BEFORE THE GRIEVANCE REDRESSAL COMMITTEE,
MUMBAI SUBURBAN, MUMBAI. जा.क्र 599,
[APPEAL U/S.35 (1A) OF THE MAHARASHTRA SLUM AREAS (IMPROVEMENT, CLEARANCE AND REDEVELOPMENT) ACT, 1971].

APPEAL NO.213 OF 2020 with Appeal No.251 of 2020 with Appeal No.370 of 2020 and with Appeal No.09 of 2021

APPEAL NO.213 OF 2020

Shri Sudhendu Mewalal Shah
Room No.403, Ambika CHS Ltd,
Laxminagar, Ghatkopar (E),
Mumbai - 400 075. ...Appellant

VERSUS

1. Additional Collector (E & R) Eastern Suburb
   1st Floor, Industrial Insurance Bldg.,
   Churchgate, Mumbai - 400 020.

2. Assistant Commissioner O N Ward
   2nd Floor, N-Ward Building,
   Ghatkopar (E), Mumbai - 400 077.

3. Secretary of Nalanda SRA CHS Ltd
   CTS No.5808 pt, Final Plot No.274 pt.
   Ghatkopar (E), Mumbai - 400 077.

4. M/s Money Magnum Nest Pvt. Ltd
   Godrej Collegium, A-Wing, 1301,
   13th Floor, Behind Everard Nagar,
   Sion, Mumbai - 400 022.

5. Shri Mewalal Hiralal Shah
   185/5187, 4th Floor, Pantnagar,
   Ghatkopar (E), Mumbai - 400 075.

6. Kumari Sunita Mewalal Shah
   185/5187, 4th Floor, Pantnagar,
   Ghatkopar (E), Mumbai - 400 075. ...Respondents

Advocate S. M. Shaha present for appellant.
Representative of developer Rishi Narvekar and advocate present.
Advocate Aayushi present for respondent Society.

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Representative of Municipal Corporation Amarsingh Rathod present and none present for other respondents.

APPEAL NO.251 OF 2020

Ms. Sunita Mewalal Shah,
Age: 45 years, Occ.: Business,
Commercial Structure at Sr. No.3 in Supplementary Annexure-II dtd.23.12.2009,
Having address at Shop NO.23 E 30,
Dr. Damaji Chawl, R.M.D. Estate,
Survey No.227B, Ghatkopar (E),
Mumbai - 400 075.

Having Residential Address at
185/5187, 4th Floor,
Pant Nagar, Ghatkopar (East),
Mumbai - 400 075. ...Appellant

VERSUS

1. Additional Collector (E & R)and
Appellate Authority - Eastern Suburb
1st Floor, Industrial Assurance Building,
Churchgate, Mumbai - 400 020.

2. Asst. Municipal Commissioner &
Competent Authority - 'N' Ward
Jawahar Road, Ghatkopar (E),
Mumbai - 400 077.

3. Nalanda SRA Co-operative Housing Society Ltd.,
Through its Secretary -
Mr. Bhimrao Motiram Sonawane,
CTS No.5808, F.P.No.274,
Dr. Damji Compound, Patel Chowk,
Ghatkopar (E), Mumbai - 400 077.

4. M/s Money Magnum Nest Pvt. Ltd
A-Wing, 1301, 13th Floor, Behind Everard Nagar,
Eastern Express High Way, Sion,
Mumbai - 400 022.

5. Mewalal Hiralal Shah

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Age: 70, Occ.: Business,
Commercial Structure at Supplementary
Annexure-II, Sr. Nos.4 and 5,
Having Address F.P.No.274, CTS - 5808,
Dr. Damji Compound, Patel Chowk,
Ghatkopar (E), Mumbai - 400 075.

6. Sudhendu Mewalal Shah,
Age: 43, Occ.: Advocate,
Commercial Structure at Supplementary,
Annexure - II, Sr. Nos.1 and 2,
Having address F.P.No.274, CTS - 5808,
Dr. Damji Compound, Patel Chowk,
Ghatkopar (E), Mumbai - 400 075. ...Respondents

Advocate Tushar Kochale present for appellant.
Representative of developer Rishi Narvekar with advocate present.
Advocate Aayushi present for respondent Society.
Representative of Municipal Corporation Amarsingh Rathod present and none present for other respondents.

APPEAL NO.370 OF 2020

Shri Mewalal Hiralal Shah
Age 71 years, conducting business at
Hut Bearing Annexure-II No.420,
Supplementary Annexure-II No.4 & 5 of
Nalada SRA Co-op. Hsg. Soc. Ltd.,
Plot No.274pt., CTS No.5808pt.,
TPS-III, Dr. Damji Compound,
Ghatkopar (East) Mumbai - 400 077. ...Appellant

VERSUS

1. Additional Collector (Enc./Rem.)
Mumbai Eastern Suburb.
Having office address at -
1st Floor, Industrial Insurance
Building, Churchgate Railway Station,
Mumbai - 400 020.

2. Bhimrao Motiram Sonawane
Secretary, Nalanda Co-op. Hsg. Soc. Ltd.,
Plot No.274pt., CTS No.5808pt.,

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TPS-III, Dr. Damji Compound,
Ghatkopar (East) Mumbai - 400 077.

3. Assistant Commissioner, 'N' ward &
The Competent Authority,
Having office address at 2nd floor,
'N' Ward office Bldg., Jawahar Road,
Ghatkopar (E), Mumbai - 400 077.

4. M/s. Money Magnum Nest Pvt. Ltd.
A Company having office address at
1301, 13th floor, Godrej collegium,
Behind Evhard Nagar, Eastern Express Highway,
Sion (East), Mumbai - 400 022. ...Respondents

Advocate Vidnyan Daware present for appellant.
Representative of developer Rishi Narvekar with advocate present.
Advocate Aayushi present for respondent Society.
Representative of Municipal Corporation Amarsingh Rathod present and none present for other respondents.

APPEAL NO.09 OF 2021

Nalanda SRA CHS Ltd.
Through its Chairman,
A Co-operative Housing Society Registered
Under the Societies Act, 1960,
Having its office at F.P.No.274,
CTS 5807, Dr. Damji Compound,
Patel Chowk, Ghatkopar (E),
Mumbai - 400 075. ...Appellant

VERSUS

1. Additional Collector (Enc/R) Eastern Suburb
1st Floor, Industrial Insurance Building,
Opp. Churchgate Station,
Churchgate, Mumbai - 400 020.

2. Mewalal Shah
Residing at H-1B,
Room No.403, Ambika CHS Ltd
MHADA Colony, Laxmi Nagar,
Ghatkopar (E), Mumbai - 400 075.

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3. Sudhendu Mewalal Shah
Residing at H-1B,
Room No.403, Ambika CHS Ltd
MHADA Colony, Laxmi Nagar,
Ghatkopar (E), Mumbai - 400 075.

4. Kumari Sunita Mewalal Shah
Residing at H-1B,
Room No.403, Ambika CHS Ltd
MHADA Colony, Laxmi Nagar,
Ghatkopar (E), Mumbai - 400 075.

5. M/s Money Magnum Nest Pvt. Ltd
Godrej Collegium, A-Wing, 1301,
13th Floor, Behind Everard Nagar,
Sion, Mumbai - 400 022.

6. Assistant Commissioner N/Ward
MCGM, Mumbai
2nd Floor, N Ward Building,
Jawahar Road, Ghatkopar (E),
Mumbai - 400 077. ...Respondents

Advocate Aayushi present for appellant Society.
Advocate Tushar Kochale, Vidnyan Daware, S. M. Shaha, P.J. Cheda present for respondent no.2, 3 and 4.
Representative of developer Rishi Narvekar present.
Representative of Municipal Corporation Amarsingh Rathod present and none present for other respondents.

Hearing Date: 21.04.2022
Order Date: 02.06.2022

ORDER:-

By the above appeals, the appellant challenged the impugned order dated 31.07.2020 passed by the learned Appellate Authority i.e. Additional Collector (E&R), Eastern Suburb, in appeal No.55 of 2019, whereby said appeal has been dismissed.

1. These appeals were filed before this Committee by the appellants on respective dates. Appeals were called out for hearing on 07.04.2022 and lastly on 21.04.2022. Heard Appellant-in-Person

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in Appeal No.213 of 2020 and who is Respondent No.3 in Appeal No.9 of 2021, Advocate Tushar Kochale for Appellant in Appeal No.251 of 2020 and Respondent No.4 in Appeal No.9 of 2021, Advocate Vidnyan Daware for Appellant in Appeal No.370 of 2020 and Respondent No.2 in Appeal No.9 of 2021, Advocate Ms Preet Chheda for Appellant in Appeal No.9 of 2021 and Respondent/Society in Appeal Nos.213 of 2020, 251 of 2020, 370 of 2020, Advocate with Rishi Narvekar for Respondent/Developer in all Appeals, Colony Officer of 'N' Ward, MCGM namely Amarsingh Rathod present. For the sake of brevity the Appellants in Appeal No.213 of 2020, 251 of 2020 and 370 of 2020 are collectively referred as 'Slum Dwellers' and Appellant in Appeal No.9 of 2021 is referred as 'Society' and respondent developer is referred as developer. After hearing the parties matter was closed for passing appropriate order as also time to file the written submission was granted to the parties. Pursuant to time to file written submission granted by this Committee, slum dwellers, society and developer filed their written submissions along with documents.

2. Perused appellant's appeal, application and the appeal papers.

3. All above appeals arises from the impugned order dated 31.07.2020 passed by the Ld. Additional Collector (Enc/Rem) Eastern Suburbs in Appeal No.55 of 2019, in said appeal society challenged the eligibility of five Commercial Structures at Serial No.1, 2, 3, 4 and 5 of the Supplementary Annexure-II dated 23.12.2009 prepared and issued by the Competent Authority, wherein the appeal filed by the society was party allowed holding that Commercial Structures at Sr. No.1 to 4 are part of one single structure, thus one single structure of 760 sq. ft. held eligible instead of four structures, and rejected the claim of Society with respect to Structure at Sr. No.5. The society filed appeal challenging eligibility of slum dwellers on the grounds that Commercial Structures are part of one single structure

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admeasuring 760 sq. ft., whereas, Commercial Structure at Sr. No.5 was not in existence. Above three appeals viz. Appeal Nos.213 of 2020, 251 of 2020 and 370 of 2020 have been filed by respective occupants of Structures at Sr. Nos.1, 2, 3 and 4 contending that four different structures having different structure numbers with separate documentary proofs, since prior to the datum line prescribed for the eligibility. The Nalanda SRA CHS also challenged the very same impugned order seeking to declare structure at No.5 as not-eligible on the same ground as taken before the Ld. Addl. Collector that said structure was never in existence.

4. In filing appeals there is delay, it is therefore the appellants preferred separate application for condonation of delay. The matter was on board dated 21.04.2022 the advocate for appellant present, representative of developer was present, advocate for society was present, representative of Municipal Corporation was present and none appear for other respondents. The committee considered the application for condonation of delay caused to appellants for filing the present appeals. The committee upon perusal of applications and facts mentioned in said applications, satisfied for the reasons mentioned therein and condone the delay and heard the appeal forthwith on merits.

5. The Appeal No.213 of 2020 filed by Mr. Sudhendu Mewalal Shah in respect of commercial structure at serial No.1 and 2, Appeal No.251 of 2020 filed by Ms. Sunita Mewalal Shah in respect of commercial structure at serial No.3, Appeal No.370 of 2020 filed by Mr. Mewalal Hiralal Shah in respect of commercial structure at serial No.4 in Supplementary Annexure-II dated 13.12.2009, whereas, Appeal No.9 of 2021 filed by Nalanda SRA Co-operative Housing Society Ltd. challenging impugned order in respect of commercial structure at Sr. No.5 of Supplementary Annexure-II belonging to Mr. Mewalal Hiralal Shah.

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6. It is the case of the Slum Dwellers that, the impugned order dated 31.07.2020 passed by the Ld. Addl. Collector is in violation of due procedure of law, without considering submissions made by slum dwellers in oral hearing as well as written submissions before the Ld. Addl. Collector with respect to mala fides and delay of 3528 days caused in filing Appeal by the Society. As also affirmative actions by the Developer and Society accepting eligibility of Slum Dweller since year 2009 till filing Appeal in year 2019. The documentary proofs showing existence of four different structures at Sr. Nos.1 to 4, as well as, existence of Structure at Sr. No.5. The slum dwellers also contended that the documents showing falsity of Society's case, Society is proxy litigant of Developer who has initiated proceedings against eligibility of these slum dwellers only after Applications dated 07.12.2015 made by the Slum Dwellers to SRA for allotment of permanent commercial rehab premises as per SRA's Circular No.140 and SRA's Letters dated 12.07.2017 and 16.12.2017 to the Developer and Architect directing to comply SRA's Circular No. 140, with respect to allotment of Commercial Rehab Premises to these slum dwellers on ground floor at the front location etc. The Slum Dwellers further submitted that, in year 2008, there was formation of three different societies on subject plot of land, only thereafter said scheme was known publicly. These slum dwellers submitted that when they came to know about Annexure-II dated 14.08.2008, wherein, at Sr. No.3 single commercial structure with area 760 sq. feet carpet area was shown instead of four different commercial structures, whereas, another commercial structure having commercial activity of 'Datta Masala Kandap' was not shown. It is therefore Slum dwellers preferred an Application in October, 2008 before the Slum Rehabilitation Authority to include those commercial structures in the Annexure-II. One slum dweller namely Mewalal Hiralal Shah filed Application No.584 of 2009 before High Power Committee "HPC" (now known as Apex Grievance Redressal Committee

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"AGRC") seeking inclusion of four different commercial structures instead of one single structure of 760 sq. ft. area and also to include another commercial structure which was left out in the Annexure-II. Slum Dwellers further submitted that, vide letter dated 16.01.2009 the Slum Rehabilitation Authority directed the Competent Authority to take decision with respect to inclusion of said commercial structures. On 01.10.2009 the High-Power Committee passed an order upon Application No.584 of 2009 and directed Competent Authority, to take decision at its level to include said Commercial Structures in the Annexure-II. The slum dwellers submitted that, the Developer was present for said hearing before the Hon'ble High Power Committee. It further submitted that, accordingly, pursuant to said directions of the SRA and order of the HPC, the Competent Authority conducted actual survey and site inspection of Appellants' commercial structures and carried out verification of documentary proofs submitted by the Appellants. On its basis issued Supplementary Annexure-II dated 23.12.2009 by including said commercial structures at Sr. Nos.1, 2, 3, 4 instead of one single structure of 760 sq. ft. and also included structure at Sr. No.5 and all structures were declared as "Eligible". The Slum Dwellers further submitted that, the SRA, Competent Authority, Developer, Society, Society's Architect, all vide their correspondence between them, sanctioned building plans having/making provision for said five commercial structures. The demolition notices and orders etc. have taken affirmative actions on the basis that commercial structures of the Slum Dwellers are having five different commercial structures. However, it is only after slum dwellers vide Applications dated 07.12.2015 approached Ld. Chief Executive Officer of the Slum Rehabilitation Authority seeking allotment of permanent alternate commercial premises as per SRA's Circular No.140 on the ground floor facing main road and also letters dated 12.07.2017 and 16.12.2017 issued by the SRA to the Developer and Architect. The Developer by deploying the

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Society as proxy litigant, selectively made complaint on 10.08.2018 before the competent authority malafidely and illegally by making a false story, and thereafter filed Appeal No.55 of 2019 before the Ld. Addl. Collector after lapse of 3528 days from the decision of eligibility of said five different structures. These slum dwellers also submitted that the Society and Developer had knowledge of slum dwellers eligibility in respect of five different commercial structures, which was not challenged by anyone till year 2019 and in fact they acted affirmatively on the basis of said eligibility. It is further submitted that Society and Developer know all the facts, however, only when slum dwellers made Application dated 07.12.2015 to SRA, the Society challenged eligibility of five commercial structures in the year 2019. It is also submitted that, one Ms. Rakhi Harishchandra Jadhav who is daughter of Chief Promoter of the Nalanda SRA CHS declared eligible for three different commercial structures at Sr. No.11, 12 and 36 of supplementary annexure-II issued in the year 2015, on the basis of one and the same Gumasta License No.000592 dated 24.10.2000, however, the very same Society malafidely and selectively challenging the eligibility of these slum dwellers, who are having separate documentary proofs proving existence of their respective commercial structures which are separate and independent. The slum dwellers further submitted that the Ld. Additional Collector after hearing the parties and taking documents into consideration passed impugned order. The slum dwellers contended that the Appellate Authority did not consider the submissions of the Slum Dwellers and there is no reasoning given in the impugned order with respect to oral as well as written submissions made by the Slum Dwellers. It is further submitted that, the Ld. Addl. Collector did not consider and decide that there was inordinate and unexplained delay of 3528 days in filing the appeal by the Society challenging eligibility of its own slum dwellers. Which was not consider by the Ld. Addl. Collector nor society was asked

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to file delay condonation application. Thus, the slum dwellers submitted that, on the issue of limitation as well as on merits, the impugned order is illegal and liable to be quash and set aside by this Committee.

7. The Society appeared through advocate and advanced oral submissions as well as written submissions and supported the impugned order passed by the Appellate Authority with respect to commercial structures at Sr. Nos.1 to 4 of said supplementary annexure-II but the society also by filing appeal No.09 of 2021 challenged the eligibility of structure No.5 as confirmed by the Appellate Authority. The Society submitted that there was only one single structure of 760 sq. ft. shown in the Annexure-II of the year 2000 as well as of year 2008 and as per measurement taken in the year 1976. That the slum Dwellers have partitioned one single structure into four different structures after preparation and issuance of Annexure-II dated 14.07.2008. The same was done to get benefit of four different structures as if same is not done then only slum dwellers can get only one single structure of 225 sq. ft. against said single structure of 760 sq. feet. It is further submitted by the Society that legal heirs of Mr. Hiralal Pandohi Shah were not considered while issuing Supplementary Annexure-II and transfer of Gumasta Licenses in the name of present Slum Dwellers. It is further submitted by the Society that, in order to get different Gumasta Licenses there is no need of different structures, thus eligibility of these five different structures based on gumasta licenses is wrong. It is further submitted by the Society that objection of limitation cannot be taken and merely because there is long delay that cannot be a ground to not adjudicate eligibility of slum dwellers who have partitioned single structure into four different structures. The Society also submitted that, Commercial Structure at Sr. No.5 was not included in the Annexure-II of year 2000 and also 2008 thus said structure which

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was not in existence has been subsequently included in the Supplementary Annexure-II dated 23.12.2009.

8. The Developer supported the case of the Society adopting and making similar submissions as made by the Society. The developer submits that the Additional Collector has rightly held that Mewalal, Sudhendu and Sunita are not entitled to hut no.3 -220 sq. ft., hut no.3A-180 sq. ft., hut no.570-180 sq. ft. and hut no.569-180 sq. ft., and they are all entitled to only hut no.1,3/3 and therefore entitled to only one rehab component with respect to the same under the subject slum scheme; and the Additional Collector has wrongly held that Mewalal is entitled to hut no.420-A, as will be demonstrated thereinafter. Therefore, the impugned order ought to be varied and/ or interfered with only to the extent of hut no.420-A such that this Hon'ble committee ought to set aside the finding of the Additional Collector only to the extent of hut no.420-A and inter alia hold that hut no.420-A was not in existence prior to 01.01.1995 and thus hold that Mewalal is not entitled to any rehab premises with respect to the same. It is submitted that the impugned order is severable and the finding with respect to hut no.420-A can be set aside without affecting the other portions of the impugned order. He further submits that the above is evident from the following facts, circumstances and reasons which are in the alternative and without prejudice to each other: Fraudulent creation of hut no.3-220 sq. ft. hut no.3A-180 sq. ft. hut no.570-180 sq. ft. and hut no.569-180 sq. ft. by Mewalal, Sudhendu and Sunita to take additional rehab premises under the subject slum scheme. It is the case of Mewalal, Sudhendu and Sunita that hut no.1,3/3 was originally occupied by Hiralal and hut no.1,3/3 was divided into 4 huts prior to 01.01.1995, owing to which hut no.1,3/3 became hut no.3'-220 sq. ft. hut no.3A-180 sq. ft., hut no.570-180 sq. ft. and hut no.569- 180 sq. ft.. Whilst it is an admitted position that Hut no.1,3/3 was in

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existence prior to 01.01.1995 and was originally occupied by Hiralal, the developer vehemently denies that Hut No. 1,3/3 was divided prior to 01.01.1995. The Developer Submits that Mewalal, Sudhendu and Sunita Fraudulently divided Hut Hut No. 1,3/3 sometime after 14.07.2008, When they came to know that rehab premises were going to be allotted soon and they would be entitled to only a 225 sq. ft. rehab premises, though Hut No. 1,3/3 admeasures 760 sq. ft. and the only way that they would get more area in the rehab component is if they illegally divided Hut No. 1,3/3 into four parts, pursuant to which they would get four rehab premises admeasuring 225 sq. ft. each and totally admeasuring 900 sq. ft.. The developer submits that it shall demonstrate hereinafter as to how the MCGM's verification of documents was incorrect to arrive at its conclusion with respect to division. However, what is noteworthy is the spot inspection. The fact that the MCGM did not see the division of hut no.1,3/3 at the time of making the original annexure-II on 29.05.2000 and at the time of making the revised annexure-II on 14.07.2008 but saw the same at the time of making the supplementary annexure-II dated 23.12.2009, clearly goes to show that hut no.1,3/3 was illegally divided by Mewalal, Sudhendu and Sunita after 14.07.2008, so as to take the benefit of more rehab premises under subject slum scheme. In the impugned order, the Additional Collector has failed to consider the above and has therefore wrongly held that hut no.420A was in existence prior to 01.01.1995. Moreover, none of the documents on the basis of which Mewalal is claiming that this purported hut was in existed prior to 01.01.1995 has been produced by Mewalal in his appeal. The contents of the original annexure-II dated 29.05.2000 were never challenged by Hiralal and/ or any other member of his family, including Mewalal, Sudhendu and Sunita, as the contents thereof depict the actual position of hut no.1,3/3, as on 29.05.2000. Therefore, Mewalal, Sudhendu and Sunita are deemed to have accepted the contents thereof and now cannot challenge the same.

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The developer submits that on this ground alone appeal nos.213, 251 and 370 of 2020 ought to be dismissed. Accordingly, it is submitted that this Hon'ble committee vary the impugned order and inter alia hold that hut no.420A was not in existence prior to 01.01.1995 and therefore no rehab premises are required to be provided for the same under the subject slum scheme.

9. The Colony Officer of MCGM by tendering the Report dated 02.02.2019 of Assistant Commissioner 'N' Ward supported the case of the Society and the Developer.

10. This committee gone through the appeal papers as well as the rival submissions made by the respective parties. After going through it this committee in present appeals require to consider, whether the impugned order in present appeals is legal or not? It is important to note here that, the names of the slum dwellers was duly recorded by the competent authority in the supplementary annexure-II and the same was issued on 23.12.2009. It is further important to note here that the said act of the Competent Authority was pursuant to the directions given by the High Power Committee and Slum Rehabilitation Authority. The Competent Authority by letter dated 15.06.2011 directed to Society, its Architect and the Developer to submit slum plan in respect of five commercial structures. Further SRA issued Letter dated 26.09.2011 to Shri Hemant Parikh who is Architect of Society to do the needful for rehabilitation of five commercial structures. The chief promoter of Society issued letter dated 14.10.2011 referring to SRA's letter dated 26.09.2011 with respect to said five commercial structures. It is further important to note here that, the Developer and Architect submitted proposal for revise of the plans in respect of the scheme. Accordingly Revised Letter of Intent dated 18.12.2014 was issued by the SRA which contains one of the reasons for revise of LOI was increase of five eligible commercial structures due to Supplementary Annexure-II dated 23.12.2009. On 15.05.2014 the SRA issued approved building

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plans in respect of rehab buildings, in the said scheme as per the plan proposal submitted by the Architect and Developer which includes rehab commercial premises for the subject matter of five commercial structures. The chief promoter of Society issued letter dated 04.09.2015 to these Slum Dwellers in respect of their Commercial Structures at Sr. Nos.1, 2, 3, 4 and 5 asking to accept the transit rent and vacate their respective structures for implementation of the S. R. Scheme. Subsequent to which, upon eviction proposal filed by the Developer, show cause notice dated 05.11.2015 was issued and eviction order dated 16.12.2015 was passed by the Competent Authority asking to accept the transit rent and hand over vacant possession of said respective structures to the Developer for implementation of the scheme. It is further important to note here that said eviction order was challenged in Appeal No.06 of 2016 wherein the Society and Developer also appeared, wherein vide Order dated 30.12.2016 Appellate Authority directed to vacate said five structures by accepting transit rent. Those slum dwellers filed Writ Petition No.6362 of 2016 challenging eviction order, the Society and Developer participated and accepted the five different commercial structures, which were handed over / demolished on 10.08.2016 and 29.09.2016 pursuant to order dated 29.09.2016 passed by the Hon'ble High Court. That, on 13.04.2017 upon modification proposal by the Developer and the Society through its Architect, building plans of rehab building in said Slum Rehabilitation Scheme were modified by the SRA wherein alternate permanent commercial premises to be provided to those slum dwellers in lieu of their commercial structures were shown on 2nd floor of rehab building, instead of ground floor facing main road as per SRA' Circular No.140.

11. After going through the papers and proceeding it reveal that dispute started between slum dwellers, society and developer after the plan was changed and the slum dwellers sought the

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directions to provide them shop premises at ground floor only and not on upper floor. It is further important to note here that after going through the letters between Society, Developer, Architect, SRA, Competent Authority as well as revised LOI, building plans submitted by the Developer and approved by the Slum Rehabilitation Authority in the year 2014 as well as in the year 2017, it is evident that, the Society and Developers were not only having knowledge of supplementary annexure-II of those five commercial structures, but they have admitted and accepted the same by making correspondence in respect of those commercial structures admitting the same and making provision for five different alternate permanent commercial premises in lieu of these five commercial structures in the year 2014 which was again modified in the year 2017. This fact goes to show the *bona fides* of the Society in challenging eligibility of its own slum dwellers after a period of 3528 days and developer for supporting the Society, that too, first taking affirmative actions over a period of these 3528 days accepting and admitting said five different commercial structures. The undisputed fact that, the Appeal No.55 of 2019 filed by Society challenging eligibility of its members with respect to five commercial premises that is only after the application for allotment of premises made by the Slum Dwellers to the SRA as per Circular No.140 and subsequent directions dated 12.07.2017 and 16.12.2017 issued by the SRA to the Developer to comply said Circular No.140, makes it clear that, said appeal has been filed with afterthought to counter said application of the slum dwellers.

12. It is further important to note here that, after going through the record and proceedings it is undisputed fact that, the Society neither prefer an application for seeking condonation of delay of 3528 days in filing said Appeal before the Appellate Authority nor the Appellate Authority directed or decided the issue of limitation in filing the appeal preferred by the

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Society. Despite specific objection by the Slum Dwellers, as per section 35 of the Slum Act, 1971 for challenging any order or notice time period has been prescribed as of 30 days and if there is delay the same can be condoned if found sufficient cause. As after going through the impugned order dated 31.07.2020 passed by the Appellate Authority was not considered the law as laid down in section 35 of the Slum Act, 1971 as well as various judgments of the Hon'ble Apex Court and High Courts, hence it seems as bad in law. That in view of the correspondences, sanctioned plans, revised LOI etc., it reveal the commercial structures are five different structures and after lapse of almost 9 years and 8 months, which goes to the root of the matter to show that the Society and Developer had specific knowledge about said Supplementary Annexure-II dated 23.12.2009 and five different commercial structures held Eligible therein, as well as the fact that the Society, Architect, and the Developer had acted affirmatively admitting existence and eligibility of these five different commercial structures. Thus, the act of the Society and the Developer to question the eligibility of said five commercial structures after a period of almost 9 years and 8 months, during which the Society and the Developer were acting on the basis that there are five different eligible commercial structures, proves that the Appeal filed by the Society challenging eligibility of its own slum dweller/members was not bonafide. Further, the Society and the Developer has not given any cogent explanation in this regard before the Appellate Authority as well as before this Committee in above appeals, which also goes to the root of the matter showing that the Society and Developer are not acting bonafidely.

13. It is important to note here that, for deciding all above appeals this committee is required to consider the documents filed by the slum dwellers as well as the society and developers. It is also required to consider, does the slum dwellers filed documents

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to show that they were occupying separate structures and those were exist since prior to 1.1.1995 as per the policy of government which was exist on the date of issuance of supplementary annexure-II. As with respect to structure at Sr. No.1 which belongs to Mr. Sudhendu Mewalal Shah filed the rent receipts which shows that Structure No.23 E 35 as per MHADA's Rent Receipt, Gumasta License bearing No.N.I.-28 also bears Structure No. 23 E 35 issued since 08.08.1990 in respect of commercial establishment in the name and style of Jai Janata Farsan Mart. With respect to structure at Sr. No.2 which belongs to Mr. Sudhendu Mewalal Shah filed the rent receipt showing structure No.23 E 34 as per MHADA's Rent Receipt, Gumasta License bearing No. N.I.1585 also bears structure No.23 E 34 issued since 13.11.1990 in respect of commercial establishment in the name and style of Maharashtra Farsan and General Stores. With respect to structure at Sr. No.3 which belongs to Ms. Sunita Mewalal Shah having structure No.23 E 30 as per MHADA's Rent Receipt, Gumasta License bearing No. N.I. 1763 also bears Shop No.30, Chawl No.23 E, issued since 20.11.1990 in respect of commercial establishment in the name and style of Maharashtra Typing House. With respect to structure at Sr. No. 4 belongs to Mr. Mewalal Hiralal Shah has Structure No.23 E 014 as per MHADA's Rent Receipt, Metrological License bearing No.458 has been issued since 01.05.1989, Letter dated 31.03.2009 bearing No.2448/09/1418 has been issued by the Dy. Controller Legal Metrology Department, Government of Maharashtra, in respect of commercial establishment in the name and style of Marxo Art Masala Store. With respect to structure at Sr. No.5 also belonging to Mr. Mewalal Hiralal Shah has Structure No.241/05 as per MHADA's Rent Receipt, Gumasta License bearing No. N.I.1536, issued since 20.11.1990 in respect of commercial establishment in the name and style of Datta Masala Kandap, Telephone Bill of January, 2009, Judgment dated 05.02.2008 passed by the Hon'ble Bombay City Civil Court in L.C. Suit No.5858 of 1998 and L. C.

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Suit No.5859 of 1998 filed by Mr. Mewalal Hiralal Shah (Appellant in Appeal No.370 of 2020) with respect to Structure at Sr No. 5 (Datta Masala Kandap) as well as another Commercial Structure at Sr. No. 420 (Osho Sweet), in respect of which the MCGM had issued Notice dated 23.06.1998 and had demolished said structures, which notices were quashed and set aside and said structures were reconstructed pursuant to above said Judgment holding the same to be in existence since 1972. Thus, after going through the documents it shows that the structures claimed by the slum dwellers are different, as the nature of business for which gumasta license issued which cannot be perform and do business from one structure as alleged by the society in their appeal. The documentary proofs filed by the slum dwellers clearly prove that the commercial structures were in existence since prior to the datum line as per the criteria prescribed vide Government Resolutions.

14. That, as per the then prevailing eligibility criteria as prescribed by the Govt. of Maharashtra only one of the document prescribed for determining the eligibility was required, to declare the occupant as eligible for rehabilitation, which also included Gumasta License as one of the valid documents. Further, from the Supplementary Annexure-II itself it is evident that, the Rent Receipts as well as Gumasta Licenses submitted by slum dwellers have been verified by the Competent Authority before declaring those structures as eligible. The letter of MHADA dated 17.06.2009 clarified that Rent Receipts have been issued by the Rent Collector of Estate Manager-1, Mumbai Board of MHADA. The verification of Gumasta Licenses also revealed it to be authentic. Thus, the factum of existence of five different commercial structures since prior to the then datum line of 01.01.1995 are proved vide said Rent / Compensation Receipt as well as the Gumasta Licenses, which negates the case of Society and Developer that structure at Nos.1 to 4 are made out of one

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single structure of 760 sq. ft after year 2008 and that Structure at No.5 was not in existence.

15. Further, the slum dwellers have relied on the Judgment dated 05.02.2008 passed by the Hon'ble Bombay City Civil Court in L.C. Suit No.5858 of 1998 and L. C. Suit No.5859 of 1998 filed by Mr. Mewalal Hiralal Shah (Appellant in Appeal No.370 of 2020) with respect to Structure at Sr No.5 (Datta Masala Kandap) as well as another Commercial Structure at Sr. No.420 (Osho Sweet), in respect of which the MCGM had issued Notice dated 23.06.1998 and had demolished said structures. The Structure at Sr No.5 (Datta Masala Kandap) is subject matter of Appeal No.9 of 2021 filed by the Society before this Hon'ble Committee. The Hon'ble Bombay City Civil Court vide said Judgment dated 05.02.2008 held that there are two different independent Premises (Osho Sweet Mart and Datta Masala Kandap) which are in existence since prior to 1972. Hence, the case of Society and Developer, that Commercial Structure at Sr. No.5 of the Supplementary Annexure-II was not in existence and has been fraudulently shown after Annexure-II of year 2008 has no merits, baseless, and contrary to the documentary evidence as well as the above said Judgment dated 05.02.2008 of the Hon'ble Bombay City Civil Court.

16. This Committee also finds that, in the Table Survey Map of year 2000 there were total 593 structures shown as existing, however, the Annexure-II of year 2008 contained only 557 structures i.e. 36 structures though shown existing were not included in the Annexure-II. Further it is seen that no new table survey map was prepared while issuing Annexure-II dated 14.07.2008. As pointed out by the Slum Dwellers during oral hearing as well as in the written submissions, in the Table Survey Map of year 2000, out of four Structure at Sr. Nos.1, 2, 3, and 4 in the Supplementary Annexure-II, three commercial structures are shown at Sr. Nos.3, 570, 569. The slum dwellers submitted that Structure at Sr. No.

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3 on Table Survey Map of year 2000 is wrongly shown combined of Structures at Sr. Nos.1 and 2 of Supplementary Annexure-II. Table Survey Map contains 593 structures however Annexure-II contains only 557 structures, it goes to show that, the case of Society that the said four structures at Sr. Nos.1, 2, 3, and 4 of the Supplementary Annexure-II are partitioned after year 2008 out of one single structure of 760 sq. feet area proves to be false.

17. Further the fact that, the MCGM has issued Notice dated 14.09.1993 to these Slum Dwellers under Section 105-B of the Mumbai Municipal Corporation Act, 1888, wherein three structure numbers are mentioned which structure numbers match with the structure numbers in verification report of the MHADA Rent Receipts. Further the Supplementary Annexure II dated 23.12.2009 also states about the said proceedings under Section 105-B of the said Act of 1888 and also it states that all Slum Dwellers paying rent to MHADA as per the Order of the Hon'ble High Court.

18. The conclusions made by the Ld. Additional Collector with respect to Shops and Establishment License (gumasta license) as one of the proofs to prove eligibility of the slum dweller are not only baseless, but are in transgression of the authority of law, because, when the State Government vide Government Resolutions dated 11.07.2001 and 17.01.2008 had prescribed Gumasta License as one of the proofs to prove existence and eligibility of Commercial Structure as well as the criteria that any one of the documents mentioned in the said G.R. is required, the conclusion of the Ld. Additional Collector stating that there need not be different commercial structures to get different gumasta licenses is directly in breach of said Government Resolutions. Further, the conclusion of Ld. Addl. Collector that the Slum Dwellers only submitted Gumasta Licenses and did not submit electricity bills of the five commercial structures, is also contrary to said Government Resolutions which provides for the requirement that any one document out of the prescribed

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documents. Further, this conclusion is also contrary to material on record viz. the five different Rent / Compensation Receipts issued by the MHADA having five different structure numbers in respect of these five commercial structures. Thus, said conclusions of the Ld. Additional Collector with respect to Gumasta License as a proof of existence and eligibility of commercial structure, and, requirement of more documents when any one of the documents prescribed is required, are illegal, contrary to above said Government Resolutions issued by the State Government. It is not out of place to mention here that, on the date on which the Ld. Additional Collector passed the impugned order dated 31.07.2020, now eligibility is governed by the Government Resolution dated 16.05.2015 and 16.05.2018, which also provides requirement of any one of the documents to prove the eligibility and the Shops and Establishment License is one of the valid documents to prove eligibility of commercial structures as per said Government Resolution.

19. It is important to note here that as on which basis the competent authority submitted the report dated 02.02.2019 and not come on record as also the reason behind given the said report which is contrary to their report and order passed earlier in point of time. This fact is also reveal that the competent authority acting on behest of someone like society or developer to favour someone. This fact goes to show that there is irregularity in submission of report by the MCGM. The same report was not called by the appellate authority at the time of hearing. The competent authority is required to be stand on the order and decision taken earlier. The documents which were produced by the appellant are issued by the competent authorities office only and for denying the same competent authority not explained any reason in their report submitted before this committee at the time of hearing. As developer completely taken contrary stand which shows the society is acting on the behest of the developer. As the entire

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3 on Table Survey Map of year 2000 is wrongly shown combined of Structures at Sr. Nos.1 and 2 of Supplementary Annexure-II. Table Survey Map contains 593 structures however Annexure-II contains only 557 structures, it goes to show that, the case of Society that the said four structures at Sr. Nos.1, 2, 3, and 4 of the Supplementary Annexure-II are partitioned after year 2008 out of one single structure of 760 sq. feet area proves to be false.

17. Further the fact that, the MCGM has issued Notice dated 14.09.1993 to these Slum Dwellers under Section 105-B of the Mumbai Municipal Corporation Act, 1888, wherein three structure numbers are mentioned which structure numbers match with the structure numbers in verification report of the MHADA Rent Receipts. Further the Supplementary Annexure II dated 23.12.2009 also states about the said proceedings under Section 105-B of the said Act of 1888 and also it states that all Slum Dwellers paying rent to MHADA as per the Order of the Hon'ble High Court.

18. The conclusions made by the Ld. Additional Collector with respect to Shops and Establishment License (gumasta license) as one of the proofs to prove eligibility of the slum dweller are not only baseless, but are in transgression of the authority of law, because, when the State Government vide Government Resolutions dated 11.07.2001 and 17.01.2008 had prescribed Gumasta License as one of the proofs to prove existence and eligibility of Commercial Structure as well as the criteria that any one of the documents mentioned in the said G.R. is required, the conclusion of the Ld. Additional Collector stating that there need not be different commercial structures to get different gumasta licenses is directly in breach of said Government Resolutions. Further, the conclusion of Ld. Addl. Collector that the Slum Dwellers only submitted Gumasta Licenses and did not submit electricity bills of the five commercial structures, is also contrary to said Government Resolutions which provides for the requirement that any one document out of the prescribed

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issue in respect of challenging the eligibility of slum dwellers arises after the slum dwellers prefers an applications for getting permanent rehab tenement at the ground floor as per circular no.145 issued by the Slum Rehabilitation Authority.

20. It is very important to note here that the Ld. Additional Collector did not make a whisper in the order on the issue of limitation in filing Appeal, however, unwarrantedly traversed to make comments on the eligibility criteria which is the exclusive domain of the State Government. Thus this committee finds that, the conclusions of the Ld. Addl. Collector in the impugned order are illegal, in transgression of the authority of law vested in the Ld. Additional Collector. The Committee also finds that, the slum dwellers have raised ground that, the daughter of Chairman of the very same Society which has challenged eligibility of present slum dwellers, had been held eligible for three different commercial structures on the basis of single Gumasta License. As the issue of said three different commercial premises held eligible on the basis of single gumasta licenses is not the subject of present appeals, the committee cannot go into the same and as held hereinabove, after an unexplained, inordinate delay of 3528 days, that too on false and baseless grounds, malafidely. Thus, this Committee hold that, the Appeal No. 55 of 2019 filed by the Nalanda SRA CHSL challenging eligibility of five different commercial structures of the Slum Dwellers was barred by limitation, even on facts and documents, it is filed malafidely to counter the applications dated 07.12.2015 made by the slum dwellers to the SRA for allotment of commercial premises as per SRA's Circular No.140 and SRA's Directions dated 12.07.2017 and 16.12.2017 to the Developer to comply said Circular No.140 with respect to said Commercial Structures. The Committee also holds that, the Order dated 31.07.2020 passed by the Ld. Additional Collector is bad in law, without considering the provisions and as well as contrary to the material on record.

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Thus, said Order dated 31.07.2020 passed by the Ld. Addl. Collector is liable to be quashed and set aside as the same is illegal. Further, for the reasons stated hereinabove, the Appeal No.9 of 2021 filed by the Nalanda SRA CHS challenging eligibility of Structure at Sr. No.5 of the Supplementary Annexure-II is liable to be dismissed. Hence the following order:

ORDER -

1. The Appeal No.213 of 2020, Appeal No.251 of 2020 and Appeal No.370 of 2020 filed by the Slum Dwellers/Appellants are hereby allowed.
2. The Order dated 31.07.2020 passed by the Additional Collector (Enc/Rem) Eastern Suburbs and Appellate Authority in Appeal No.55 of 2019, is hereby quashed and set aside.
3. The Appeal No.9 of 2021 filed by the Nalanda SRA Co-operative Housing Society Ltd. challenging eligibility of Commercial structure at Sr. No.5 of the Supplementary Annexure-II dated 23.12.2009 is hereby dismissed.
4. No order as to the cost.
5. This order shall be communicated to all parties.

Sd/-
(Anita Meshram [Wankhede])
(Addl. Collector, Mumbai City)
Chairperson,
Grievance Redressal Committee,
Mumbai Suburb.

Sd/-
(Vishal Deshmukh)
Jt. Chief Officer, MHADA,
Member,
Grievance Redressal Committee,
Mumbai Suburb.

Sd/-
(Chanda Jadhav)
Dy. Municipal Commissioner, MCGM.
Member,
Grievance Redressal Committee
Mumbai Suburb.

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