**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**PUBLIC INTEREST LITIGATION NO. 28 OF 2017**

Kamlakar R. Shenoy
Aged : 58 years, Occ : Self-
Employed, R/o : 2/7, Kishor
Kunj CHS, Opp. Kalverts
Company, Shanti Path Marg,
Mazgaon, Mumbai-400 010. ....Petitioner

**: V E R S U S :**

1. State of Maharashtra
2. Principal Secretary,
Housing Department,
Mantralaya, State of
Maharashtra.
3. Director General of Police
Anti-Corruption Bureau,
Sir Pochkhanwala Road,
Worli, Mumbai-400 030.
4. Commissioner of Police,
Mumbai City.
5. Chief Executive Officer,

Maharashtra Housing Area
and Development Authority,
Griha Nirman Bhavan,
Kala Nagar, Bandra (East),
Mumbai-400 001. ....Respondents

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Mr. Chaitanya Pendse a/w. Ms. Siddhi Bhosale, Advocate for the petitioner.

Mr. Deepak Thakare with Mrs. P.P. Shinde, Advocate for respondents no.1 to 3.

Mr. Milind Sathe a/w. Mr. Kamlesh Ghumare a/w. Ms. Sonali Jadhav, Advocate for respondent no.5-MHADA.

ACP, Mr. Chinchkar, present.

**CORAM : S.C. DHARMHADHIKARI, &**
**SANDEEP K. SHINDE, JJ.**
**JUDG.RESD ON : 29TH JULY, 2019.**
**JUDG. PRON.ON : 18TH SEPTEMBER, 2019.**

**JUDGMENT (PER: SANDEEP K. SHINDE, J) :**

1. The petitioner alleges the unholy nexus, between the defaulting Developers and the Officials

of the Maharashtra Housing and Area Development Authority ("MHADA" for short), which caused and resulted in unlawful losses to the States' exchequer to the tune of Rs.40 thousand crores by virtue of defaulting builders not surrendering surplus area of approximately 1.37 lakh sq.mtrs (30 lakhs sq.ft saleable area) which otherwise is exclusive property of the State in terms of the Scheme, floated by the State Government under the Development Control Regulation 33(7)("DCR" for short). The petitioner alleged, though this fact was well within the knowledge of officials of MHADA, as could be discerned from the correspondence, yet despite repeated reminders to take steps for effecting recovery of property which belongs to the State, nothing has been done and no action has been taken against the defaulting developers by such Public

Officials (Public Servants) knowingly and/or intentionally who are duty bound not only to protect the interest of the State but also to discharge their duty honestly. The petitioner thus alleged that, willful acts of omission and commission on the part of the officials of the MHADA not only caused wrongful loss to the State but wrongful gain to the developers. On these broad allegations, the petitioner is seeking following reliefs :

> "(a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus directing the Respondents to register FIR in respect of Complaint dated 1/6/2016 addressed by the Petitioner to the Deputy Commissioner of Police, EOW, Crime Branch, Mumbai which was forwarded by Deputy Commissioner of Police, EOW, Crime Branch, Mumbai to Director General of Police, Anti-Corruption Bureau,

State of Maharashtra vide letter dated 3/6/2016.

(b) That this Hon'ble Court may be pleased to issue a writ of Mandamus or any other writ in the nature of Mandamus directing the Respondent No.2 i.e. Principal Secretary, Housing Department, Mantralaya, State of Maharashtar to take such effective measures for the purpose of recovering a surplus area of 1,37,332.53 sq.mts of surplus area which the defaulting developers have not surrendered to MHADA accordingly make a report of the same and place it before this Hon'ble Court.

(c) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus directing the Respondent No.2 i.e. Principal Secretary, Housing Department, Mantralaya, State of Maharashtra to initiate any inquiry and consequential actions to find out why effective steps were not taken by the concerned officials of MHADA in effecting

recovery of 1,37,332.53 sq.mts of surplus area and why action was not initiated by such officers of MHADA against all such builders who had defaulted in surrendering 1,37,332.53 sq.mts of surplus area as can be seen from the information supplied to the Petitioner under covering letter dated 17/3/2016 being at 'Annexure-H' herein and accordingly filed a report in respect thereof before this Hon'ble Court."

2. Before adverting to the facts of the case, it may be stated that, the respondents no.2, 3 and 4 are the State Agencies and fifth respondent is Authority (Executive Officer) of MHADA established under Section 3 of the MHADA Act, 1976. Chapter-VIII of the MHADA Act contains provisions relating to repairs and reconstruction of dilapidated buildings. Under Section 18 of the Act, the State of Maharashtra has established the Mumbai Housing and

Area Development Board (hereinafter called "the Board") which also contemplates and outline duties of the Board relating to the repairs and reconstruction of the dilapidated buildings.

3. In the year 1969, as per the suggestions of the Bedekar Committee, the Government of Maharashtra had resolved to, undertake the repair and reconstruction/redevelopment, of number of dilapidated buildings and thus enacted the Mumbai Repair and Reconstruction Board Act, 1969 which came into force in 1971. In 1976, the Maharashtra Housing and Area Development Act came into force and in terms of its Chapter-VIII, work of repair and reconstruction of old cess buildings is continued to be carried out. The State having found the slow

progress in redevelopment scheme of the dilapidated buildings amended the Development Control Regulations ("DCR" for short), 1991 to encourage the redevelopment of the CESS buildings through private developer/owner/ landlord, with the participation of tenants/occupants under DCR-33(7).

4. In terms of provisions of DCR-33(7), Clause (4) of Appendix-III, the developer to whom the No-Objection Certificate (NOC) has been issued for redevelopment of the dilapidated building is required to surrender surplus built-up area, as per prescribed percentage provided in third schedule of the MHADA Act, 1976.

5. The validity of the Clause-(4) of Appendix-III of DCR, 1991 was challenged in petitions before this Court on the ground that the

same provides for compulsory acquisition of part of property constructed by the petitioners on their own lands without authority of law and without providing for any adequate or reasonable compensation. These petitions were dismissed and the validity of Clause-4 was upheld by this Court on 7th May, 2015. The Hon'ble Apex Court on 15th July, 2015 dismissed the Special Leave petitions preferred against the judgment of this Court.

6. It is in the backdrop of aforesaid facts, the petitioner states he sought information from the Board under the Right to Information Act, 2005 (for short "the RTI Act") as to in how many cases, the Board has granted NOC to the developers and as to in how many cases, the Developers were obliged to surrender the surplus built-up area to the Board and further, as to in how many cases and to what extent

the surplus area has been surrendered by the developers to the Board under DCR 33(7). This information was supplied by the Board to the petitioner on 26th August, 2000 in the tabular form which is at page-53 to the 73A. It shows the Board had issued the NOC/permissions to 241 developers out of which 121 developers have not surrendered the surplus area. Just, as an example, at serial no.2 of tabular form, the NOC was issued on 28th September, 1992 to Smt. Sumitra V. Mhatre for redevelopment of the property-1253, Old Prabhadevi. This developer was required to surrender the surplus built-up area of 19.97 sq.mts; however, the information supplied in August, 2010 shows that the surplus area has not been surrendered by this Developer atleast till August, 2010. The information supplied in the tabular form shows 121 number of developers have not

surrendered the surplus area though it was one of the conditions attached to the NOC and it also discloses a fact that the officials of MHADA and Board have not taken any effective steps for years to recover the surplus built-up area.

7. The petitioner further states, after receiving the information as aforestated, he started pursuing the matter with MHADA and as a consequence of his follow-up and persuasion, MHADA through its representatives filed complaint with the Economic Offences Wing, Crime Branch, Mumbai against thirty three such defaulting developers for not surrendering the surplus built-up area.

8. The petitioner further states, but for the reasons best known, the officials of the MHADA did not take steps at all to recover constructed surplus

area either by attaching it or by adopting such other permissible remedies in law. The petitioner thus states, it is not only apathy and/or dereliction of duties by the officials of MHADA, but alleged dishonest and intentional acts of commission and omission on their part causing and thus allowing the developer to appropriate, such surplus area for their benefit and gain.

9. The petitioner therefore sought the information under the Right to Information Act with regard to the action taken by the officials of MHADA and Board against these thirty-three defaulting developers and also sought information as to why action has not been taken against the remaining defaulting developers. The petitioner was not given the complete information as sought and therefore

again on 3rd March, 2016 sought the information in the following terms :

(a) civil proceedings adopted and initiated to recover the surplus constructed area which is not surrendered;

(b) action against the officials of MHADA for causing wrongful loss to the MHADA worth Rs.6,000 crores due to wrongful and deliberation inaction on their part.

10. The petition discloses, information supplied on 17th March, 2016 under the Right to Information Act that, the surplus area of 1,37,332.52 sq.mtrs is yet to be received from 379 project-holders/developers. It is also informed that since the developers of these projects did not

surrender the surplus area, the Occupation Certificates were not issued for these projects. It is informed that out of 1,37,332.53 sq.mts. of surplus area only area admeasuring 6191.89 sq.mts was surrendered by ten developers and amount of Rs.84,43,502/- was recovered by MHADA against the additional construction of 36.76 sq.mts. In other words and to be precise;

(i) atleast as on 17th March 2016, 379 project developers were to surrender surplus area of 1,37,332.53 sq.mts. (emphasis supplied).

(ii) as on 17th March, 2016 only surplus built-up area of 6191.89 sq.mts was surrendered by ten developers.

(iii) Though the NOC for redevelopment was issued to developers in 1993 but till August,

2016, the officials of the MHADA/Board have not taken steps at all to recover the surplus built-up area either by attaching the properties of the developer or by taking recourse to such other remedies provided under the said Act.

11. It is therefore the case of the petitioner that the omissions on the part of the officials of MHADA and the Board, to recover such surplus built-up area from the developers is not only a negligence in discharge of their duties but by willful omission permitting the developers to appropriate the State's property (surplus surrendered built-up area which is 1.37 lacs sq.mtrs), and thereby causing and caused unlawful loss to the State and gain to these developers. It is in these circumstances, the petitioner filed a

complaint with the Deputy Commissioner of Police, Economic Offence Wing (EOW) on 1st July, 2016 seeking registration of an FIR against the officials of MHADA and Board.

12. It appears, the EOW upon perusal of complaint was of the opinion that the office of the Director General of Police (DGP), Anti-Corruption Bureau (ACB) is the appropriate authority to look into the grievance of the petitioner and thus forwarded the complaint to the DGP, ACB and informed the petitioner accordingly.

13. It appears, the petitioner reminded the Additional Commissioner of Police, ACB, Mumbai to register the FIR against the officials of the MHADA on 5th June, 2016, 10th June, 2016, 13th June 2016, 17th June 2016, 19th June 2016, 29th June 2016, 8th

July 2016, 12th July 2016 and 17th July, 2016, however, there was no response from the office of the Additional Commissioner of Police, ACB, Mumbai. It is in these circumstances, the petitioner sought information from the Additional Commissioner of Police, ACB under the Right to Information Act seeking details and progress in action, taken on his complaint. In response thereto, the Additional Superintendent of ACB, informed the petitioner on 26th July, 2016 that since the complainant is seeking action against Mr. Bhange and Mr. Zende, Chief Executive Officer of the Board and the Chief Officer of MHADA and other MHADA officials, the Bureau is seeking opinion of the Principal Secretary, Housing Department, Mantralaya, Mumbai.

14. On 15th November, 2017 Mr. Parag Shyam Manere, Deputy Commissioner of Police (1) EOW, Mumbai filed an affidavit-in-reply and maintained that, developers redeveloping cess buildings under DCR 33(7) and other related rules, are bound to surrender part of redeveloped property, in a set percentage, to MHADA before obtaining Occupation Certificate from Municipal Corporation of Greater Mumbai. In paragraph no.4, Mr. Manere stated as under ;-

> "I say that a general scrutiny of the said complaint primarily suggested violation of provisions of Prevention of Corruption Act" hence on 03.06.2016, Economic Offences Wing, Mumbai forwarded said complaint to the Director General of police, Anti Corruption Bureau, Mumbai for further necessary action. (emphasis supplied)

Mr. Manere DCP, further stated, that, in the year 2011, on the basis of the complaint received from MHADA, Economic Offences Wing, Mumbai, twenty-nine First Information Reports registered against the developers, who had willfully failed to handover part of developed property to MHADA, as required under DC Rules 33(7). He also states, in those cases, final reports have been filed and no evidence has been found disclosing involvement of MHADA Officials in any of those cases, and therefore ACB, Mumbai returned the complaint of the petitioner to the EOW, Mumbai stating that any action on their part would amount to double jeopardy. However, Mr. Manere disputed the facts, figures disclosed by the petitioners in the petition relating to area surrendered by the developers to the MHADA on the

basis of letters dated 4th August 2017 and 22nd September 2017 written by MHADA and would contend that so far as civil proceedings are concerned, for recovery of the developed area, notices were issued to 29 developers and recovered 6376.12 sq. mtrs. built up area. In para 10(ii), page 136 it is stated as under :-

> *"The developers of remaining 48 projects, had defaulted in handling over 14,021.99 Sq. Mtrs of area, which can be considered as the actual loss caused to MHADA as against 270027 Sq. Mtrs. claimed by Petitioner. Accordingly as mentioned in para 5 above, MHADA has filed FIR against 34 developers and one more complaint is under consideration with Economic Offences Wing, Mumbai. As far as civil proceedings in these matters are concerned, MHADA has already issued notices to developers in 29 cases and*

*recovered 6376.12 Sq.Mtrs of redeveloped area and received assurance of payment of Rs. 40.47 Crores as penalty. Further 6 developers have expressed their intention to settle their dues with MHADA and the process of handing over promised area/ compensation is in progress. In the remaining 2 cases, the matter is subjudice. This prima-facie shows that MHADA has also initiated civil proceedings/ arbitrations against errant developers."*

Thus, the EOW concluded that no loss has been caused to MHADA and sought rejection of the petition.

15. The EOW thus sought dismissal of the Petition by disputing the facts and figures of the area surrendered by the developers of MHADA, on the

basis of the letters written by MHADA, without first verifying contents of it, which otherwise is also contrary to information supplied under Right to Information Act.

16. Thus, after hearing the respective counsel for the parties, following order was passed on 8th September 2018, :-

> "1. The petitioner has, in larger public interest, brought to the notice of this court that the Maharashtra Housing and Area Development Authority (MHADA) sanctions several development projects in the City of Mumbai. The statistics would reveal that though a no-objection certificate has been given by MHADA, unless that is given and issued, the Municipal Corporation of Greater Mumbai will not process the

plans and issue further certificate, particularly the development permission. The development permission in the city of Mumbai is granted in the form of Intimation of Disapproval and Commencement Certificate, particularly known as IOD-CC. Therefore, a no-objection certificate of MHADA is a prerequisite of the IOC-CC. This no-objection certificate does not come without attached conditions. One of the attached conditions is that any area remaining surplus either in the form of ready construction or vacant has to be surrendered to MHADA and its non-surrender will invite serious consequences, including the whole project being termed as illegal.

2. The petitioner says that there are several such projects and which may

have been completed but MHADA has not ensured the surrender of these surplus vacant or constructed areas. He relies upon the data and information made available by MHADA from its own records. The petitioner says that because of the intervention of this court, some FIRs have been registered against the defaulting builders, but those responsible for ignoring the matter, namely, the officials of the authority and the Government are roaming free. Neither any departmental action nor any criminal prosecution is launched against them.

3. In these circumstances and when such serious allegations are made on oath, we expect the petitioner to attend the office of the Anti Corruption Bureau at Worli, Mumbai. Let him so attend the office and have his statement recorded, so also tender all

the documents which are relevant for the purpose. The petitioner shall attend the office on 12th February, 2018 at 11.00 a.m.

4. We place this matter on 28th February, 2018 so as to obtain from the learned APP as also the learned AGP, the requisite particulars or the outcome after the statement of the petitioner is recorded. Needless to clarify that in the event the petitioner does not attend and have his statement recorded, the Court will proceed to close this public interest litigation." (emphasis supplied)

17. In terms of this order, the State was required to inform the Court of the outcome after statement of petitioner is recorded. It appears that, the statement of the petitioner was indeed

recorded on 08.02.2018 by the ACB. On 16.07.2018 when the petition was heard, Learned Assistant Prosecutor, informed the Court that the Additional Commissioner of Police, ACB vide letter dated 18.04.2018 is seeking permission of the Additional Chief Secretary, Home Department to hold open inquiry against the officers and the permission is awaited.

18. In view of this statement made by Learned APP, the hearing was adjourned for a period of three weeks in order to enable the Additional Chief Secretary, Home Department to take appropriate decision in the matter, as regards open inquiry referred to above.

19. Before we proceed further, we think it appropriate to read and appreciate contents of ACB's letter dated 18.04.2018, addressed to the Additional Chief Secretary, Home Department whereby permission to conduct open inquiry was sought. In unnumbered para no. 5 of the said letter, Additional Commissioner of Police, ACB stated thus :-

> *" प्रस्तुत प्रकरणाची व्याप्ती खुप मोठी असुन मुंबईमधील एकूण 272 प्रकल्पमधील म्हाडाला देय असलेले अतिरिक्त क्षेत्रफळ विकासकांनी म्हाडाला हस्तांतरीत केले नसुन त्यामुळे शासनाचे हजारो कोटीचे नुकसान झाल्याचे दिसुन येते. तसेच म्हाडाचे सबंधीत अधिकयाची भुमिका संशयास्पद असून त्यांनी पदाचा दुरुपयोग करुन विकासकांचा फायदा करुन दिला असण्याची दाट शक्यता आहे. म्हणुन प्रस्तुत प्रकरणामध्ये सत्वर सखोल चौकशी करुन संबंधीतांवर कारवाई करणे आवश्यक आहे."*

This statement of fact, discloses that, 272, project developers, have not surrendered constructed built-up area to MHADA in terms of the DCR 33(7); it caused loss of thousands of crores of Rupees to the State. The Additional Commissioner, ACB thus expressed doubt, over role of the officials of the MHADA, who in purported exercise of their power caused benefit to the developers. In the backdrop of these facts, he sought permission to conduct detail enquiry and action against the officials of the MHADA.

20. On 11th January, 2018, Mr. Ramchandra Kondiba Dhanawade, Deputy Secretary to the State, Housing Department, has filed reply-affidavit and attempted to shield MHADA officials, contending that surplus area required to be surrendered to the MHADA by developers is always at the completion of

the project and not at any stage, during or before the construction. He contended that as per the information received from the MHADA, monetary compensation of Rs.37.76 Crores, in lieu of the surplus built-up area admeasuring 2947.48 sq.mtrs. has been recovered. It is further stated in the reply-affidavit, that FIRs are registered against the developers/project holders, for not surrendering surplus area and in some cases, notices have been challenged by the developers and in other five cases, directions have been issued to register the FIR. These statements of facts (in paragraph 17 of the reply affidavit) are not supported by any document or material particulars. Be that as it may, reply of the State, however, does not answer, as to why for years together officials of the MHADA did not take any efforts or steps to recover the constructed

area. Neither of the respondents have informed the Court about the effective steps taken by the officials of the MHADA to recover the surplus constructed area from the developers, which is about 30,00,000 sq.fts. In reply affidavits, respondents are simply disputing facts and figures of area to be surrendered by the developers, which is otherwise contrary to the information supplied by them to the petitioner under the Right to Information Act. It lacks credence and therefore we do not accept it.

21. It is interesting to note that the Deputy Secretary of the Housing Department has placed on record a communication dated 15th October, 2012, addressed to the MHADA. We have perused it. Vide this communication, Home Department directed the MHADA to recover the penalty from defaulting/erring

developers, who have not surrendered constructed area, as required under DCR 33(7). A statement annexed to the communication shows that penalty has been imposed on developers for not surrendering surplus built-up area to MBRRB, which is at Pages 424 to 428 of the Petition. It shows that 33 developers were issued NOC/permission. All 33 permissions were issued in between year 1999 to 2003. To be more precise, about 26 permissions were issued during 1991 to 1996 and total penalty imposed is Rs.31,41,85,129.20 paise. (emphasis supplied)

22. We have carefully perused, reply affidavits, of the respondents; however, neither the State nor the MHADA/Board, has referred to this penalty amount, in their affidavits, nor stated whether this amount has been recovered or not ? And if

not recovered why it has not been recovered and reasons for not recovering such huge amount. Neither the MHADA nor the State has placed on record particulars of the steps taken or efforts made by the MHADA officials to recover the same from this defaulting developers. It may be stated that the Deputy Secretary, Home Department in reply affidavit, has not made statement as to whether the State has taken any follow up with the officials of the MHADA to ensure and secure recovery of huge penalty amount.

23. Thus, the material placed on record by the respondents themselves, clearly shows, that for years together and atleast since 1991 neither officials of MHADA nor of the Board, have taken any steps to recover the penalty as levied (as referred

to here-in-above) or to recover constructed area from such developers to whom permissions were granted for re-developing cess buildings.

24. The material on record has thus established following facts:

> "(i) In terms of DCR 33(7) upto March 14, 2014 Board granted No Objection/permission for redevelopment of 1728 projects;
>
> (ii) Out of which, 379 developers have not surrendered constructed area admeasuring 137332.3 sq.mtrs. to MHADA,
>
> (iii) Just, 133 developers have

surrendered constructed component admeasuring 32233.18 sq.mtrs.,

(*As disclosed in, office notings of 'Board' at page 84 of the petition*)

AND

(iv) MHADA/Board authorities have not registered FIR against 379 developers except few,

(v) Around 36 lakhs ft. built-up area has been sold by the developer worth around Rs.40,000 Crores which was to be surrendered to the MHADA and (emphasis supplied)

(vi) Authorities have not initiated any

proceedings for attaching properties of the defaulting developers for not surrendering the constructed area to the MHADA to the extent of 1.37 lakh sq.mtrs.

*(disclosed information under Right to Information Act)*

25. It is in the backdrop of the aforesaid facts, opinion formed by Mr. Manere, Deputy Commissioner of Police (1), Economic Offences Wing as expressed in paragraph 4 of his reply affidavit that; "The general scrutiny of the complaint primarily suggests violation of the provisions of Prevention of Corruption Act" is correct (emphasis supplied).

. This assertion/opinion of Mr. Manere, is further fortified by the Additional Commissioner of

Police, ACB, who in his letter dated 18th April, 2018 stated, that the role of officials of the MHADA is not free from doubt, who by misusing their official position, may have caused benefit of developers and thus, suggested detail enquiry and appropriate action against such officials.

26. Thus, two high rank officers of the State were of the opinion that complaint of the petitioner prima-facie discloses cognizable offence committed by the officials of the MHADA/ Board. However, in spite of this fact, officers of the EOW and officers of the ACB declined to entertain the complaint either by disputing facts and figures disclosed in the petition and/or by saying that initiating proceedings against the officials of the MHADA may amount to double jeopardy. It is nothing but

shirking the responsibility and acting in defiance of provision of Penal Laws.

27. We have noticed and noted that the stand taken by the respondents before us is contrary to what they have stated in their reply-affidavits.

28. Once projects are sanctioned under the DCR 33(7), component of the constructed area to be surrendered by the developer to the MHADA assumes character of property of the State, which the officials of the MHADA and the Board are/were to appropriate for the benefit of the State. But by willful omissions, these officials allowed and permitted the developers to appropriate, such surplus area, which was/is under their control and

thereby caused huge loss to the State to the extent as stated hereinabove and caused unlawful gain to the developers. Therefore, component of constructed area to be surrendered by the developers to the MHADA, being property under their control, but who by their deliberate/intentional omissions failed to appropriate for the benefit of the State and thus, committed penal offences, besides knowingly disobeyed directions of law. Once the developer is granted permission to re-develop the cess buildings under DCR 33(7), officers of the MHADA, being public servants, were under statutory obligations to ensure recovery of constructed area, but in this case material on record clearly indicates that these officers knowingly and intentionally disobeyed the directions of law and such dis-obedience has caused loss to the State. Material on record equally

indicates that the component of constructed area, which is to be surrendered to the MHADA, has been sold by the developers in the open market. Though this fact was within knowledge of the officers of the MHADA/Board, they turned nelsons eye, obviously for the reasons known to all. Thus, we are of the considered opinion that the complaint and material on record constitutes credible information, which prima-facie discloses commission of cognizable offences punishable under the Indian Penal Code and other penal laws.

29. In this case, Mr. Keshav Patil, Additional Commissioner of Anti-Corruption Bureau vide communication dated 18th April, 2018 expressed his grave concern about the alleged complicity of the officials of the MHADA and their possible collusion

with the developers and thus sought permission of the State to hold open enquiry against the Officers of the MHADA. Thus, Mr. Patil attempted to take recourse to the provisions of Section 17A of the Prevention of Corruption (Amendment) Act, 2018 ("P.C. Act" for short). This section reads as under:

> "17A.(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-
>
> (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of

that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in

writing by such authority, be extended by a further period of one month."

. Even assuming facts of the case admit application of Section 17A but in terms of the proviso thereto, concerned authority (herein Home Department) has not conveyed its decision within permissible period. At-least, the State has not brought to our notice any such decision taken by the State pursuant to request of the Anti-Corruption Bureau. We therefore hold that the State and its agencies have consciously avoided to Register the FIR, against the concerned official of the MHADA, under the garb of enquiry, though information clearly disclosed commission of a cognizable offence. Thus, more stringent provisions are now in place. The P.C. Act is amended by Amendment Act 16 of 2018 so as to fill in the gaps in description and

coverage of the offence of bribery so as to bring it in line with the current international practice and also to meet more effectively India's obligation under the U.N. Convention. The provision for previous approval is aimed at providing a safeguard to a public servant from vexatious prosecution for any bonafide omission or commission in the discharge of official duties. It is not a shield to protect officials who do not act bonafide but with ulterior motives.

30. In the case of **Lalita Kumari V/s. Government of Uttar Pradesh and Others,** reported in **(2014) 2 SCC 1,** the Constitution Bench has held that "if the information given clearly mentions commission of offence, there is no option but to register the FIR forthwith. The other

considerations are not relevant at the stage of registration of FIR, such as whether the information is falsely given, whether the information is genuine, whether the information is credible. These are the issues that are to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given, ex-facie, discloses the commission of cognizable offence. If after investigation, the information given is found to be false, there is always an option to prosecute the complaint for filing a false FIR".

. In this case, there is not only credible information disclosing the commission of offence is on record but also the opinion of two high rank officers of the State that information suggests prima-facie commission of offence atleast under the

Prevention of Corruption Act, 1988.

31. One may attempt to argue that, whether writ can be issued to police authorities to register the offence, in as much as, the Apex Court has held and reiterated in All India Institute of Medical Science's case, the remedy available is by filing a complaint before the Magistrate.

32. We are aware of the judgment of the Apex Court in the case of **Aleque Padamsee V/s. Union of India, reported in 2007 (6) SCC 171** wherein it is held that, when the information is laid with the police but if no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code file the complaint before the

Magistrate having jurisdiction to take cognizance of the offence. In para-7, the Apex Court has held thus :

> "7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences case, and reiterated in Gangadhar case the remedy available is as set out above by filing a complaint before the Magistrate."

33. The case of Rashid Ahmed V. Municipal Board, Kairana, reported in AIR 1950 Supreme court 163 laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid & Son Vs. The Income Tax Investigation Commissioner AIR 1954 SC 207 which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words,

> *"unless there are good grounds therefor", which indicated that alternative remedy would notoperate*

*as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.*

34. A specific and clear rule was laid down in **State of U.P. vs. Mohd. Nooh reported in 1958 SCR 595 = AIR 1958 SC 86**, as under :

"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 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."

35. The aforestated rulings thus culled out the

following two principles viz. namely (i) the exhaustion of statutory remedies before issuing the writ is a rule of policy convenience and discretion rather than rule of law, (ii) the decision of a High Court to entertain the petition is pre-eminently one of discretion, notwithstanding the existence of an alternate remedy and it is to be exercised when there are good grounds therefor."

36. In our considered view, this is not the case of rejection only on the ground of alternate remedy since rule of exclusion of alternate remedy is satisfied here. In the case in hand two high rank officers after examining material on record held opinion that such material disclosed cognizable offence, however, they sought permission of the State to hold enquiry may be in the light of

provisions of Section 17A of the Prevention of Corruption Act (Amendment) Act, 2018. The fact remains that the concerned authority has not granted permission within the required period but that itself will not absolve respondents from registering the FIR.

37. Thus, taking into consideration material on record, in our view, for the reasons stated hereinabove constitutes credible information and/or material shows *prima-facie* positive or tacit acquiescence of officials with defaulting developers and discloses commission of cognizable offence by the officers of the MHADA/Board punishable under the Indian Penal Code and other penal laws and, therefore, we direct Economic Offences Wing to register the FIR within

five days from today. Thereafter all steps be taken in accordance with law. Petition is partly allowed in the aforesaid terms and disposed of.

38. Before parting, we wish to emphasise that our observations are tentative and *prima-facie* and shall not influence the investigations much less the ultimate trial both of which will proceed strictly in accordance with law.

**(SANDEEP K. SHINDE, J)** **(S.C. DHARMADHIKARI, J)**