

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Letters Patent Appellate Jurisdiction)

L.P.A. No. 431 of 2023

V.K.S. Realty, having its office at 302, 2nd Floor, Gopal Marketing Complex,
Argora Chowk, P.O.- Doranda, P.S.- Argora, District – Ranchi, 834002

..... Respondent No.10/Appellant

Versus

1. Rinki Yadav, aged about 39 years, wife of Ajay Kumar, resident of Flat No. 4A, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.
2. Ranjana Kumari Yadav, aged about 26 years, wife of Ranjeet Yadav, resident of Flat No. 1B, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.
3. Kumar Vijaya Nand, aged about 58 years, son of Satchida Nand, resident of House No. 27/B1, Balihar Road, Morabadi, P.O. & P.S. Bariatu, District – Ranchi.
4. Deepty Jay, aged about 58 years, wife of Lokesh Ranjan, Flat No.8B, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.
5. Amita Khandelwal, aged about 58 years, wife of Kailash Kumar Khandelwal, resident of Flat No.10D, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.
6. Priyanka Jain, aged about 37 years, wife of Nishant Patni, resident of 8/88, Kalibari Road, Near Bank of Baroda, Sadar, Hazaribagh, P.O. & P.S. Hazaribagh, District – Hazaribagh.

..... Petitioners/Respondents

7. The State of Jharkhand, through its Chief Secretary, Jharkhand Mantralaya (Project Building), Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District – Ranchi.
8. Principal Secretary, Urban Development Department, Government of Jharkhand, having its office at Jharkhand Mantralaya (Project Building), Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District – Ranchi.
9. Commissioner, South Chotanagpur Division, having its office at Kutchary Chowk, P.O. G.P.O., P.S. Kotwali, District – Ranchi.
10. Director General of Police (Anti Corruption Bureau), having its office at Audrey House, Kanke Road, P.O. Ranchi University, P.S. Kotwali, District – Ranchi.
11. Deputy Commissioner, Ranchi, having its office at District Collectorate, Court Compound, Ranchi, P.O. G.P.O., P.S. Kotwali, District – Ranchi.
12. Sub Divisional Officer, Ranchi, having its office at District Collectorate, Court Compound, Ranchi, P.O. G.P.O., P.S. Kotwali, District – Ranchi.
13. Ranchi Municipal Corporation, through its Municipal Commissioner-cum-Chief Executive Officer, Ranchi, P.O. – G.P.O., P.S. – Kotwali, District – Ranchi.
14. Ranchi Regional Development Authority, through its Vice-Chairman, R.R.D.A. Bhawan, Kutchary Chowk, P.O. – G.P.O., P.S. – Kotwali, District – Ranchi.

15. Vinayaka & Associates, a partnership firm, through its partner, having its office at Shree Vishnu Talkies Lane, Main Road, PO- GPO, PS- Kotwali, District – Ranchi, Jharkhand 834001.
16. Narendra Butala, son of Late Manilal Butala, Power of Attorney-holder, presently resident of Flat No.503, Vallabh Sadan Apartment, Peace Road, P.O. & P.S.-Lalpur, District – Ranchi.
17. Pratyaksha Butala, Partner, Vinayaka & Associates, son of Sri Narendra Butala resident of 16 Bharatpuri, Purulia Road, P.O. – GPO, P.S. – Kotwali, District – Ranchi, PIN-834001.
18. Ashok Kumar Walamji Parmar, aged about 75 years, son of Late Walamji Hirji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
19. Jay Parmar, aged about 54 years, son of Late Dayaram Walamji Parmar, resident of Flat No.07D, Ratan Heights, Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
20. Jeet Parmar, aged about 53 years, son of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
21. Pratima Dayaram Parmar, aged about 79 years, wife of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
22. Sweta Parmar, aged about 48 years, daughter of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.

..... Respondents/Respondents

With

L.P.A. No. 432 of 2023

1. Ashok Kumar Walamji Parmar, aged about 75 years, son of Late Walamji Hirji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
2. Jay Parmar, aged about 54 years, son of Late Dayaram Walamji Parmar, resident of Flat No.07D, Ratan Heights, Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
3. Jeet Parmar, aged about 53 years, son of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
4. Pratima Dayaram Parmar, aged about 79 years, wife of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
5. Sweta Parmar, aged about 48 years, daughter of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.

..... Respondent No.13 to 17 / Appellants

Versus

1. Rinki Yadav, aged about 39 years, wife of Ajay Kumar, resident of Flat No. 4A, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.

2. Ranjana Kumari Yadav, aged about 26 years, wife of Ranjeet Yadav, resident of Flat No. 1B, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.
3. Kumar Vijaya Nand, aged about 58 years, son of Satchida Nand, resident of House No. 27/B1, Balihar Road, Morabadi, P.O. & P.S. Bariatu, District – Ranchi.
4. Deepty Jay, aged about 58 years, wife of Lokesh Ranjan, Flat No.8B, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.
5. Amita Khandelwal, aged about 58 years, wife of Kailash Kumar Khandelwal, resident of Flat No.10D, Ratan Heights Apartment, Tagore Hill Road, Near Antu Chowk, Morabadi, Ranchi, P.O. & P.S. Bariatu, District – Ranchi.
6. Priyanka Jain, aged about 37 years, wife of Nishant Patni, resident of 8/88, Kalibari Road, Near Bank of Baroda, Sadar, Hazaribagh, P.O. & P.S. Hazaribagh, District – Hazaribagh.

..... Petitioners/Respondents

7. The State of Jharkhand, through its Chief Secretary, Jharkhand Mantralaya (Project Building), Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District – Ranchi.
8. Principal Secretary, Urban Development Department, Government of Jharkhand, having its office at Jharkhand Mantralaya (Project Building), Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District – Ranchi.
9. Commissioner, South Chotanagpur Division, having its office at Kutchary Chowk, P.O. G.P.O., P.S. Kotwali, District – Ranchi.
10. Director General of Police (Anti Corruption Bureau), having its office at Audrey House, Kanke Road, P.O. Ranchi University, P.S. Kotwali, District – Ranchi.
11. Deputy Commissioner, Ranchi, having its office at District Collectorate, Court Compound, Ranchi, P.O. G.P.O., P.S. Kotwali, District – Ranchi.
12. Sub Divisional Officer, Ranchi, having its office at District Collectorate, Court Compound, Ranchi, P.O. G.P.O., P.S. Kotwali, District – Ranchi.
13. Ranchi Municipal Corporation, through its Municipal Commissioner-cum-Chief Executive Officer, Ranchi, P.O. – G.P.O., P.S. – Kotwali, District – Ranchi.
14. Ranchi Regional Development Authority, through its Vice-Chairman, R.R.D.A. Bhawan, Kutchary Chowk, P.O. – G.P.O., P.S. Kotwali, District – Ranchi.
15. VKS Realty, having its office at 302, 2nd Floor, Gopal Marketing Complex, Argora Chowk, P.O.- Doranda, P.S. Argora, District – Ranchi, 834002.
16. Narendra Butala, son of Late Manilal Butala, Power of Attorney-holder, presently resident of Flat No.503, Vallabh Sadan Apartment, Peace Road, P.O. & P.S.- Lalpur, District – Ranchi.
17. Pratyaksha Butala, Partner, Vinayaka & Associates, son of Sri Narendra Butala, resident of 16, Bharatpur, Purulia Road, P.O.- G.P.O. & P.S.- Kotwali, District – Ranchi.
18. Vinayaka & Associates, a partnership firm, through its partners, having its office at Shree Vishnu Talkies Lane, Main Road, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi – 834001.

..... Respondents/Respondents

With
L.P.A. No. 433 of 2023

V.K.S. Realty, through its Partner Vijay Kumar Sahu, aged about 42 years, son of Late Arjun Sahu, having its office at 302, 2nd Floor, Gopal Marketing Complex, Argora Chowk, P.O. & P.S.- Argora, District – Ranchi.

..... Respondent No.18/Appellant

Versus

1. Ratan Heights Residential Society, a registered Society having its address at Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi, through its Secretary Mr. Jaishankar Jaipuriar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.
2. Jaishankar Jaipuriar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.

..... Writ Petitioners/Respondents

3. Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S. – Kotwali, District – Ranchi, through its Municipal Commissioner-cum-Chief Executive Officer.
4. Municipal Commissioner-cum-Chief Executive Officer, Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi.
5. Vinayaka & Associates, a partnership firm, having its office at Shree Vishnu Talkies Lane, Main Road, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi, through its partners Sri Narendra Butala and Sri Pratyaksha Butala.
6. Narendra Butala, son of Late Manilal Butala, Power of Attorney-holder, presently resident of Flat No.503, Vallabh Sadan Apartment, Peace Road, P.O. & P.S.- Lalpur, District – Ranchi.
7. Pratyaksha Butala, Partner, Vinayaka & Associates, son of Sri Narendra Butala resident of 16, Purulia Road, P.O. & P.S. – Lalpur, District – Ranchi.
8. Ashok Kumar Walamji Parmar, aged about 75 years, son of Late Walamji Hirji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
9. Jay Parmar, aged about 54 years, son of Late Dayaram Walamji Parmar, resident of Flat No.07D, Ratan Heights, Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
10. Jeet Parmar, aged about 53 years, son of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
11. Pratima Dayaram Parmar, aged about 79 years, wife of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
12. Sweta Parmar, aged about 48 years, daughter of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
13. Anti-Corruption Bureau, Ranchi, through its Superintendent of Police, Audrey House, P.O. Ranchi, P.S. Gonda, District – Ranchi.

14. The Superintendent of Police, Anti-Corruption Bureau, Audrey House, P.O. Ranchi, P.S. Gonda, District – Ranchi.
15. The Deputy Commissioner, Ranchi, P.O. – Ranchi, P.S.- Kotwali, District – Ranchi.
16. Om Prakash Tulsyan, aged about 57 years, son of Late Sitaram Tulsyan, resident of Ratan Heights, Flat Nos. 10A, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi.
17. Dropadi Devi Modi, aged about 76 years, wife of Late Kailash Chandra Modi, resident of Shubham Agencies, Main Road, Good Books Building, Ranchi, P.O. – G.P.O., P.S.- Kotwali, District – Ranchi.
18. Mili Sarkar, aged about 62 years, wife of Ashok Kumar Sarkar, resident of Flat No. 8C, Ratan Height, Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi.
19. Rekha Kedia, aged about 54 years, wife of Shankar Kumar Kedia, resident of Flat No. 9D, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi.

..... Respondents/Respondents

With

L.P.A. No. 434 of 2023

V.K.S. Realty, through its Partner Vijay Kumar Sahu, aged about 42 years, son of Late Arjun Sahu, having its office at 302, 2nd Floor, Gopal Marketing Complex, Argora Chowk, P.O. & P.S.- Argora, District – Ranchi.

..... Respondent No.16/Appellant

Versus

1. Ratan Heights Residential Society, a registered Society having its address at Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi, through its Secretary Mr. Jaishankar Jaipurkar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.
2. Jaishankar Jaipurkar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.

..... Writ Petitioners/Respondents

3. Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S. – Kotwali, District – Ranchi, its Municipal Commissioner-cum-Chief Executive Officer.
4. Municipal Commissioner-cum-Chief Executive Officer, Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi.
5. Vinayaka & Associates, a partnership firm, having its office at Shree Vishnu Talkies Lane, Main Road, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi, through its partners Sri Narendra Butala and Sri Pratyaksha Butala.
6. Narendra Butala, son of Late Manilal Butala, Power of Attorney-holder, presently resident of Flat No.503, Vallabh Sadan Apartment, Peace Road, P.O. & P.S.- Lalpur, District – Ranchi.
7. Pratyaksha Butala, Partner, Vinayaka & Associates, son of Sri Narendra Butala resident of 16, Purulia Road, P.O. & P.S. – Kotwali, District – Ranchi, 834001.

8. Ashok Kumar Walamji Parmar, aged about years, son of Late Walamji Hirji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
9. Jay Parmar, aged about years, son of Late Dayaram Walamji Parmar, resident of Flat No.07D, Ratan Heights, Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
10. Jeet Parmar, aged about years, son of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
11. Pratima Dayaram Parmar, aged about years, wife of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
12. Sweta Parmar, aged about years, daughter of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
13. The Deputy Commissioner, Ranchi, P.O. – Ranchi, P.S.- Kotwali, District – Ranchi.
14. Om Prakash Tulsyan, aged about 57 years, son of Late Sitaram Tulsyan, resident of Ratan Heights, Flat Nos. 10A, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi.
15. Dropadi Devi Modi, aged about 76 years, wife of Late Kailash Chandra Modi, resident of Shubham Agencies, Main Road, Good Books Building, Ranchi, P.O. – G.P.O., P.S.- Kotwali, District – Ranchi.
16. Mili Sarkar, aged about 62 years, wife of Ashok Kumar Sarkar, resident of Flat No. 8C, Ratan Height, Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi.
17. Rekha Kedia, aged about 54 years, wife of Shankar Kumar Kedia, resident of Flat No. 9D, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi.

..... Respondents/Respondents

With

L.P.A. No. 435 of 2023

1. Ashok Kumar Walamji Parmar, aged about 75 years, son of Late Walamji Hirji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
2. Jay Parmar, aged about 54 years, son of Late Dayaram Walamji Parmar, resident of Flat No.07D, Ratan Heights, Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
3. Jeet Parmar, aged about 53 years, son of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
4. Pratima Dayaram Parmar, aged about 79 years, wife of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
5. Sweta Parmar, aged about 48 years, daughter of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.

..... Respondent No.6 to 10 / Appellants
Versus

1. Ratan Heights Residential Society, a registered Society having its address at Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi, through its Secretary Mr. Jaishankar Jaipuriar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.
2. Jaishankar Jaipuriar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.

..... Writ Petitioners/Respondents

3. Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S. – Kotwali, District – Ranchi, its Municipal Commissioner-cum-Chief Executive Officer.
4. Municipal Commissioner-cum-Chief Executive Officer, Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi.
5. Vinayaka & Associates, a partnership firm, having its office at Shree Vishnu Talkies Lane, Main Road, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi, through its partners Sri Narendra Butala and Sri Pratyaksha Butala.
6. Narendra Butala, son of Late Manilal Butala, Power of Attorney-holder, presently resident of Flat No.503, Vallabh Sadan Apartment, Peace Road, P.O. & P.S.- Lalpur, District – Ranchi.
7. Pratyaksha Butala, Partner, Vinayaka & Associates, son of Sri Narendra Butala resident of 16, Purulia Road, P.O. & P.S. – Lalpur, District – Ranchi.
8. Anti-Corruption Bureau, Ranchi, through its Superintendent of Police, Andrey House, P.O. Ranchi, P.S. Gonda, District – Ranchi.
9. The Superintendent of Police, Anti-Corruption Bureau, Andrey House, P.O. Ranchi, P.S. Gonda, District – Ranchi.
10. The Deputy Commissioner, Ranchi, P.O. – Ranchi, P.S.- Kotwali, District – Ranchi.
11. Om Prakash Tulsyan, aged about 57 years, son of Late Sitaram Tulsyan, resident of Ratan Heights, Flat Nos. 10A, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi.
12. Dropadi Devi Modi, aged about 76 years, wife of Late Kailash Chandra Modi, resident of Shubham Agencies, Main Road, Good Books Building, Ranchi, P.O. – G.P.O., P.S.- Kotwali, District – Ranchi.
13. Mili Sarkar, aged about 62 years, wife of Ashok Kumar Sarkar, resident of Flat No. 8C, Ratan Height, Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi.
14. Rekha Kedia, aged about 54 years, wife of Shankar Kumar Kedia, resident of Flat No. 9D, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi.
15. V.K.S. Realty, having address at 302, 2nd Floor, Gopal Marketing Complex, Argora Chowk, P.O. & P.S. – Argora, District – Ranchi.

..... Respondents/Respondents

With
L.P.A. No. 436 of 2023

1. Ashok Kumar Walamji Parmar, aged about 75 years, son of Late Walamji Hirji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
2. Jay Parmar, aged about 54 years, son of Late Dayaram Walamji Parmar, resident of Flat No.07D, Ratan Heights, Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
3. Jeet Parmar, aged about 53 years, son of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
4. Pratima Dayaram Parmar, aged about 79 years, wife of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.
5. Sweta Parmar, aged about 48 years, daughter of Late Dayaram Walamji Parmar, resident of Morabadi Road, Behind State Bank of India, P.O. & P.S. – Bariatu, District – Ranchi.

..... Respondent No.6 to 10 / Appellants
Versus

1. Ratan Heights Residential Society, a registered Society having its address at Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi, through its Secretary Mr. Jaishankar Jaipurkar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.
2. Jaishankar Jaipurkar, aged about 58 years, son of Late Rajni Raman Sinha, resident of Flat No.8-D, 8th Floor, Ratan Heights, Ratan Heights Residential Society, Morabadi Road, Behind State Bank of India, Karamtoli Chowk, P.O. & P.S. – Bariatu, District – Ranchi.

..... Writ Petitioners/Respondents

3. Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S. – Kotwali, District – Ranchi, its Municipal Commissioner-cum-Chief Executive Officer.
4. Municipal Commissioner-cum-Chief Executive Officer, Ranchi Municipal Corporation, Ranchi, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi.
5. Vinayaka & Associates, a partnership firm, having its office at Shree Vishnu Talkies Lane, Main Road, P.O.- G.P.O., P.S.- Kotwali, District – Ranchi, through its partners Sri Narendra Butala and Sri Pratyaksha Butala.
6. Narendra Butala, son of Late Manilal Butala, Power of Attorney-holder, presently resident of Flat No.503, Vallabh Sadan Apartment, Peace Road, P.O. & P.S.- Lalpur, District – Ranchi.
7. Pratyaksha Butala, Partner, Vinayaka & Associates, son of Sri Narendra Butala resident of 16 Bharatpuri, Purulia Road, P.O.- Ranchi, P.S.- Kotwali, District – Ranchi, 834001.
8. The Deputy Commissioner, Ranchi, P.O. – Ranchi, P.S.- Kotwali, District – Ranchi.
9. Om Prakash Tulsyan, aged about 57 years, son of Late Sitaram Tulsyan, resident of Ratan Heights, Flat Nos. 10A, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi.
10. Dropadi Devi Modi, aged about 76 years, wife of Late Kailash Chandra Modi, resident of Shubham Agencies, Main Road, Good Books Building, Ranchi, P.O. – G.P.O., P.S.- Kotwali, District – Ranchi.

- 11.Mili Sarkar, aged about 62 years, wife of Ashok Kumar Sarkar, resident of Flat No. 8C, Ratan Height, Tagore Hill Road, Morabadi, P.O. & P.S. – Bariatu, District – Ranchi.
- 12.Rekha Kedia, aged about 54 years, wife of Shankar Kumar Kedia, resident of Flat No. 9D, Ratan Height, Tagore Hill Road, Morabadi, P.O. & P.S.- Bariatu, District – Ranchi, Jharkhand – 834008.
- 13.V.K.S. Realty, having address at 302, 2nd Floor, Gopal Marketing Complex, Argora Chowk, P.O. & P.S. – Argora, District – Ranchi.

..... Respondents/Respondents

**CORAM: HON’BLE THE ACTING CHIEF JUSTICE
HON’BLE MR. JUSTICE ARUN KUMAR RAI**

For the Appellant(s):	Mr. Kamal Nayan Choubey, Sr. Advocate (through V.C) Mr. Sameer Saurabh, Advocate [in LPA Nos. 432, 435 and 436 of 2023] Mr. Ajit Kumar, Sr. Advocate Mr. Atanu Banerjee, Advocate Mr. Vishal Kumar, Advocate [in LPA Nos. 431, 433 and 434 of 2023]
For the Respondents:	Mr. Indrajit Sinha, Advocate Mr. Sumeet Gadodia, Advocate Mr. Rohit Ranjan Sinha, Advocate Mr. Akchansh Kishore, Advocate Mr. Piyush, Advocate Mr. Atul Vivek, Advocate Mr. Abhishek Agarwal, Advocate Mr. Ritesh Kumar Gupta, Advocate Mr. Prakhar Harit, Advocate Mr. Nillohit Choubey, Advocate Mrs. Ritu Kumar, Advocate Ms. Shruti Shekhar, Advocate
For the State:	Mr. Gaurang Jajodia, AC to GP-II
For the RMC:	Mr. Shashank Shekhar, Advocate
For the RRDA:	Mr. Prashant Kumar Singh, Advocate

J U D G M E N T

CAV on 23rd February 2024

Pronounced on 17th May 2024

Per, Shree Chandrashekhar, A.C.J.

After the adverse decisions by the Municipal Commissioner and the Appellate Tribunal, seven flat-owners of the Ratan Heights had joined hands with the Society and approached the writ Court by filing W.P.(C) Nos. 5734 of

2022, 341 of 2023 and 1420 of 2023. They were aggrieved by the sanction of a new building plan on 14th February 2022 on a part of the property which according to them was earmarked for common facilities for the flat-owners. This batch of the Letters Patent Appeals seeks to challenge the directions passed by the writ Court in the proceedings taken out by the Ratan Heights Residential Society¹ and the flat-owners.

2. In W.P.(C) No. 5734 of 2022 and batch cases, the writ Court passed the following directions:

95. In view of the aforesaid discussions, these writ petitions are allowed in following terms:-

(i) The order dated 06.09.2021 passed by the Municipal Commissioner, Ranchi Municipal Commissioner, Ranchi to the extent of holding that the original building plan for construction of residential building 'Ratan Heights' was sanctioned pursuant to the development agreement executed for 40 kathas of land as opposed to 86 kathas of land and liberty was given to the landowners to apply for sanction of fresh building plan over 46 kathas of land is quashed.

(ii) The order dated 29.07.2022 passed by the Appellate Tribunal, R.R.D.A., Ranchi in Misc. Appeal No. 35 of 2021 is quashed.

(iii) Building Permit/Plan issued vide Memo No. RMC/BP/1637/W03/ 2019 dated 14.02.2022, whereby Ranchi Municipal Corporation has sanctioned commercial-cum-residential building plan over the remaining 46 kathas of land is quashed. Consequently, the order dated 29.09.2022 passed by the Chairman, Appellate Tribunal, R.R.D.A., Ranchi in Misc. Appeal No.13 of 2022 is also quashed.

(iv) The landowners and the new builder are directed to remove/demolish the construction made over the remaining 46 Kathas of land and to fill the said part of the land as well as to handover the same to the Society of the flat owners which will be used as common area and facilities attached to the said building as per the building plan sanctioned vide B.C. Case No.1049 of 2005.

(v) The landowners and the new builder are directed to safely demolish the retaining wall which has been constructed to separate the said building from 46 Kathas of land in the western side of the same running from north to south.

(vi) If the amenities attached to the said building have been damaged in course of making construction over 46 Kathas of the said land, the same shall also be reconstructed by the landowners and the new builder.

(vii) The aforesaid directions shall be complied by the landowners and the new builder within one month from the date of this order.”

3. Briefly stated, an application for sanction of a building plan for residential use was submitted by Vinayaka & Associates² to the Ranchi Regional Development Authority³ vide Application No. 13185 dated 12th September 2005. On the basis of a Power of Attorney dated 27th August 2005, this application was submitted by Narendra Butala claiming himself the power of attorney holder for Ashok Kumar Walamji Parmar, Jay Parmar, Jeet

¹ hereinafter referred as “Society”

² hereinafter referred as “builder”

³ hereinafter referred as “RRDA”

Parmar, Pratima Dayaram Parmar and Sweta Parmar who are the land-owners. The application dated 12th September 2005 was filed for a building plan over an area of about 6022.30 sq. meters, equivalent to approximately 90 kathas. Later on, the application for sanction of the building plan was supported by an affidavit dated 29th May 2008 by the land-owners whereunder they gave an undertaking that no additional construction beyond the sanction plan shall be carried without the written consent of the flat-owners. On behalf of the builder, a similar affidavit was filed by Narendra Butala and on that basis the RRDA approved the plan submitted by the builder over 6022.30 sq. meters of land; in B.C. Case No. 1049 of 2005. Then for the road widening, a gift deed was made by the land-owners measuring 1792 sq. ft. over M.S. Plot No. 218, Khata No. 170/36 in Ward No. 19A of the Ranchi Municipal Corporation⁴ at Morabadi within Bariatu PS in the district of Ranchi.

4. Suddenly, a complaint was filed before the RRDA by a stranger, namely, Mr. R.C. Talwar making allegations against the land-owners and the builder that the passage to the building was provided through some other road instead of the front road with a width of 22 ft. On his complaint, L.S. Case No. 39 of 2009 was registered and a report was submitted by the Town Planner. In the said proceeding, the builder produced a map and filed an affidavit stating that the occupants of the proposed residential complex shall be provided passage through a road having a width of 7.5 meters and the proceeding in L.S. Case No. 39 of 2009 was closed. Thereafter, the property was divided into two portions by constructing a boundary wall and the land-owners started claiming exclusive possession over 46 kathas of lands and utilizing the Banquet hall which was illegally constructed in the common facilities area. In the meantime, Vigilance P.S. Case No. 20 of 2009 was registered on 24th October 2009 against the builder and the land-owners under sections 406, 420, 408, 409 and 120-B of the Indian Penal Code read with sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 and a charge-sheet has been laid against them. In the vigilance report, it is recorded that the apartment was not constructed as per the building plan in B.C. Case No. 1049 of 2005. The report further mentioned that

⁴ hereinafter referred as “RMC”

by erecting a wall on the western side of the property the total area under the sanctioned plan has been reduced from 5818.57 sq. meters to 2655 sq. meters and the FAR was increased from 1.465 to 3.73. The Society objecting to the construction of Banquet hall in the common facilities area lodged a complaint with the RMC and that was registered as U.C. Case No. 29 of 2019. In that proceeding, a report was submitted by the Junior Engineer who reported that a boundary wall was illegally constructed on the western side and the Banquet hall was being illegally operated. However, U.C. Case No. 29 of 2019 was dismissed by the Municipal Commissioner by an order dated 6th September 2021. The order passed by the Municipal Commissioner and the building plan dated 14th February 2022 were unsuccessfully challenged before the Appellate Tribunal by the Society in separate proceedings vide Misc. Appeal No. 35 of 2021 and Misc. Appeal No. 13 of 2022.

5. The orders dated 29th July 2022 and 29th September 2022 passed in the aforementioned miscellaneous Appeals were put to challenge before the writ Court by the flat-owners and the Society. This is admitted at the Bar that similar prayers were made in all the writ petitions and in support thereof were also on the same lines. Therefore, for the sake of convenience, we shall refer to the prayer clause in W.P.(C) No. 1420 of 2023 which was couched in the following language:

“(i) For issuance of an appropriate writ/order/direction including Writ of Certiorari, for quashing/setting aside the order dated 29.07.2022 (Annexure-14) passed by Appellate Tribunal, Ranchi Regional Development Authority, Ranchi in Misc. Appeal No. 35 of 2021, wherein the Appeal filed by Ratan Heights Residential Society has been dismissed.

(ii) For issuance of further appropriate writ/order/direction for quashing/setting aside the order dated 06.09.2021 (Annexure-10) passed by Municipal Commissioner, Ranchi Municipal Corporation (Respondent No.7) in U.C. Case No. 29 of 2019, to the extent, in substance, learned Municipal Commissioner has held that original Building Plan for construction of residential building ‘Ratan Heights’ was sanctioned pursuant to the Development Agreement entered into between the land-owners and Developer only on 40 Kathas of land as opposed to 86 Kathas of land, and, has thereafter held that landowners can apply for sanction of fresh Building Plan over rest 46 Kathas of land appertaining to M.S. Plot No. 218, Ward No.7, New Ward No.4, Holding No.31 and New Holding No.148/A and 148/A1 of Ranchi Municipal Corporation, situated at Village Morabadi, Thana Bariatu, Thana No.192, District Ranchi, Jharkhand, as being wholly illegal, erroneous and contrary to the order dated 12.06.2008/21.07.2008 passed in Building Plan Case No. 1049 of 2005, wherein the original Building Plan was sanctioned taking into consideration the total land of 86 Kathas.

(iii) For issuance of further appropriate writ/order/direction for quashing/setting aside the Building Permit/Plan issued vide Memo No. RMC/BP/1637/WO3/2019

dated 14.02.2022 (Annexure-15) by Respondent-Ranchi Municipal Corporation sanctioning the Commercial cum Residential Building Plan over M.S. Plot No. (CS) 218, Plot No. (MSP)218, Khata No. 170/36, Village Morhabadi, District Ranchi, especially because the land in question appertaining to aforesaid Building Permit/Plan is already the subject matter of Building Plan No.1049 of 2005 dated 12.06.2008/21.07.2008.

(iv) For issuance of further appropriate writ/order/direction restraining the Respondents, particularly Respondent 10 and Respondent Nos. 13 to 17 from making any construction pursuant to sanction of Building Permit/Plan issued vide Memo No. RMCBP/1637/W03/2019 dated 14.02.2022 (Annexure-15) in their favour as the said Building Permit has been sanctioned illegally and arbitrarily.

(v) For issuance of further appropriate writ/order/direction, including Writ of Mandamus, directing the Respondent-Ranchi Municipal Corporation and/or Respondent-Deputy Commissioner, Ranchi to ensure restoration of 46 Kathas of land appertaining to M.S. Plot No. 218, Ward No.7, New Ward No.4, Holding No. 31 and New Holding No.148/A and 148/A1 of Ranchi Municipal Corporation, situated at Village Morabadi, Thana Bariatu, District Ranchi, Jharkhand in its original position at the cost of Respondent No.10 and Respondent Nos. 13 to 17, which has been illegally and dangerously dug-up/excavated to the depth of 30-35 feet and below 15 feet of the bottom of foundation level of Ratan Heights Building Tower, having serious impact on the risk of lives of the residents of Ratan Heights Apartment.

(vi) For issuance of further appropriate writ/order/direction directing the Respondent-Ranchi Municipal Corporation and/or Deputy Commissioner, Ranchi to ensure reconstruction of the entire approach road of Ratan Heights Apartment at the cost of Respondent No.10 and Respondent Nos. 13 to 17, which has been extensively damaged, including Septic Tank and Soak Pit, and has become unsafe for movement of vehicles due to excavation of adjacent land of 46 Kathas pursuant to sanction of the second Building Permit dated 14.02.2022, in an illegal and arbitrary manner.

(vii) For issuance of any other appropriate writ(s)/order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case.”

6. Before us, Mr. Kamal Nayan Choubey, the learned senior counsel appearing for the land-owners submitted that the construction of the Ratan Heights started after rectification in the building plan and the flat-owners had clear knowledge that the total covered area for construction of the building and common facilities was about 40 kathas. The learned senior counsel assailed the writ Court’s order on the ground that the writ Court had gone into the merits of the decision and exercised the power under Article 226 of the Constitution as if it was sitting in appeal over the orders passed by the Municipal Commissioner and the Appellate Authority. The learned senior counsel referred to an arbitration clause in the agreement executed between the flat-owners and the builder to make good his point that the writ remedy was not available to the Society and the flat-owners. The V.K.S. Realty⁵ which had entered into a fresh

⁵ Hereinafter referred as “new builder”

agreement with the land-owners for a new project over 46 kathas of land also joined the chorus and questioned the writ Court's power to entertain the writ petition and issue a slew of directions purely on surmises, assumptions and conjectures. Mr. Ajit Kumar, the learned senior counsel appearing for the new builder contended that the writ Court wrongly entertained the writ petitions filed by the Society and the flat-owners brushing aside the objections thereto raised on the ground of alternative remedy. The learned senior counsel endeavored to demonstrate that Narendra Butala was the culprit and his statement before the investigating officer and in the proceeding of ABA No. 1634 of 2016 would establish that the building plan for the Ratan Heights was sanctioned over 40 kathas of land and the remaining portion of 46 kathas of land belonged to the land-owners who entered into an agreement with the new builder for construction of a residential complex. On the other hand, Mr. Indrajit Sinha and Mr. Sumeet Gadodia, the learned counsels appearing for the Society and the flat-owners referred to "*Supertech Limited*"⁶ and submitted that the sanctioning of a new map ignoring the mandatory statutory provisions was the illegal action against which a writ petition under Article 226 of the Constitution shall lie.

7. The powers under Article 226 of the Constitution are discretionary in nature and therefore its exercise must be judicious and in furtherance of justice, equity and good conscience. However, the mere fact that there is a statutory remedy available to the aggrieved party that shall not affect the jurisdiction of the High Court to entertain a writ petition complaining violation or apprehended violation of a Constitutional or legal right of the aggrieved person. In a proceeding for a *certiorari*, the High Court is concerned with legality, irrationality and procedural impropriety in the order passed by the inferior Tribunal or the State instrumentality. The rule of exhaustion of statutory remedy is a rule of self-imposed limitation and the High Court may in appropriate cases issue a *certiorari* after having satisfied itself that the relief sought by the aggrieved party is not barred by law or suffer from delay and laches, and that the relief if granted would not be against public policy. In

⁶ *Supertech Limited v. Emerald Court Owner Resident Welfare Association and Ors.* : (2021) 10 SCC 1

“*Mohammad Nooh*”⁷ the Hon’ble Supreme Court held that; “But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and the instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies”.

8. In U.C. Case No. 29 of 2019, the Municipal Commissioner recorded a finding that there was an illegal deviation on the western, eastern and southern portions and such deviations were condonable provided the entire plot area was to be taken into consideration. The Municipal Commissioner further held that the boundary wall constructed on the western side and the Banquet hall were to be demolished. But even then, the Municipal Commissioner referred to the unregistered Development Agreement and a few sale deeds executed by the builder and held that the building plan was sanctioned in L.S Case No. 39 of 2009 for residential use over 40 kathas of land and, that, the land-owners were entitled to seek the sanction of a map over the remaining 46 kathas of land. Misc. Appeal No. 35 of 2021 which was filed to challenge the order dated 6th September 2021 passed by the Municipal Commissioner was dismissed by the Appellate Tribunal holding as under:

“32. From the following documents, this tribunal finds that the building in question Ratan Heights has been constructed on 40 Kathas of land:

(1) Developer Agreement dated 03.06.2005

(2) Power of attorney which disclose above development agreement.

(3) The sale deed of the appellant as well as other flat owners.

33. The appellants as well as other flat owners have purchased the flat on the basis of previous sanctioned map 1049/05. The appellant as well as other flat owners of the Ratan Heights have got proportionate share of land 600 sq. ft. each as per his sale deed. Therefore, the appellant is admitting and not denied that the sale deed is fraudulently executed in his wife favour in which on 40 Kathas of land, Ratan Heights has been constructed.

34. The appellant claiming 46 Katta of land which is as per memo of appeal, page 8, 2nd para required to be vacant and the construction was made on 40 kathas of land on the basis of building plan no. 1049/05. The said building plan has been filed by appellant as annexure page 78 of the said sanction map, a certificate have been given by sanctioning authority on the backside of the map at serial no. 24 as भवन प्लान की स्वीकृति से आवेदक का प्रश्रगत भूमि पर भू-स्वामित्व का स्थापित नहीं होगा। Therefore, the appellant complaint/complaints based on the above sanction map for 46 Kathas of land which is to be kept vacant is falsified because the map cannot give any ownership to the applicant of the map and in this regard the map was sanctioned on the application by the developer.

35. As per impugned order page 5, 2nd para, the president of the flat owner association was present before the court below and refuted the claim of the

⁷ State of U.P v. Mohammad Nooh : AIR 1958 SC 86

complainant. In this regard the appellant is saying nothing in this appeal that why his association president has refuted appellant claim before the court below, further on the other hand 13 flat owners have separately represented at the court below, this shows that all the flat owners including appellants association president is not along with appellant which has also been admitted by the appellant in memo of appeal in page 17 that the society and its residents including 30 residents have been advancing their assistance on behalf of the society in proper and effect adjudication of the proceeding.

36. The appellant main grievance is that the FAR calculation is shown on the 86 Kathas of land and the appellant is saying that the respondent, land owner and builder are going to delineating it to transfer 46 Kathas of land whereas above provision of clause 27.2 of Building Bye Laws says that the sanction of the map is not effecting the title over the land or building.

37. Considering the case of both the parties and discussing the material available on record and relying on the submission of respondent, this tribunal finds and holds that the court below has rightly dismissed the complaint of the appellant as the appellant has no locus standi to claim the 46 Kathas of vacant land in the light of the above provision of clause 27.2.1 of building bye laws and clause 24 of sanction order over the map by the sanctioning Authority. As such, this tribunal finds and holds that there is no merit in this appeal. Hence this appeal is dismissed. Office is directed to send the L.C.R along with the copy of this order to the court below for information and needful.”

9. Quite evidently, the Appellate Tribunal failed to take note of the contradictory findings recorded by the Municipal Commissioner in the order passed in U.C. Case No. 29 of 2019. The reference to clause 27.2.1 of the Jharkhand Building Bye-Laws, 2016 by the Appellate Tribunal was not proper to reject the appeal preferred against the order passed by the Municipal Commissioner. The stand of the Society was rejected by the Appellate Tribunal holding that the map does not give any ownership rights to the flat-owners. Clause 27 of the Jharkhand Building Bye-Laws, 2016 provides that approval of the plan would mean granting of permission to construct under the Bye-Laws. Under clause 27, one of the duties of the Authority is to maintain a register in Form-XII containing the necessary particulars including information as to how the applications for permission have to be dealt with. However, there is no material on the record to show that an application for revision of the sanctioned map was even filed. Unfortunately, the Appellate Tribunal overlooked the mischief played by the builder in the proceeding of L.S. Case No. 39 of 2009 who produced a different map in the said proceeding and that was accepted as the revised map for the Ratan Heights sanctioned over 40 kathas of land. The Appellate Tribunal also completely ignored the details described in the building plan which was sanctioned in B.C. Case No. 1049 of 2005, and the affidavit of Narendra Butala who himself had affirmed that he was the holder of a piece of

land measuring 6022.30 sq. meters over Municipal Survey Plot No. 218 for constructing a residential building thereon. He had also referred to the Application No. 13185 which was lodged on 12th September 2005 for construction of the Ratan Heights over the said piece of land.

10. Clause 4.2 of the Ranchi Planning Standards and Building Bye-Laws, 2002 provides that for making any material alteration in any part of the building or developing or redeveloping any piece of land, an application in writing has to be made to the authority in the prescribed form (Appendix-A & B) and such application shall be accompanied by plans and statements in quadruplicate as required under Bye-Laws Nos. 5.2 and 5.3. It further provides that the plans may be printed; ammonia print or photographic prints of which at least two sets of plans shall be cloth mounted. One print shall be retained with the authority and the other shall be forwarded to the RMC for record. Clause 5.1 provides that the application for building or development plan shall be accompanied by the key plan, site plan, layout plan, services plan and specifications as prescribed in Bye-Laws Nos. 5.2 and 5.3. Clause 6.4.1(c) provides that the fee chargeable for the revised plan of a building which the Authority had already sanctioned shall be 1/4th of the fee chargeable on the original plan subject to the condition that the covered area of the building has not increased from the original sanctioned plan. This is not brought on the record that the Vice-Chairman, RRDA had passed any order for revision of the map that was sanctioned in B.C. Case No. 1049 of 2005. The so-called revised map produced in L.S. Case No.39 of 2009 did not bear any seal or signature of the competent authority and a copy of the application for revision of the map if filed by the land-owners or the builder was not produced at any stage.

11. Crying foul, the flat-owners pleaded before the writ Court that a map showing the total area of about 40 kathas was produced in a clandestine manner in L.S. Case No. 39 of 2009 and projected as the revised map for the building constructed over M.S. Plot No. 218. The writ Court held that the orders passed by the Municipal Commissioner and the Appellate Tribunal suffered from non-consideration of the vital and material facts, and had failed to take note of the very basis for sanctioning the map in B. C Case No. 1049 of 2005 that the total building covered area was 8189.45 sq. meters and the FAR was

calculated as 1.465. After perusing the records of L.S. Case No. 39 of 2009, the writ Court held that no application for revision of the map was filed in the said proceeding and L.S. Case No. 39 of 2009 was closed based on the so-called revised map produced by the builder. The writ Court held as under:

“63. This Court finds serious infirmity in the orders of the Municipal Commissioner as well as the Appellate Tribunal as those failed to take into consideration vital fact that the said building was constructed on the basis of the sanctioned map showing the net covered area of the building as 8189.45 sq. meter and the grand plot area as 5818.574 sq. meter and after execution of the gift deed the land area remained as 5590.07 sq. meter. The FAR was also calculated as 1.465. If the land area of 46 Kathas is deducted from the total land area, the same remains as 2655 sq. meter and if the net covered area of the building as calculated in the enquiry report of the vigilance department i.e. 9912 sq. meters is divided by 2655 sq. meter, the FAR will come to 3.73, which is not only much more than the FAR shown in the map but also higher than maximum permissible limit. Moreover, the percentage ground coverage of 15.84% shown in the sanctioned map increases to 82.19% after reduction of the land area, as has been shown in the report of the enquiry committee of the vigilance department. Thus, by permitting the landowners to file application for sanction of map of a building to be constructed over 46 Kathas of land, the Municipal Commissioner, Ranchi, in fact, made part of the existing building as illegal. Resultantly, the flat owners who had purchased the flats relying on the map sanctioned vide B.C. Case no.1049 of 2005, which was produced before them by the previous builder and the landowners, will have to suffer irreparable loss for no fault on their part.

64. The development agreement which has been taken into consideration by the Municipal Commissioner while passing the order dated 06.09.2021 in U.C Case No. 29 of 2019 is an unregistered document and there is every possibility that the same has been created by the previous builder and the landowners after getting the map of the building sanctioned vide B.C Case No.1049 of 2005 as has been claimed on behalf of the flat owners. Under such circumstance, the Municipal Commissioner was not correct in relying on the said unregistered development agreement while passing the order dated 06.09.2021. Though the area of the land has been mentioned as 40 Kathas in the sale deeds of the flat owners, but it has simultaneously been mentioned in the sale deeds that the map of the building has been sanctioned vide B.C. Case No.1049 of 2005 which indicates that 46 Kathas of the said land was part of the said building and the structure standing over 46 Kathas of land was required to be demolished. Moreover, in that part of the land, an underground water tank with one lakh litre capacity and recharge borewell were required to be constructed. The said aspect of the matter was also not taken into consideration by the Municipal Commissioner while passing the impugned order dated 06.09.2021.

66. One of the claims of the landowners is that having found the infirmity in the sanctioned map, they raised the objection before the builder and thereafter the map of the said building was revised vide L.S Case No. 39 of 2009 which specifically discloses that the said building was constructed over 40 Kathas of land. As such, the Society as well as the flat owners cannot claim any right over 46 Kathas of land on the basis of the map sanctioned vide B.C. Case No.1049 of 2005.²³

67. To appreciate the said contention of the landowners, this Court has perused the record of L.S. Case No. 39 of 2009 which reveals that the same was not filed for revision of the map earlier sanctioned vide B.C. Case No.1049 of 2005, rather the same was filed by one R.C. Talwar claiming carving of proper road as per the sanctioned map of the said building and in the said case, the builder produced a fresh map of the said building and looking to the said map the case was dismissed by the Vice Chairman, R.R.D.A., Ranchi. In fact, L.S. Case No.39 of 2009 was

confined to the issue of redressing the claim of the complainant with respect to the approach road and the Vice Chairman, R.R.D.A., Ranchi did not pass any specific order with respect to revision of the map sanctioned vide B.C Case No. 1049 of 2005. It is also evident from the map filed in L.S Case No. 39 of 2009 that there is no seal or signature of the competent authority on the same and, therefore, it otherwise cannot be treated as revised map of the said building.

12. We have examined the records and find that there is bundle of materials to demonstrate that there were provisions for the common area, swimming pool, etc. in the original plan and a representation was held out to the prospective buyers for providing such facilities within the premises of the Ratan Heights stretching over 86 kathas of land. Under section 3(i) of the Jharkhand Apartment (Flat) Ownership Act, 2011, the common areas and facilities in relation to a building are defined to mean (i) the land on which such building is located and all easements, rights and appurtenances belonging to the land and the building. Section 10 provides under sub-section 4(a) that the percentage of the undivided interest of each Apartment (Flat) owner in the common areas and facilities shall have a permanent character and shall not be altered without the written consent of all the Apartment (Flat) owners. It further provides that the basement, stairs, cellars, yards, gardens, open areas, schools, elevators, tanks, pumps, motors etc. and the installation of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and sewerages shall fall under the definition of common areas and facilities. This is not denied that an underground water tank with a capacity of one lakh liters and a recharge borewell was to be constructed beneath a part of the disputed 46 kathas of land. Mr. Indrajit Sinha and Mr. Sumeet Gadodia, the learned counsels appearing for the Society and the flat-owners demonstrated with the materials available on record that the entire 46 kathas of land was required for providing common facilities. The finding of the Municipal Commissioner that the boundary wall and the Banquet hall which were illegally constructed have to be demolished was not questioned by the builder or the land-owners. Therefore, the land-owners had no subsisting right over 46 kathas of land that can be inferred on the basis of the findings recorded by the Municipal Commissioner. In this factual scenario, permission to the land-owners to apply for a building plan over 46 kathas of land which was part of the

building plan sanctioned in B.C. Case No. 1049 of 2005 caused serious prejudice to and would have deprived the flat-owners of necessary amenities to them.

13. The writ Court recorded a clear finding that the rights of the flat-owners were infringed due to violations in law. There was an imminent threat to the life and safety of the residents in the building and deep cracks had developed on the road jeopardizing the resident's access to critical utilities such as electricity, sewage and water supply lines. The writ Court referred to the evaluation report submitted by the Director (Technical), MECON which pointed out that (i) the under-construction retaining wall was not safe in sliding and over-turning criteria as per design calculation (ii) the base raft was not safe in cantilever condition and (iii) the wall may collapse leading to undue secondary stress to the column supporting the slab over the ramp of the adjoining building. The writ Court therefore issued a direction to the land-owners and new builder to demolish the wall and other constructions over 46 kathas of land.

14. In criticizing the writ Court's aforementioned direction, a veiled suggestion was made by Mr. Kamal Nayan Choubey that the writ petitions based on vague and anticipated danger were not maintainable. The law on this subject is no longer in the realm of debate. In "*Adi Saiva Sivachariyargal Nala Sangam*"⁸ the Hon'ble Supreme Court held that the institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. Clause (1) to Article 226 of the Constitution empowers the High Court to issue directions, orders or writs of the nature included therein for the enforcement of any right conferred by Part III and for any other purpose. An aggrieved party therefore can move the High Court in a writ petition seeking protection of his life guaranteed under Article 21 of the Constitution for enforcement of his right. The word "enforce" means to ensure observance of or obedience to a law, decision etc.⁹ Therefore, to seek enforcement of his right, the aggrieved person can move the High Court before it is actually infringed. Such a writ petition shall necessarily be seeking pre-violation protection through the Court's

⁸ *Adi Saiva Sivachariyargal Nala Sangam v. State of T.N.* : (2016) 2 SCC 725

⁹ Collins English Dictionary

command for observance of the law. “*Wandsworth Justices Justices Ex parte Read*”¹⁰ held that the remedy of a person convicted by a Court of summary jurisdiction was not by way of an appeal where no opportunity of hearing was given; but by an application to the High Court for an order of *certiorari* to quash the conviction. In our opinion, it would have been too simplistic a solution for the writ Court to turn away the Society and the flat-owners saying that the writ Court cannot take any action towards preventive justice.

15. The contention that the order passed in L.S. Case No. 39 of 2009 and the findings recorded therein have attained finality must be rejected. It is not correct to say that the order dated 24th July 2009 passed in L.S. Case No. 39 of 2009 does not bear the sign of invalidity on its forehead and having not been put to challenge attained finality. In legal parlance, the expression “fraud” is used for an act of deliberate deception to secure undue advantage from other. In “*Ram Chandra Singh*”¹¹ the Hon’ble Supreme Court observed that if a party makes representation knowing it to be false and causes injury to the other that shall amount to fraud in law. In “*Derry*”¹² it was held that: “fraud is proved when it is shown that a false representation has been made (i) knowingly or (ii) without belief in its truth or (iii) recklessly, without caring whether it be true or false.” The proceeding in L.S. Case No. 39 of 2009 was vitiated on account of a false representation of the land owners that the original map for the Ratan Heights was later revised. In a sort of fixed match, the builder produced a copy of the so-called revised map and on that basis the proceeding in L.S. Case No. 39 of 2009 was dropped. In “*Lazarus Estates Ltd.*”¹³, Lord Denning observed that “no judgment of a Court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything”. This may be true that some of the sale deeds described the building plan of the Ratan Heights over 40 kathas of land but any such averment in the sale deed shall not be binding on the flat-owners because the original map sanctioned in B.C. Case No. 1049 of 2005 was

¹⁰ Rex v. Wandsworth Justices, Ex parte Read : 1942 (1) K.B 281

¹¹ Ram Chandra Singh v. Savitri Devi : (2003) 8 SCC 319

¹² Derry v. Peek : (1889) 14 AC 337

¹³ Lazarus Estates Ltd. v. Beasley : (1956) 1 QB 702

for a building plan over 86 kathas of land. The dispute between the land-owners and the new builder would be entirely a different issue and the land-owners cannot take shelter under the so-called misdeeds by the previous builder. This also needs a mention that the agreement between the land-owners and the new builder is of no consequence. If at all any injury has been caused to the new builder, its remedy lies against the land-owners and based on the order passed in L.S. Case No. 39 of 2009 it cannot lay a claim for raising a new building over a part of the subject property. The new builder is a stranger to the transactions between the land-owners and the builder and it was not a privy to the contract between them. In our opinion, the writ Court was not even required to take a response from the new builder for examining the legality of the orders passed by the Municipal Commissioner and the Appellate Tribunal.

16. For the foregoing reasons, we are in complete agreement with the writ Court's opinion that the original map for the Ratan Heights was sanctioned over 86 kathas of land, and the flat-owners are entitled to enjoy common facilities built around 46 kathas of land. We hold that the new builder and the land-owners were illegally trying to grab 46 kathas of land which was earmarked for common facilities for the residents of the Ratan Heights. In the circumstances of the case, the directions issued by the writ Court do not call for any interference by this Court and these Letters Patent Appeals being bereft of any merit are dismissed.

(Shree Chandrashekhar, A.C.J.)

I agree

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Jharkhand High Court, Ranchi
Dated: 17th May 2024
Manoj/Amit/R.K./Sudhir/Tanuj
A.F.R.