



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

WRIT PETITION NO. 2926 OF 2025

Gulab Shankar Mishra, Chief Promoter of
Cuffe Parade SRA CHS Federation (P.) ... Petitioner
Versus
Slum Rehabilitation Authority & Ors. ... Respondents

AND
WRIT PETITION (L) NO. 25376 OF 2025

Precaution Properties Pvt. Ltd. & Anr. ... Petitioners
Versus
State of Maharashtra & Ors. ... Respondents

Mr. Chirag Balsara a/w. Mr. Kartikeya Desa, Ms. Sayli Shinde, Vaibhav More i/b. Kartikeya and Associates for the petitioner in WP/2926/2025.

Mr. Virag Tulzapurkar, Senior Advocate a/w. Mr. Samit Shukla, Ms. Masira Shaikh i/b. Trilegal for the petitioner in WPL/25376/2025 and for respondent no. 7 in WP/2926/2025.

Ms. Savita Ganoo a/w. Ms. Gargi Warunjikar for respondent no. 4 in WP/2926/2025.

Mr. Shahajirao Shinde a/w. Mr. Kuldip Pawar, Akanksha Bobhate for respondent no. 5 in WP/2926/2025.

Mr. Amogh Singh a/w. Mr. Pavan Patil and Tanmay Deshmukh for respondent nos. 5 and 6.

Ms. Aarushi Yadav i/b. Ravleen Sabharwal for respondent nos. 1 to 3 in WP/2926/2025.

Ms. Aarushi Yadav i/b. Ravleen Sabharwal for respondent nos. 2, 3, 4 and 8 in WPL/25376/2025.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 1 October, 2025

P.C.

1. These two petitions concern development of very large land of about 33 acres belonging to the State Government, situated at a prime location in South Mumbai at Cuffe Parade / Colaba. This land is encroached by the slum dwellers and now is proposed to be developed as a slum scheme. We are informed at the bar that on such large land, there are 65000 encroachers/slum dwellers, who have now formed a Society and the land is now sought to be developed by the developer appointed by them, namely, Precaution Properties Pvt. Ltd., who is the petitioner in Writ Petition (L) No. 25376 of 2025.

2. We are quite alarmed that such vast land of the ownership of the State Government can just be made available for slum redevelopment, i.e., not only rehabilitation of the slum dwellers in skyscrapers but also large scale private apartments to be constructed in one of the most prime localities in South Mumbai where land is scarce and requirement of the land for the Government can never come to an end. Mumbai city is a island city in which it is no more possible to find government lands to be utilized for public purpose. In such circumstances, in the prime localities of Mumbai and that too a place like Cuffe Parade/Colaba which are sea facing lands, they are invaluable for the government utility and/or for any vital public purpose, which may be innumerable. However, it appears that the Slum Rehabilitation Authority is too keen for reasons best known to it to permit such vast government land to be extinguished permanently from the pool of government lands which could be utilized for public utilities like gardens, open

spaces etc., in a city which in any way bursting with unbridle construction depriving the public of such basic requirements for a humane living. Such largesse being showered and that too free of cost on 65000 slum dwellers is detrimental to public interest and long term needs of the city.

3. As a Constitutional Court, we cannot overlook the observations made by the Division Bench of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi vs. Bhiwandi Nizampur Municipal Corporation & Ors.¹; Abdul Majid Vakil Ahmad Patvekari vs. The Slum Rehabilitation Authority² and Moinuddin Pashamiya Shaikh vs. Slum Rehabilitation Authority³** in regard to the large Government land State largesse, which is admittedly a public property being not utilized for any public purpose but being thrown to the development of slum scheme which involves large private development in the form of free sale components. The cumulative effect being by virtue of such large scale permissive encroachment, the Government land is forever lost from any public utility. The aforesaid decisions are considered by a Division Bench of this Court in **Bishop John Rodriques vs. State of Maharashtra, through its Principal Secretary & Ors.⁴** We find it appropriate to extract the relevant observations of the Court in all these decisions as set out in the said decision, which reads thus:

“112. ... Unfortunately, it is the State policy which in fact has encouraged encroachments on all categories of lands and in fact has resulted in large Government lands being siphoned out from the ‘State pool’ and equally private lands being completely lost to its owners.

1 2022 SCC OnLine Bom 386

2 2021 SCC OnLine Bom 13719

3 2023 SCC OnLine Bom 2933

4 2024 SCC OnLine Bom 1632

Such position is wholly unacceptable when the rights on every individual/person are conferred by the Constitution and the laws. [See the observation of Division Bench in Jilani Building (supra)].

113. Apart from what has been discussed above, as rightly submitted by Dr. Sathe, the encroachers on land cannot assert rights to rehabilitate on the very land albeit the land owner agreeing to rehabilitate them on the same land. The assertion on the part of the slum dwellers being made in the present case, which is to the effect as if the slum dwellers have higher rights on the land than the owners of the land, so as to presume absolute right of rehabilitation on the very same land even under the policies of the Slum Act, is totally untenable. The right of the slums dwellers is only to a permanent alternate accommodation under the statutory scheme and the State policies. The slum dwellers cannot have an approach that they become owners of the land and assert rights to defeat the rights of the real owners of the land. In our opinion, neither such rights of any ownership of the land to the slum dwellers are recognized by the Slum Act nor can such rights be so inferred. We test such assertion of the slum dwellers on an illustration namely, assuming a Government or private land which is encroached, is situated at a prime locality namely at Nariman Point, Cuffe Parade, Pedder Road or Malabar Hill in Mumbai. Can the encroachers of such land, in law, assert that they need to be rehabilitated at the same place or area ? The answer would be an obvious 'No'. In our opinion, if the State Government or a public body or a private party is in a position to make available an alternate land away and even far away from the slum land and rehabilitate such slum dwellers on such alternate land, in our opinion, the rights of the slum dwellers in no manner are affected and prejudiced. The reason being that the rights of rehabilitation of slum dwellers are recognized under the policies of the State Government and as envisaged by the provisions of the Slum Act, they cannot have a recognition over and above the right to property guaranteed to a person under Article 300A of the Constitution. It would be difficult to accept that there is an absolute right in slum dwellers to be rehabilitated at the same place and/or in the same area when such rights are premised on encroachment and clothed by such Government policies. Hence, such rights cannot be elevated to an extent that it will defeat the valuable rights of property of the owners of the land and merely because effective steps (which is an impossibility) to remove the encroachment could not be taken. We ponder was it ever possible for the public bodies to prevent encroachment on their lands and prevent declaration of such public lands as slum under the Slum Act and/or to remove encroachment before the public lands were made available to the slum societies/developers to be commercially exploited. If this was not possible to be achieved by the mighty Government machinery, how can one expect a private person like the petitioner in the present case to prevent the tyranny of the slum dwellers and the developers.

114. Regrettably, instead of moving in the direction to have a planned and sustainable development, the successive Governments together with the Corporation seem to have unabashedly allowed mushrooming of slums at the instance of squatters by encouraging them not only to encroach more and more of public property but, simultaneously, by enacting laws to protect such unauthorized occupation. However, a vicious nexus involving high profile personalities, bureaucrats, builders and slum lords have created a situation where public property is first encroached without resistance being provided by the law enforcing agency, followed by a declaration of slum gradually progressing to redevelopment by builders ostensibly for slum dwellers but really to further the interests of the “haves”. In the garb of legislation, in a novel manner, a fraction of the population including holders of public offices have continued to prosper by achieving their goals through impure means which are nothing short of betrayal of the trust that the people of this region have reposed in those responsible for an able governance. While it was the need of the hour to make housing projects a reality more effectively and with empathy, what has been laid bare is the apathy and indifference to cater to the needs of the hapless coupled with a complete lack of sensitivity. The reasons are not far to seek. Quite contrary to the ideals and values embodied in the Constitution which lay down the basic framework of the social and political structure of the country and sets out the objectives and goals to be pursued by the people in a common endeavor to secure happiness and welfare of every member of the society and despite taking oath to uphold the laws, actions of those in power and authority are now invariably driven by political motivations or other oblique considerations. No wonder, the casualty is the compassionate Constitution of ours.

116. In the above context, Dr. Sathe would be correct in placing reliance on the decision in Abdul Majid Vakil Ahmad Patvekari v. The Slum Rehabilitation Authority. The case of the petitioner in the said proceedings was quite peculiar, which was to the effect that the petitioners, who were having their hutments on the Government land (slums), ought to be rehabilitated either on the same land or in the vicinity. A co-ordinate Bench of this Court negating such plea, observed that the slum dwellers cannot elevate their protection to such an extent that they need to be rehabilitated either on the same land, or in the vicinity. This was although in the context of encroachment and formation of the slums on Government land, principles in the present case would not be different and in fact, when it comes to private land, the owners constitutional rights guaranteed under Article 300A of the Constitution would get attracted and become more prominent in recognizing any rights of the slum dwellers. The observations of the Court are required to be noted which read thus:—

“9. Having heard the learned counsel for the parties and having perused the record, at the outset, we may observe that the petitioners, who initially encroached on the Government land and who had remained on the same for

sometime so as to fall within the beneficial policy of the State Government of being protected slum dwellers, cannot elevate their protection to such an extent that such slum dwellers have to be rehabilitated either on the same land, if any remaining after the project work is completed or they be provided a permanent alternate accommodation within the vicinity.

... ..”

(emphasis supplied)

117. Also, in a decision of the Division Bench of this Court [G. S. Patel, J. (as His Lordship then was) and Neela Gokhale, J.] in *Moinuddin Pashamiya Shaikh v. Slum Rehabilitation Authority* dated 19/20th June, 2023 in a prescient and elaborate judgment authored by G.S. Patel, J., a similar view was taken by this Court that the slum dwellers would not have an absolute right to rehabilitate on the very land where they have encroached and entitled, under the Government policies or under the slum legislation, for a permanent alternate accommodation. The observations of the Court read thus:—

“20. In *Abdul Majid Vakil Ahmad Patvekari v. Slum Rehabilitation Authority*, a Division Bench of this Court of Dipankar Datta CJ (as he then was) and GS Kulkarni J made these observations:

8. On the other hand, learned counsel for the respondents supported their actions as assailed. It is their common submission that the petitioners, being encroachers on the Government land, only because of the beneficial policies of the State Government are required to be considered as protected slum dwellers for rehabilitation by providing of a permanent alternate accommodation at public cost. It is submitted that the petitioners cannot assert any right to remain on the same plot of land and in fact they ought to be content with their rehabilitation, being made at Hadapsar and Viman Nagar, which are also areas within the Pune Municipal Corporation limits. It is their contention that the petitioners are causing unnecessary obstruction in the execution of the public project in the absence of any legal right to remain on the land in question. It is submitted that this petition is also wholly untenable, as for the same cause the petitioner-Society has already approached this Court and the petition is pending. It is, therefore, submitted that this petition apart from not being bona fide is an abuse of the process of law, which deserves to be dismissed with cost.

9. Having heard the learned counsel for the parties and having perused the record, at the outset, we may observe that the petitioners, who initially encroached on the Government land and who had remained on the same for sometime so as to fall within the beneficial policy of the State Government

of being protected slum dwellers, cannot elevate their protection to such an extent that such slum dwellers have to be rehabilitated either on the same land, if any remaining after the project work is completed or they be provided a permanent alternate accommodation within the vicinity. In our clear opinion, any encroachment on public land at the threshold ought not to be tolerated and prompt action is required to be taken to remove such encroachment, more particularly when those who are custodians of the public land are well aware that encroachments for long periods will clothe the encroachers with rights to seek rehabilitation at public costs under the prevalent Government policies. It is not new that valuable Government land on account of the negligent approach of the officers in charge by not protecting such lands from encroachment have stood extinguished from the Government's holding, causing a serious cascading effect, namely, that whenever land is required for any public purpose, the Government is required to acquire the same from private holdings, causing an unwarranted burden on the public exchequer and a sheer waste of the tax payers money. This for the reason that the Government despite its mighty machinery did not protect its valuable land and permitted to be encroached to be developed by the slum dwellers and their developer, with the Government nowhere in the picture. Such inaction, in our opinion, amounts to grossest violation of the public trust doctrine as a result of the patent abuse of the powers vested in such Government machinery in not protecting public property. We also have a grave doubt about the policy of the State Government which rewards the encroachers of the public land by a free of cost accommodation. In our opinion, such policies qua the Government land not only violate the 'principles of equality' but certainly fall foul of the doctrine of public trust. We wonder as to whether at any point of time an audit in regard to the encroached Government land or lands belonging to public authorities in the State of Maharashtra was undertaken. As to how many such lands have vanished due to encroachment and as to what steps have been taken to preserve such lands are questions which need to be answered to "we the people", and accountability fixed for negligence in this regard. We say so, as there can be no two opinions that even land for important public institutions and other government utilities is not available, which certainly has adversely affected the very functioning of such institutions in a democratic set up. We hope that the Government awakens on such issues before it is too late and restores all the encroached Government lands for the benefit of public and strictly to be used for public purposes. This would certainly require a genuine political will and consciousness towards larger public benefit.

10. The petitioners occupying Government land cannot take such an adamant stand as canvassed by them, when they are occupying Government land. Mere rights of rehabilitation cannot be recognized to be equivalent to a right of ownership or as if it is some compensation being offered to the slum dwellers for their encroachment and occupation of Government land. This is neither the intention nor the object even of the slum legislation and slum policies of the State Government. The insistence of the petitioners if accepted and that too in the context of the 'State' undertaking such public projects, it would be impossible to plan any such project using the Government land for the benefit of the public at large.

(emphasis added)

21. In High Court on its own motion (in the matter of) Jilani Building at Bhiwandi v. Bhiwandi Nizampur Municipal Corporation, the same Division Bench said:

7. In the above paragraphs, we have noted our previous directions only to point out the anxiousness of the Court on the burning issues, with the sole focus of saving human lives so as to bring about a regime of respectable and dependable living in the city by having lawful and authorized structures, only to realize that, for the concerned law enforcing agencies everything mattered, except the mandate of law and the Court's orders. We are seriously concerned about such state of affairs. The common impression that is being created is that municipal officers or those who are concerned with implementing the municipal laws, function on a premise that for such matters, they are, law unto themselves, and the regime of "the rule of law" as set down by the Constitution and the laws, and the binding effect of the Court orders hardly mattered to them, needs to be completely wiped out. Any power vested with such authorities is coupled with a binding duty towards the society at large. We may observe that the municipal authorities cannot be pawns at the hands of land mafia, elected representatives and their own Corporators who appear to be totally disinterested in taking action against growing slums which is apparent, considering the large number of slums in the city. In fact, there is a clear impression that their action has encouraged slums and encroachments on public lands, obviously such inaction is for extraneous reasons. As far as the civic administration is concerned, in our opinion, primacy has to be given to the strictest implementation of the municipal laws, so as to prevent unauthorized and illegal constructions, prevent land grabbing by slum mafia, protecting government land

and land belonging to statutory bodies. Also there is a need to do away with such policies which confer a premium illegality in favour of the encroachers, by granting them a windfall of State largesse, namely, a gift of valuable government land in the form of tenements on Government lands wherever situated. This is nothing but legalizing encroachments on prime public lands, in a manner nullifying the “public trust doctrine” and catering to private gains in the teeth of the well established Constitutional requirements while dealing with State largesse. By such mechanism, valuable public lands are gone forever. Given the financial burden on the public exchequer it is impossible for the government to acquire such prime land for any public requirement except at an unimaginable burden on the public exchequer. If such land acquisition cannot be achieved, in that case, is it not the duty of the State to save these lands from being thrown to the encroachers and private gains? Is it necessary that the encroachers are rehabilitated on the same land, when others who want to purchase a small dwelling unit are required to go miles away from such prime places, where encroachments on public land happen with impunity? There cannot be such an imbalance in the societal position in which the citizens are placed when Article 14 of the Constitution stares at the State. Merely because the slums turn into potential ‘vote banks’ such policy of rehabilitation on hypothetical cut off dates is being implemented under the garb of slum rehabilitation. This, in our opinion, is a mockery of the public trust doctrine. We were constrained to make these observations, as not only these larger issues stare at us in plethora of litigations reaching the Courts, but also for the reason that the building collapse with which we are concerned has taken place in a purported rehabilitation and/or a slum area.

(emphasis added)

22. We cited Jilani Building in our order of 17 April 2023 in Sapphire Enterprises v. State of Maharashtra. As a bench of coordinate strength, we are bound by the ratio in both Patvekari and Jilani Building; but we go further, lest it be argued that the ‘observations’ in Patvekari and Jilani Building are not binding, and we emphatically re-affirm those observations. We adopt them as our own. It is our understanding that these are not stray observations in passing but set out the correct position in law and under the Constitution.

23. **And we go further. We take it as firmly settled that the right to shelter is part of the right to life.⁴ But there is no**

fundamental right to trespass. There is no fundamental right to squat. There is no fundamental right under the Constitution to rehabilitation at the very site of trespass or squatting. Both decisions cited commend the need for the statute — the Slum Act — to revisit this, and point out that it has no basis at all under the Constitution. Rather, it is against fundamental Constitutional precepts. Equally importantly, while the State may have an obligation to provide shelter, it has no Constitutional obligation to provide a marketable asset to anyone; and most emphatically not to someone whose initial entry on the land is illegal and unlawful. And yet this is precisely what the existing slum rehabilitation policy contemplates and promises. We are forced to ask, what is this if not the distribution of state largesse? One that comes at a very real public cost? Public lands for common public good are rendered unavailable. Every slum dweller is now confident in the assurance that the State will give him not just shelter but a high value marketable peace of real estate entirely free of cost.”

(emphasis supplied)

118. If this be the position, then certainly, the slum dwellers merely by forming a society cannot assert that their rights are higher than the rights of the owners of the land and as successive Division Benches of this Court has held that the rights of the slum dwellers cannot be elevated (as if they are the owners of the property), so as to control the rights of the owners of the land under the garb of rehabilitation and through the resources of a developer, foist/dictate compulsory acquisition of land against the owner. The acquisition of the land for rehabilitation of slum dwellers can also never be on a pedestal and/or of a status of an acquisition of the land for public purposes in relation to public project to be undertaken by the State in exercise of its powers of eminent domain. This for two reasons firstly, it is a private group of persons (slum developers) who would be the beneficiary of such land acquisition and the second beneficiary would be the developer who would reap bonanza of a huge Floor Space Index (FSI) in undertaking construction of commercial/saleable premises. Thus, the only beneficiaries of such acquisition of private persons, the Government would spend a meager amount of compensation to be paid as per Section 17 of the Slum Act. Despite this clear position, quite unfortunately, the experience in relation to acquisition under the Slum Act is quite different. It is completely misunderstood, misapplied, misinterpreted or abused by the authorities; this considering the proliferation of litigation in this regard, concerning private lands as encroached, and what is happening to public lands is a mystery which can never be resolved.”

(emphasis supplied)

4. We note that the observations of the Division Bench in *Bishop John Rodrigues* (supra) have turned into a reality in the present case and are squarely applicable as in the present case the slum in question is a slum at Cuffe Parade. The Division Bench in fact had illustratively made such categorical observations in the context of the slums at prime lands in Mumbai like Cuffe Parade, Pedder Road, Malabar Hill etc. which are to the effect *‘We test such assertion of the slum dwellers on an illustration namely, assuming a Government or private land which is encroached, is situated at a prime locality namely at Nariman Point, Cuffe Parade, Pedder Road or Malabar Hill in Mumbai. Can the encroachers of such land, in law, assert that they need to be rehabilitated at the same place or area ? The answer would be an obvious ‘No’.*

5. The decision of this Court in **Bishop John Rodrigues** (supra), which considers the other decisions which we have referred hereinabove, has been upheld by the Supreme Court in **Saldanha Real Estate (P) Ltd. vs. Bishop John Rodrigues**⁵.

6. As noted above, the land in question in the present proceedings is 33 acres of prime Government land situated at Cuffe Parade/Colaba in South Mumbai, which was permitted to be encroached and now sought to be privately developed under the garb of rehabilitation of the slum scheme, i.e., rehabilitation of the slum dwellers and also construction of resale buildings. This is a usual modus operandi to siphon off valuable public lands. We need not delve as to what would be the

5 2025 SCC OnLine SC 1794

cost of each unit in a area like Colaba/Cuffe Parade. The value of the land and any development thereon just needs to be imagined.

7. When such land of about 33 acres is proposed to be utilized for slum redevelopment, we wonder whether there is any “Cabinet decision” or whether any approval taken by the SRA from the Cabinet, for disposal of such vast land to be utilized for the slum scheme considering the settled principles of Constitutional governance and morality. This irrespective of the fact as to what the Slum Act would provide. The Slum Act in such context can never override the basic compliance of what is expected by such constitutional principles and its strict adherence by those in authority. Thus, under the garb of any schemes under the Slum Act, such large and valuable public largesse cannot be taken away and deprived of public utility and public interest.

8. This is a case where the rights of the slum dwellers on such prime government land cannot outweigh and/or be higher than the public interest, for such vast land to be utilized only for public/Government purpose. Such prime land cannot be permanently taken away from the public pool of lands as also been thrown open for private development, would be the moot question, certainly arising for consideration. *Prima facie* any other view would amount to a fraud on the Constitution.

9. We, accordingly, request the learned Advocate General to appear in the present proceedings. We also direct the State Government to place on record an

affidavit as to whether there is any well considered Cabinet decision for such land to be allotted for development of slums and/or any attempt on the part of the Collector, Mumbai to obtain any such decision at the highest level of the Government. If there is no such decision, we have the gravest of doubt whether any redevelopment of these slums can at all be permitted to happen, of such prime government land of 33 acres and more particularly considering the observations which are made by this Court in the aforesaid decisions as referred by us.

10. We may also observe that the issue which has been brought to the Court is on account of a strict view of the matter being taken by the Ministry of Defence in not granting NOC for such development, as assailed in the present proceedings.

11. In the facts and circumstances of the case, all such issues need to be examined, however, in our opinion, apart from NOC and the location of the land in question, the concern of the Ministry of Defence would also be quite significant and on which the Ministry of Defence, Government of India would be required to be heard considering the location of the land near the defence establishments.

12. Let reply affidavit to this petition be placed on record by the Ministry of Defence as also of the Principal Secretary, Revenue and Forest Department and the the Principal Secretary, Urban Development Department of the State Government as also of the Chief Executive Officer, Slum Rehabilitation Authority, within 10 days from today in the light of the observations as made by us hereinabove. Copy of the reply affidavit be served on the advocate for the petitioner well in advance.

13. With the aforesaid observations, we adjourn the proceedings to **15 October, 2025 (H.O.B.)**.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)