the tender process, similarly it cannot be foisted on the developer brought in by the Financial Institution.

6.6) Mr. Kadam also drew our attention to the various correspondences and documents to submit that Piramal has not accepted or agreed to the terms of the Development Agreement executed between ORDL and Pittie. According to him the Committee has accepted Piramal's proposal without conditions of taking over liabilities or old contracts of the erstwhile defaulting developer. He submits that, the contention that contractual rights with ORDL are binding on Alperton is untenable for want of privity of contract between Pittie and Piramal.

6.7) He contends that, the assertion by GoM that Alperton steps in the shoes of ORDL is misconceived as neither the Amnesty Scheme nor any correspondence reflects the same. He placed reliance on the Judgement in *Sanjeev Coke Manufacturing Company V/s. M/s Bharat Coking Coal Limited & Anr. reported in (1983) 1 SCC 147*, to submit that interpretation is not to be judged by Affidavit filed by the State but by what the legislature or the State has said in Scheme itself. According to him such contention would have a drastic consequence and may result in making the Scheme entirely unviable.

6.8) Mr. Kadam refutes the contention of Pittie that the Amnesty Scheme does not provide for appointment of a new developer on the basis of the plain language used in the Amnesty Scheme itself. He submits that while the Amnesty Scheme contemplates issuance of modified LoI in favour of the Financial Institution as a Co-Developer along with the newly appointed developer, the Section 13(2) of Slums Act contemplated issuance of a new LoI after terminating the old developer in which case the Financial Institution/s would loose their money invested with the old developer.

6.9) He also vehemently opposed the contentions that the Order dated 29th April, 2024 was passed by SRA without giving notice under Section 13(2) of the Slums Act to Pittie placing reliance on the Sections of the Slums Act, Power of Attorney given to ORDL and Section 229 of the Contract Act which provides that notice given to the agent will have the same legal consequences as given to the principle. He also denied any collusion between Alperon, Piramal and ORDL. He then relied upon Annexure 22 to the letter dated 10th October, 2023 to submit that Piramal's communication to SRA evinced that it intended to proceed with the project only if certain pre-requisites were fulfilled. Thus, it was clear that no person would have any right or recourse against Alperon.

6.10) Mr. Kadam finally submitted that, Pittie has already an ongoing arbitration proceeding against ORDL. Alperon cannot be forced to step into the shoes of ORDL and defend those arbitration proceedings. The claim of

Pittie against ORDL is a separate matter and Alpertton cannot be forced to accept the terms and conditions that ORDL had agreed to with Pittie. There would be a possibility that the project would then become unviable. Accordingly, he submitted that the Petition is liable to be dismissed.

7) Mr. Dinyar Madon, learned Senior Counsel representing Respondent No.4- Piramal submits that, he adopts all the arguments of Mr. Kadam. He further submits that his contract was with ORDL. ORDL had mortgaged the 'sale component' to Piramal. The Amnesty Scheme was to protect his interest. The foisting of the terms by Pittie on Piramal's appointed developer would make the Scheme unviable and thereby the finance lent to ORDL would then be at stake. He therefore submits that, Pittie can claim only against ORDL and cannot foist the entire contract on his developer. He therefore submits that the Petition be dismissed.

8) We have heard all the learned counsel for the parties and perused the entire record.

REASONS AND CONCLUSIONS:

9) At the outset, it would be pertinent to analyze the Amnesty Scheme and its clauses to understand the reason for our conclusion.

9.1) The relevant portion of the Amnesty Scheme is reproduced hereinbelow for ready reference:

“Government Resolution:-

Approval is given hereby to the Slum Rehabilitation Authority, to take up the following measures to complete stalled slum rehabilitation projects:-

1) To appoint Developer through the process of tender:-

...

2) Execution of Abhay Scheme (Amnesty Scheme)

Investment is made by various financial institutions in the slum rehabilitation projects. The authority to sell the sale component that will be available through the Developer of the slum rehabilitation scheme, is given to such financial institutions in relation to their investment.

The said financial institutions are not on the records of the Slum Rehabilitation Authority. The Developer of the slum rehabilitation scheme is not completing the rehabilitation component in the said scheme due to some reasons. In spite of finance being provided, the rents of eligible hutment holders are kept in arrears and since the scheme is being deliberately stalled, the rehabilitation of the slum holders is not being done on time. The financial institutions who have invested in such rehabilitation schemes are facing financial loss. Since the said financial institutions are not on the records of the Slum Rehabilitation Authority, it is does not become possible for the Slum Rehabilitation Authority to give them approval in spite of their having financial capability to complete the scheme. In such stalled schemes, if those financial institutions approved by the Reserve Bank of India, SEBI or NHB, come forward, they will be given permission to complete the stalled scheme. **[Those financial institutions (approved by RBI, SEBI, NHB) which have provided funds for implementation of the scheme, should be entered in the Letter**

of Intent as Co-Developer/Lender. Permission to implement the scheme will also be given to the competent institution appointed/authorised by them.]¹

The following terms and conditions will be applicable to both the aforementioned schemes.

- 1) It will not be necessary to take approval of the General meeting of the Committee of hutment holders for appointment of new Developer/Financial Institution.
- 2) The condition to pay 5% premium by the said financial institution as per the slum rehabilitation policy, will not be there.
- 3) It will be binding on the Developer/Financial Institution to complete construction of the rehabilitation component within the prescribed period.
- 4) It will be binding on the new Developer to pay the rents of all eligible hutment holders regularly.
- 5) In connection with payment of the rent arrears of the hutment holders in the scheme, the Chief Executive Officer, Slum Rehabilitation Authority will take proper decision through consensus after holding joint meetings with the Developer/Financial Institution as well as Office bearers of the concerned housing society. The Letter of Intent (LOI) will be given only after that.
- 6) It will be binding on the said financial institution to submit certificate regarding financial capability (Annexure-III).
- 7) If the said Financial Institution/Developer does not complete construction of the rehabilitation component within the prescribed time period, penalty will have to be paid as

1 As per corrigendum dated 9th December 2022 at page 677 of the record.

follows:-

Sr. No.	Stages of time period	Percentage of construction to be completed within the said time period	Penalty that will be charged if there is delay in construction
1	Within 1 year	33	Amount equivalent to 1% of value of land required to construct sale component
2	Within 2 years	66	Amount equivalent to 2% of value of land required to construct sale component
3	Within 3 years	Construction of all flats	Amount equivalent to 2% of value of land required to construct sale component

(Note- The above time period will be calculated from date of giving permission for construction of the redevelopment component).

8) However, regarding large schemes, wherein if it is not possible to complete the work as per the above schedule,

for such projects, the Chief Executive officer, Slum Rehabilitation Authority will have the authority to fix the time period required to complete the scheme as per the size of the scheme.

9) It will be binding to mention in the Letter of Intent (LOI), the information regarding the penalty to be charged to the Financial institution/Developer if the construction of the rehabilitation component or the construction is not completed within the prescribed time period.

10) If any instruction is received from the Hon'ble High Court or the Government in connection with the scheme, it will be binding on the Financial institution/new Developer to

comply with the said instruction.

11) In the said scheme, action cannot be taken against the Developer under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 during the prescribed period of the scheme. However, if the aforementioned terms and conditions are breached, or the said Financial institution/new Developer is unable to complete the slum rehabilitation scheme, action will be taken against him under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Any new scheme submitted by him thereafter will not be accepted.”

[Emphasis Supplied]

9.2) This Amnesty Scheme came into effect on 25th May, 2022. It was for those projects that were stalled despite all efforts, including concessions offered and finance being provided to the developer.

10) Pertinently, the Amnesty Scheme is for such Financial Institutions that are approved by Reserve Bank of India (RBI), Securities Exchange Board of India (SEBI) or National Housing Bank (NHB) who come forward to complete the Scheme. Such Financial Institutions will be given permission by bringing them on record as Co-Developer in the LoI to complete the stalled Schemes. It is to enable them from facing financial losses despite having financial capability to finance completion of the Scheme.

11) Upon perusal of the entire Scheme, we are unable to accept the Mr. Khambata's contention that the clause 11 of the Amnesty Scheme

contemplated continuance of ORDL as developer, though terminated under section 13(2) of the Slum Act, because the clause 11 did not use the words “new developer”. His interpretation, of the words ‘action cannot be taken against the Developer....’ to mean the ‘*defaulting developer*’ would in fact be a misinterpretation and misreading of the Amnesty Scheme. Since the Scheme is for all those who are affected by the non-performance by ‘*defaulting developer*’ and his consequent removal. The subsequent line which mentions the words “...said Financial institution/ new Developer...” clarifies that the clause refers to the new developer and not the ‘*defaulting developer*’ Additionally, a plain reading of paragraphs 7 and 11 reveals that it is regarding that new developer appointed by the Co-Developer/Lender who will not face action under Section 13(2) of the Slums Act during the prescribed period of the Scheme except in the event of breach of the terms and conditions mentioned in the Amnesty Scheme.

12) We however agree with Mr. Khambata that, though Pittie has no privity of contract with Piramal, his rights as landowner does not extinguish or get nullified on account of ORDL's termination, since Pittie was not a developer of SRS to whom LoI was issued. A careful reading of the Amnesty Scheme would indicate that even the financiers who had the financial capability to complete the scheme could not be granted approval since they were ‘*not on the records of the Slum Rehabilitation Authority*’. Therefore, since Pittie who was neither on record of the SRA nor was in any

way responsible for the stalling of the scheme, cannot face abrogation of his rights. It would be akin to nullifying the rights of the financier who financed the Developer. According to us both are similarly placed as they are not on record of the SRA.

13) Regarding the contention of Mr. Kadam, learned senior Counsel for the for Alpertons Developers and Contractors Pvt. Ltd.-Respondent No.5, that the owner's right to redevelop the property is a one-time preferential right relying on the Judgments of *Rajan Garg (supra)*, *Veekaylal Investment (supra)* and *Deena Pramod Baldota (supra)*, we find this proposition unacceptable. These judgements do not lay down any such principle.

14) A closer look at *Rajan Garg (supra)*, particularly *the line in* paragraph No.23 which reads thus, "*This is understandable where no letter of intent is issued at all or has been issued to somebody else to the exclusion of the owner.*" reveal that it excludes the owner, when letter of intent is issued to someone else. Thus, this judgment considers a situation where the LoI has been issued to a developer and not the owner himself.

15) Similarly, in the case of *Veekaylal Investments (supra)*, it was *Veekaylal Investments* who had submitted the rehabilitation scheme as mentioned in paragraph 19 of the judgement and was on the record of the SRA.

16) Even in the case of *Deena Pramod Baldota (supra)* to the Court has categorically observed in paragraph No.34 that, "*ultimately the Court is*

called upon to adjudicate matter structured by provisions of beneficial legislation competing rights of land owner and slum dwellers will have to be balanced after considering the facts and circumstances in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India. The Court has to consider all the relevant facts and circumstances and is required to satisfy itself that its interference will serve the interest of justice.”

17) Thus, the commonality in all three cases referred by Mr. Kadam was that the property owner was granted an opportunity to develop the land and had failed. The present case is clearly distinguishable. Here Pittie had offered the land to ORDL a developer who was developing the adjoining lands under the slum scheme. The LoI was in the name of ORDL and Pittie's land was merged in the Scheme. Therefore, the principle laid down in these judgments will not assist Mr. Kadam's contention in the present case.

18) We are unable to accept Mr. Kadam's contention that if the developer appointed by the owner, who is not on the record of SRA, fails to develop the property even then his land is liable to be acquired under Section 14 read with Sections 16 and 17 of the Slums Act and the owner will only have a right to receive compensation for the acquisition in accordance with Sections 16 and 17 of the Slums Act.

18.1) In our view, this submission would not be applicable to this

case. Firstly, because the owner is not on record of SRA and undertaken to develop the property it was ORDL and secondly, Section 14 contemplates representation from the competent Authority, which is absent in this case.

19) Further, if these contentions are to be accepted, it would result in the Financier and new Developer enjoying the fruits of Scheme at the cost of the State who would require paying for the acquisition of the land from Pittie. Consequently, Pittie's rights under the contract with developer are nullified and would get far lesser value than the market value for his property. In these circumstances, only two stake holders i.e., the financier-developer and slum dwellers who have no right as such on the property enrich themselves at the cost of the landowner. This is not justified in any manner from any point of view.

20) We are also unable to accept the contention of Mr. Kadam that Pittie attempted to obfuscate the SR Scheme and monetize the land at the expense of the slum dweller. Pittie's inability to develop the land cannot be construed as an attempt to obfuscate the SR Scheme. Pittie has all rights to monetize the land as an owner. On the contrary, it is the slum dwellers who have illegally trespassed on Pittie's land and deprived him of his rights. The State has failed to help Pittie in protecting his land.

20.1) In this context the learned Single Judge of this Court in the case of *Reverend Father, Peter Paul Fernandes, Parish Priest and Sole Trustee of the Church of St. Francis Xavier V/s. State of Maharashtra*

reported in *1991 SCC OnLine Bom 92 : AIR 1991 Bom 445*, has observed about the formation of slum colonies in Bombay way back in 1991. The relevant passage is reproduced for ready reference.

“6. It is unthinkable that person whose land has been encroached upon, which land is situated in Greater Bombay, would keep quiet and not seek the assistance of Public Authorities to get rid of squatters. It will have to be presumed that the Petitioners predecessors had done so and an indirect confirmation of this comes from the portion accepted from the Order at Exh. A. The same speaks of demolition by the B.M.C. or the demolitions squad of the encroachment department of the revenue. This demolition of the unauthorized structure is to be undertaken by the B.M.C. and the Revenue Authorities and that is they alone who can deal with the squatters. Slum colonies in Bombay had their origin in acts of trespass and the private citizens suffering could do little to get even with the wrongdoers. For this reason, demolition of unauthorized structures is the responsibility of the Corporation or the demolitions squad of the Revenue Authorities. Judicial notice can be taken of the fact that the squatters are the creations of either slumlords or they themselves and that where the lands encroached upon are of private parties: the latter having no remedy against the wrongdoers. Mr. Bora says that the Petitioner or his predecessors could have filed a complaint or a suit in a Court of law against the trespassers. It is well known that the complaints and the suits take decades to reach decision in the city of Bombay and that even where relief is granted, it is merely on paper. To execute decrees and secure the eviction of trespassers through the process of Criminal Court is virtually impossible and, in this situation,

to impose upon the owner the burden of N.A. assessment or fine or penalty is to add insult to injury. **The owners whose property has been occupied and perhaps lost forever, are further burdened with liability to pay for the benefits originating in the acts of trespass and enjoyed by the trespassers or their successors-in-interest....”**

[Emphasis Supplied]

21) This case is the stark reality of the learned Judge’s prediction in 1991. Pittie is a victim and thus cannot be blamed for not being able to protect his land. It is the concerned authorities and the State that are to be blamed.

22) All landowners are not developers and have the wherewithal or the expertise in development. Obviously, in the eventuality that illegal structures are erected on their land and declared as Slum, they would either sell, assign or self-develop as they deem fit.

23) In this case, Pittie has assigned his rights to ORDL for consideration because he was developing the adjoining lands. Prior to ORDL Pittie had attempted to develop through another developer. That too did not fructify.

24) Questions that arise in our minds are:

- i) Can the owner be blamed in these circumstances?
- ii) Should his rights be nullified for contracting with a developer who fails for whatever reason?

24.1) In our view, the owner cannot be faulted. He is the victim in

this whole scheme. But the Slum Act gives preference to those illegal trespassers on private land. They are permitted to dictate terms and their rights are sought to be protected contrary to all general principles.

25) Thus Mr. Kadam's contention that Pittie attempted to develop his land twice and failed and cannot get a chance again is to be rejected. Moreover, a landowner's right cannot be nullified on account of breach by a developer-a third party whose actions are not within the control of the landowner.

26) We are unable to accept the contention of Mr. Kadam that, Pittie has sought to delay the SRS for his own personal motives and has failed to take steps for completion of the SRS.

27) According to us, this is merely a bald statement with no particulars stated in support of this contention. He is unable to point out the obligations that were reneged by Pittie which led to the delay in implementation of the SR scheme. In the absence of such particulars, it cannot be asserted that Pittie was responsible for delay in implementation of the SR scheme. Consequently, the same can only be called as a conjecture or surmise. The allegation that Recital 18 of the Development Agreement and Clause 8 of the MoU evinces that Pittie contracted with ORDL to avoid acquisition of the land and utilize the slum process to enrich himself is baseless. However, in our view, Pittie cannot be blamed for trying to protect his rights to the land.

28) Moreover, non-termination of contract with ORDL by Pittie cannot be construed as collusion between them to thwart the SR scheme by any stretch of imagination. In our view, Pittie was only a recipient under the contract without any obligations. ORDL had to perform by constructing a building for Pittie on its plot apart from other consideration. Whilst, Pittie's land is used and rehab constructed thereon, no part of the consideration is received by them as contended. Obviously therefore, Pittie has chosen not to terminate the contract with ORDL. In these circumstances, we are unable to accept Mr. Kadam's contention that, a bona fide owner would have forthwith terminated the deal with the developer.

29) We also do not agree with Mr. Kadam's contention that since Alperton was appointed pursuant to the termination of the old developer under Section 13(2) of the Slums Act, it was not required to take over ORDL's contractual obligations with Pittie relying on the Government Resolution dated 25th May 2022. According to us if the Amnesty Scheme were not applicable then, even the financier of the developer would be ousted from the Scheme as contemplated under Section 13(2) of the Slums Act.

30) In our view, the status of the Financier cannot be higher than the landowner. If viewed from the perspective of a financier to a developer in a redevelopment project, is a financier who finances the developer for his entitlement to the free sale component in the redeveloped building would

be placed in the same position as a third-party purchaser.

31) In the case of *Deepak Prabhakar Thakoor and Others V/s. Maharashtra Housing and Area Development Authority (MHADA) and Others reported in 2023 SCC Online Bom 2234*, the Division Bench of this Court has held that a flat purchaser of the free sale component of a building proposed to be developed by the developer will have no right to decide on the developer of the society whose building was being redeveloped. Applying the same ratio, a financier to the developer, will also have no right to decide on the new developer of the society whose building was to be redeveloped. It would thus be preposterous to contend that a financier to the developer of a society redevelopment project, who is similarly placed in the slum project would eliminate the right of the society whose building was sought to be developed. According to us the only right the financier has is against the developer who has reneged on his contractual obligations with the financier.

32) In this context, the Amnesty Scheme must be read in the broader sense and purposively to secure both the landowner and the financier. It cannot be only to secure the financier. In the present case he stands on a lower footing than Pittie who is the landowner. It would be different if Pittie as developer would have been removed under section 13(2) of the Slums Act.

33) In our view if this contention of Mr. Kadam is accepted it would

be doing sheer injustice to Pittie the landowner who is principally a victim in this Scheme. He is not only stripped of his rights to vacant land by slumlords (against whom no action is taken by the State), then by the slum dwellers who claim right to shelter though are trespassers and whose interest the State seeks to protect and the financier who has no right whatsoever save and accept to recover the money from the developer who has reneged on his contractual terms. We cannot and do not propose to permit such *ex-facie* blatant injustice to perpetrate.

34) We are also unable to accept the contention of Mr. Kadam that notice under Section 13(2) of the Slums Act was required to be given only to the defaulting Developer (who was a Power of Attorney holder of Pittie) and would be deemed notice to the landowner. In our view, Pittie ought to have been given Notice as provided under Section 13(2) of the Slums Act inasmuch as he was clearly and directly affected with the outcome of the hearing.

35) While considering this aspect, it would be pertinent to note the definition of “developer” and “owner” under the Slum Act. The definitions are reproduced herein for ready reference:

“2 (c-a) “developer” means such agency as may be appointed or registered under section 3B by the Chief Executive Officer of the Slum Rehabilitation Authority to implement the Slum Rehabilitation Scheme.

2 (f) “owner”, when used with reference to any building or

land, means the person who receives or is entitled to receive the rent of the building or land, if the building or land were let, and includes, –

(i) an agent or trustee who receives such rent on account of the owner;

(ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any building or land devoted to religious or charitable purpose;

(iii) a receiver, sequestrator or manager appointed by a court of competent jurisdiction to have the charge of or to exercise the rights of owner of the said building or land, and

(iv) a mortgage in possession
but does not include, a slumlord.”

36) A plain reading of the owner’s definition reveals that it does not include a developer. Moreover, an agent under the definition of the owner also does not include a developer. Therefore, a developer cannot be read into the definition of owner under the Slums Act, enlarging it, though not contemplated by the Act.

37) Additionally, the proviso to Section 13(2) of the Slums Act contemplates notice to the landowner. The Section 13 (2) and the relevant proviso under section 3D is reproduced herein for ready reference:

“S. 13(2) Where on declaration of any land as Slum Rehabilitation Area, the Chief Executive Officer is satisfied that, the land in the Slum Rehabilitation Area has been or is being developed by the owners, land holders or occupants or developers in contravention of the plans duly approved, or

any restrictions or conditions imposed under sub-section (10) of section 12, or in contravention of any provision of any Slum Rehabilitation Scheme or any condition specified in the approval or has not been developed within the time, as specified under such conditions of approval, he may, by order, determined to develop the land declared as Slum Rehabilitation Area by entrusting it to any agency or the other developer recognised by him for the purpose.

Provided that, such compensation shall not be payable by the agency appointed by the Chief Executive Officer, for any expenditure incurred towards construction to meet conditional obligations made to any third party by the landowners or occupants or previous developers, as the case may be. The Chief Executive Officer before passing such order shall obtain report from approved valuer independently appointed on his behalf and by the concerned parties to the proceeding before the Chief Executive Officer.

Provided further that, before passing such order by the Chief Executive Officer, the concerned landowner or occupant or developer, as the case may be, shall be given a reasonable opportunity of being heard and time which shall not be more than thirty days of showing cause why the order should not be passed.”

[Emphasis supplied]

38) According to us when the rights of the landowner are likely to be affected by termination of the developer a separate entity, then notice to the landowner, being an affected party, is necessary and cannot be dispensed with by the SRA. The Sections or the provisos cannot and ought not to be read to exclude the landowner's right to be heard which is contemplated by the Slums Act. The words “as the case may be” is meant to

include all parties affected and not otherwise as contended by Mr. Kadam.

39) In the present case admittedly, no notice was given to Pittie. Hence, the Order under Section 13(2) of Slums Act would necessarily have no binding effect on Pittie.

40) Sections 226 and 229 of the Contract Act referred to by Mr. Kadam would therefore not be applicable to a 'developer' under the Slums Act as he is not an "agent" as contemplated or covered under the definition of the "owner" under the Slums Act. The word "developer" and "owner" have two distinct definitions under the Slums Act and are not interlinked in any manner or form.

41) We are unable to accept and accede to the contentions and propositions of Mr. Kadam and Mr. Madon who are the new developers and financiers respectively in this case. Pursuant to the termination of ORDL - the developer, under Section 13(2) of the Slums Act, since the Scheme is partially implemented and there cannot be restitution for the landowner or recovery for the financier, the incoming developer must secure rights of both. The Amnesty Scheme must be effectively read to secure the rights of all the three stakeholders namely, the landowner, slum dwellers and the financier.

42) On an overview of the matter, according to us, the Abhay Yojna Amnesty Scheme evidently caters to all the three stakeholders. The Amnesty Scheme envisages the developer's failure to perform his obligations and is

initiated to protect the rights of the three stakeholders under the Scheme. While the Abhay Yojna Scheme has categorically protected the financier and the slum dweller, in our view, it also protects the right of the landowner. It is the defaulting developer who is substituted. The State has rightly taken a stand in its Affidavit in Reply dated 10th February 2025 to the said effect in unequivocal terms that Piramal/Alperton will be bound by the terms of the Registered Development Agreement between the Private entity and erstwhile Developer dated 8th September 2015 and is bound to execute all terms and conditions stipulated therein and we appreciate. The State's stand is absolutely justified being rational. The only thing that the State has sought to do by bringing out the Amnesty Scheme is to protect the interests of all concerned. In this regard in paragraph 6.5 of the same Affidavit it states that the new developer is not absolved of the obligations towards the owners, if any.

43) In this context Mr. Kadam's contention that, Affidavits cannot bind the parliament and validity of legislation is not to be judged merely by affidavits filed on behalf of the State relying on the case of *Sanjeev Coke* (supra) is misconstrued. As held by the Supreme Court we have therefore judged this case and the intention of the Amnesty Scheme not merely on basis of affidavits filed on behalf of the State but by taking into consideration all the relevant circumstances and especially from what we gathered from what the legislature has itself said. This statements amply

clarify that the Amnesty Scheme certainly does not permit the new developer to get a 'clean slate' and take the benefits under the Scheme and thereby deprive the landowner of their benefits for having volunteered to join the Scheme for the development of their lands.

44) In conclusion, with a view to balance the equities amongst all the parties herein Alperton-the developer's appointment is to continue. It may choose to either agree to the terms and conditions of ORDL in totality or may choose to enter into another set of terms with the landowners. Choice is left to the new developer. If an agreement (either on the same terms or other terms) with Pittie is not possible then they may choose to decline the contract and exit the Scheme. In which case Piramal may choose to bring in another developer who will cater to the terms of Pittie. But having accepted the contract, it is bound to secure the rights of all the three stakeholders namely, Pittie, Piramal and Slum Dwellers.

45) The plea of alternate efficacious remedy raised by Piramal and Alperton is to be rejected as *ex facie* and admittedly, Pittie was neither given a notice nor a hearing, and therefore the ratio in the case of *State of U.P vs Mohammad Nooh reported in AIR 1958 Supreme Court 86*, would squarely apply as this case is clearly an exception to the discretionary rule being in violation of the principles of natural justice.

46) Pittie's claim against ORDL in the arbitration proceedings will have no bearing to the issue before us and hence we do not propose to

comment on the same. As fairly submitted by Mr. Khambata, the arbitration proceedings will independently continue.

47) We accordingly dispose off the Petition in the above terms.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.).