

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO.6325 OF 2021**

1. Babaji Sonu Kadam,  
Age : 81 years, having permanent  
address at Room No.26, Plot Nos.31 and 32,  
Sangam Co-operative Housing Society Ltd.,  
Barrister Nath Pai Nagar, Ghatkopar East,  
Mumbai – 400 077.  
Presently residing at  
Room No. 602, Building No. 122/B2,  
Bhakti Heights, Tilak Nagar, Chembur,  
Mumbai – 400 089.
2. Ramesh G. Kadam,  
Age : 76 years, having permanent  
address at Room No.34, Plot Nos. 31 and 32,  
Sangam Co-operative Housing Society Ltd.,  
Barrister Nath Pai Nagar, Ghatkopar East,  
Mumbai – 400 077.  
Presently residing at  
Room No. 203, Gangasagar Co-op. Housing  
Society Ltd., Plot No.21, Kamothe,  
Navi Mumbai – 410 209.
3. Shri Kunal Pradeep Kedare,  
Age : 40 years, having permanent  
address at Room No.19, Plot Nos. 31 and 32,  
Sangam Co-operative Housing Society Ltd.,  
Barrister Nath Pai Nagar, Ghatkopar East,  
Mumbai – 400 077.  
Presently residing at  
Flat No.21, Rajputra Mahindera Co-operative  
Housing Society Ltd., B-Wing, Pestom Sagar Road  
No.5, Chembur West, Mumbai – 400 089.

4. M/s. Nakoda Infrastructures,  
having its office at Shop No.5, Mistry Palace,  
Trimurti Road, Sion Chunabhatti, Mumbai – 400 032  
Through its partner Vimal Jain ... Petitioners  
*Versus*
1. The Collector,  
Mumbai Suburban District,  
Administrative Building, 10<sup>th</sup> Floor,  
Government Colony, Bandra East,  
Mumbai – 400 051.
2. The Assistant Secretary,  
Social Justice and Special Assistance Department,  
Mantralaya, Mumbai – 400 032.
3. The Commissioner,  
Social Welfare Department,  
Having Office at Three Church Road,  
Pune – 411 001.
4. State of Maharashtra,  
Revenue & Forest Department,  
Mantralaya, Mumbai. ... Respondents

Mr. Karl Tamboly i/by Mr. Abhishek P. Deshmukh for the Petitioners.

Mr. Abhay L. Patki, Addl. Government Pleader for the State.

**CORAM: S.J. KATHAWALLA &  
MILIND N. JADHAV, JJ.**

**ORDER RESERVED ON : 20<sup>th</sup> AUGUST, 2021  
ORDER PRONOUNCED ON : 25<sup>th</sup> AUGUST, 2021**

**ORAL ORDER : (S.J. KATHAWALLA & MILIND N. JADHAV, JJ.)**

1. Rule. Respondents waive service. By consent of both sides, Rule is made returnable forthwith.

2. Petitioner Nos. 1 to 3 are members of one Sangam Cooperative Housing Society Ltd. (*‘the Society’*), which is a housing society whose members belong to backward classes. The Society was allotted land for housing its members under a special scheme formulated by the State of Maharashtra for the benefit of persons belonging to backward classes, known as the *‘PWR 219 Scheme’*. The Society’s building in which its members were residing was constructed on that land in 1979 – 1980, and has since been declared dilapidated and demolished in 2017 pursuant to notices for pulling down the same by the Municipal Corporation of Greater Mumbai. The Society has sought permission from the Respondents for redevelopment of the land. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioners have challenged the decision of the Social Justice and Special Assistance Department of the State, sanctioning the proposed redevelopment by the Society on the condition that even after redevelopment, ninety percent of the members of the Society must belong to the backward class community, and only ten percent can be from the open category. According to the Petitioners, such a restriction would affect the marketability of the free sale component of the project and would render the redevelopment effectively unviable, leaving the members of the Society homeless. The Petitioners have asserted that there is no legal foundation for imposing such a restriction. The Petitioners have also asserted that the impugned decision is violative of Article 14 of the Constitution of India, as the State has previously permitted

redevelopment of similarly placed societies by permitting eighty percent of their members to be from the open category and requiring only 20 percent to be from the backward / reserved category after redevelopment. The Petitioners have accordingly sought directions against the Respondents to permit the Society to redevelop its property on the same condition that after redevelopment, eighty percent of its members can be from the open category and twenty percent from the backward / reserved category.

3. The relevant facts in the matter are in brief set out hereunder :

3.1 Petitioner Nos. 1 to 3 are members of the Society. Petitioner No. 4 is the developer appointed by the Society for redevelopment of its property.

3.2 Respondent No. 1 is the Collector, Mumbai Suburban District. Respondent No. 2 is the Assistant Secretary, Social Justice and Special Assistance Department. Respondent No. 3 is the Commissioner, Social Welfare Department. Respondent No. 4 is the State of Maharashtra, through the Revenue and Forest Department.

3.3 Respondent No. 4, with a view to provide housing to persons belonging to the backward class, formulated the PWR-219 Scheme.

3.4 The Society has thirty – six members, including Petitioner Nos. 1 to 3, all of whom are from the backward community. By an order dated 31<sup>st</sup> December 1966, Respondent No. 1 allotted land admeasuring 1,442 square meters bearing Plot Nos. 31

and 32 forming part of Survey No. 236A, City Survey No. 196 of Village Ghatkopar, Taluka Kurla, Mumbai Suburban District (*'the Land'*) to the Society under the PWR 219 Scheme for constructing a residential building thereon to house its members. The Society constructed a residential building on the Land in the year 1979-80. Since then, the members of the Society were in occupation of their respective tenements in the building.

3.5 The condition of the building deteriorated over a span of forty – five years. The Municipal Corporation of Greater Mumbai issued notices dated 16<sup>th</sup> September 2015 and 21<sup>st</sup> September 2016 under section 354 of the Mumbai Municipal Corporation Act, 1888, declaring the building to be dilapidated and dangerous for occupation, and called upon the occupants to vacate and pull down the same. The members of the Society vacated the building pursuant to the notices issued by the Municipal Corporation of Greater Mumbai.

3.6 The Society executed a development agreement dated 25<sup>th</sup> July 2017 in favour of Petitioner No. 4, who was appointed as the developer for redevelopment of the property. Petitioner No. 4 thereafter demolished the existing building of the Society.

3.7 By its letter dated 23<sup>rd</sup> February 2018, the Society informed Respondent No. 1 of its decision to redevelop the Land in view of the demolition of the existing building pursuant to the notices issued by the Municipal Corporation of Greater

Mumbai. Respondent No. 1 was requested to grant his sanction for the redevelopment. Since there was no response to the same, the Society by its letter dated 27<sup>th</sup> November 2018 once again requested Respondent No. 1 to sanction the scheme for redevelopment and to inform the Society of the quantum of premium payable in respect of the same. In furtherance of the same, Respondent No. 1 by his letter dated 12<sup>th</sup> June 2019 informed the Additional Chief Secretary, Revenue Department that permission can be granted to the Society for the proposed redevelopment subject to all necessary premiums being paid. Similarly, the Divisional Commissioner, Konkan Division by a letter dated 25<sup>th</sup> June 2019 sought sanction from the Additional Chief Secretary, Revenue Department for the proposed redevelopment subject to payment of all necessary premiums by the Society.

3.8 By its letter dated 28<sup>th</sup> March 2019 addressed to the Assistant Commissioner, Social Welfare Department, the Society sought the no objection certificate of the Social Welfare Department for the proposed redevelopment. By his letter dated 20<sup>th</sup> July 2020, the Assistant Commissioner, Social Welfare Department stated that the department has no objection in respect of the proposed redevelopment.

3.9 Since the sanction for the redevelopment scheme was not forthcoming from the State Government, the Petitioners filed Writ Petition (L) No. 1004 of 2020 before this Court seeking directions to the concerned authorities to grant permission for the proposed redevelopment (*'the first Writ Petition'*).

3.10 An Affidavit dated 13<sup>th</sup> August 2020 came to be filed by the Joint Secretary, Revenue Department on behalf of the State in reply to the first Writ Petition. It was stated in that Affidavit that since the Land had been allotted under a special scheme meant for persons belonging to the backward class, the prior approval of the Social Justice Department would be required before the State could sanction the redevelopment scheme. The Affidavit stated that the Divisional Commissioner, Konkan Division had sought the views and remarks from the Social Justice Department, and the response from that department was awaited. The Affidavit went on to state that in order to make the redevelopment viable, a certain percentage of the salable component is permitted to be sold to other category of persons. In the case of redevelopment of a society by the name of Dinanath Cooperative Housing Society, the Revenue Department of the State had permitted eighty percent of the tenements to be sold by way of free sale, and reserved twenty percent of the tenements for members belonging to the backward category. Based on the same the Revenue Department had sent a similar redevelopment proposal of one New Vikas Cooperative Housing Society to the Social Justice Department for its approval, which was awaited. It was accordingly stated that the Revenue Department of the State would approve the proposal of the present Society after securing the consent and approval of the Social Welfare Department.

3.11 The first Writ Petition came up for hearing before this Court on 14<sup>th</sup>

August 2020. On that date, it was contended by the Petitioners that the letter dated 20<sup>th</sup> July 2020 issued by the Social Welfare Department referred to above, constitutes the necessary NOC by that Department for the proposed redevelopment. However, the Assistant Government Pleader appearing for the State contended that it was not so. Accordingly, an order was passed by this Court directing the Social Welfare Department to file an Affidavit clarifying whether the letter dated 20<sup>th</sup> July 2020 conveys its consent / no objection for the development of the Land.

3.12 Pursuant to the same, the Joint Secretary, Social Justice and Special Assistance Department of the State filed an Affidavit dated 17<sup>th</sup> August 2020 stating that the letter dated 20<sup>th</sup> July 2020 issued by the Social Welfare Department could not be treated as the no objection / permission issued by the Social Justice and Special Assistance Department. It was stated in that Affidavit that the Land was allotted to the Society under the PWR 219 Scheme meant for the benefit of members of Scheduled Castes and Tribes and other weaker sections of society. As per that scheme, lands were allotted to societies of members of backward classes on the basis that ninety percent of the members of the concerned societies must belong to the backward category. Over passage of time the buildings of these societies have deteriorated necessitating redevelopment. Such redevelopment will result in creation of new flats forming part of the salable component of the developers. This would in turn affect the ratio of members in such societies belonging to backward classes vis - a - vis members

from other categories. It was stated that hence regulations for reserving membership for persons from the backward classes would need to be formulated by taking a policy decision. It was accordingly submitted that a period of eight weeks be granted to the Social Justice and Special Assistance Department for finalizing the policy in this regard.

3.13 By an order dated 24<sup>th</sup> October 2020 passed in the first Writ Petition, this Court directed the Social Justice and Welfare Department to consider the redevelopment proposal filed by the Society within a period of four weeks from the date of the order.

3.14 The Deputy Secretary, Social Justice and Special Assistance Department filed an Affidavit dated 30<sup>th</sup> September 2020 stating that the policy governing such redevelopment proposals of societies which had originally been allotted lands under the PWR 219 Scheme was not yet formulated. The present Society's proposal for redevelopment would also be governed by the proposed policy. Hence it was submitted that the Department be given a period of eight weeks to consider the proposal in accordance with the final policy.

3.15 In view of the above Affidavit dated 30<sup>th</sup> September 2020, by an order dated 6<sup>th</sup> October 2020, this Court disposed of the first Writ Petition by directing the Social Justice and Special Assistance Department of the State to take a final decision on the redevelopment proposal submitted by the Society within a period of eight

weeks from the date of receipt of a copy of the order.

3.16 The Social Justice and Special Assistance Department of the State did not decide the proposal of the Society within the time stipulated by this Court. This led to the Petitioners filing Contempt Petition (L) No. 819 of 2020 alleging breach of the aforesaid order dated 6<sup>th</sup> October 2020 disposing of the first Writ Petition.

3.17 During the pendency of the aforesaid Contempt Petition, Respondent No. 2 i.e. the Assistant Secretary of the Social Justice and Special Assistance Department addressed a letter dated 2<sup>nd</sup> February 2021 to Petitioner No. 1, communicating the decision taken by the Department to permit the redevelopment proposal of the Society, subject to the condition that even after redevelopment, ninety percent of the members of the Society must be from the backward category and only ten percent can be from the open category.

3.18 Being aggrieved by condition imposed by the aforesaid decision of the Social Justice and Special Assistance Department as contained in the communication dated 2<sup>nd</sup> February 2021 addressed by Respondent No. 2, the Petitioners have filed the present Petition on 1<sup>st</sup> March 2021, seeking the following substantive reliefs :

“(a) that this Hon’ble Court be pleased to pass an order thereby directing the Respondent Nos. 1 to 4 to give benefit to the Petitioner’s Society at par with other societies of PWR-219 Scheme thereby giving benefit of the redevelopment scheme at the ratio of 80% reserved for open category / Non backward class and 20% reserved for Backward class;

(b) that his Hon’ble Court be pleased to pass an order thereby

setting aside the impugned order dated 2<sup>nd</sup> February, 2021 to the extent of not giving benefits to the Society of the Petitioners of 80% to the open class / non backward class and 20% to the backward class and further the Respondent NO. 2 be directed to give benefit of 80:20 ratio as the same is to give by the Respondents to all the other societies in PWR-219 Scheme as like the Petitioners Society;

(c) that this Hon'ble Court be pleased to pass an order thereby directing the Respondent Nos. 1 to 4 to forthwith allow the members of the Sangam Co-op Hsg. Soc. Ltd. To redevelop and further start the construction work on the plot bearing Plot No. 31 and 32, Survey No. 236A, City Survey No. 196, admeasuring 1442 sq. meter of Village Ghatkopar, Tal. Kurla, Mumbai Suburban District on the basis of 80% to the open class / non backward class and 20% to the backward class as the said ratio is made applicable to all the similarly situated societies coming under PWR-219 Scheme situated in Mumbai and the Petitioners be further permitted to pay the premium on the basis of the ratio of 80:20 for the redevelopment of plot bearing plot bearing Plot No. 31 and 32, Survey No. 236A, City Survey No. 196, admeasuring 1442 sq. meter of Village Ghatkopar, Tal. Kurla, Mumbai Suburban District;"

4. The Petitioners filed an additional Affidavit dated 17<sup>th</sup> March 2021 of Petitioner No. 3 in support of the Petition. In that Affidavit, it was contended that after the filing of this Petition, the Petitioners received a response from the State to an application filed by them under the provisions of the Right to Information Act, 2005. By that response, the Petitioners discovered that in the case of redevelopment of a similarly placed society by the name of Dinanath Cooperative Housing Society, the State Authorities had issued permission for redevelopment on the condition that eighty percent of the members from the free sale component can be from the open

category and only twenty percent of the members of the free sale component must be from the backward category. It was contended that this permission was granted pursuant to a judgement dated 8<sup>th</sup> December 2016 passed by this Court in Writ Petition No. 1939 of 2016 in the case of *Dinanath Co-operative Housing Society Ltd. v/s State of Maharashtra*. It was contended that pursuant to the permission granted to Dinanath Cooperative Housing Society, the State had issued permission for redevelopment to various similarly placed societies who had been allotted lands under the PWR 219 Scheme, on the condition that from the free sale component, eighty percent members may be from the open / non backward category and twenty percent must be from the backward category.

5. Respondent No. 2 filed an Affidavit dated 1<sup>st</sup> July 2021 in reply to the present Petition. It was contended that the Society is a beneficiary of the PWR 219 Scheme which was introduced for upliftment of members of backward communities. In order to protect the interests of the beneficiaries under that scheme, the Social Justice and Special Assistance Department is required to regulate the admission of members to such societies. It was contended that in the case of redevelopment of the Land, additional tenements would be generated by virtue of the Transferable Development Rights (TDR) which would be permitted to be loaded on the Land. Such excess tenements would be sold in the open market and if the same are sold to persons other than from the backward classes, the composition of the membership in the

Society would be altered contrary to the PWR 219 Scheme. It was reiterated that a regulatory policy in this regard was under consideration by the State. It was contended that the impugned decision of the Social Justice and Special Assistance Department was in accordance with the PWR 219 Scheme and a Government Resolution dated 26<sup>th</sup> June 2009. It was contended that the case of Dinanath Cooperative Housing Society was not comparable on facts to the present case, and hence the same could not be cited as a precedent by the Petitioners. It was contended that no other society had been permitted by the State to redevelop its property without maintaining the mandatory 90:10 ratio i.e. ninety percent of members from the backward classes and ten percent from the open category.

6. The Petitioners filed an Affidavit dated 12<sup>th</sup> July 2021 of Petitioner No. 3 in rejoinder to the reply filed by Respondent No. 2. The Petitioners contended that the stand taken in the reply to the effect that no other society has been permitted to redevelop its property without maintaining the aforesaid 90:10 ratio is incorrect. The Petitioners annexed an order dated 12<sup>th</sup> September 2014 issued by the Department of Revenue and Forests, State of Maharashtra granting permission to one Youngmens Progressive Cooperative Housing Society on the condition that after redevelopment, eighty percent of the members may be from the open category, and twenty percent must be from the backward category.

7. We have heard Shri Tamboly on behalf of the Petitioner, and Shri Patki,

learned AGP on behalf of the Respondents.

7.1 At the outset, Shri Tamboly contended that the issue as to whether the State can impose a condition requiring the Society to maintain the ratio of its members as ninety percent from the backward classes and ten percent from the open category at the time of sanctioning a scheme for redevelopment, is no longer *res integra*. Shri Tamboly contended that this issue is now squarely covered by the judgment of a Division Bench of this Court in the case of *Dinanath Co-operative Housing Society Ltd. Vs. State of Maharashtra and Ors.*<sup>1</sup> He argued that this Court has clearly held in that judgment that there is nothing in the scheme or subsequent government resolutions which would warrant the State taking a stand that in the case of redevelopment of such societies, a ratio of members must be maintained where ninety percent are from the backward category and ten percent are from the open category. He argued that it has been held in that judgment that the State has itself understood the policy to mean that the additional premises in the redevelopment can be disposed of in the ratio of eighty percent to the open / non backward class and twenty percent to the backward class. It was accordingly argued that the impugned decision of the Department of Social Justice and Special Assistance is contrary to the above judgment of this Court and hence deserves to be quashed and set aside. It was also argued that following the ratio of this judgment, the Society ought to be permitted to redevelop the

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1 2017 (1) AIR Bom R 362 :: 2018 (5) All.M.R. 105

Land and be free to deal with eighty percent of the free sale flats in favour of persons from the open category, reserving only twenty percent of the same for persons from the backward category.

7.2 Shri Tamboly next contended that the decision of the Department of Social Justice and Special Assistance is violative of Article 14 of the Constitution of India. According to him, the State has in the past permitted redevelopment of similar societies by permitting sale of eighty percent of the free sale component in favour of persons from the open category, and reserving only twenty percent in favour of persons from the backward category. In this regard, he cited the cases of Dinanath Co-operative Housing Society and Youngmens Progressive Co-operative Housing Society as examples to show that the State has permitted this in the past. It was argued that by not allowing the Society to redevelop the Land along similar lines, the State was treating equals unequally, which is in contravention of Article 14 of the Constitution.

7.3 Shri Tamboly next submitted that the opposition of the Respondents to the present Petition is contrary to the stand taken by the State on oath in the first Writ Petition. He contended that the stand taken by the Joint Secretary, Revenue Department in his Affidavit dated 13<sup>th</sup> August 2020 clearly demonstrates that even according to the State, eighty percent of the free sale component can be disposed of in favour of persons from the open / non backward category, reserving only twenty percent for members of the backward community.

7.4 Shri Tamboly lastly submitted that the building of the Society has been demolished since the year 2017. The members of the Society require to get the Land redeveloped on an urgent basis to regain the roofs over their heads. If the condition imposed by the impugned decision that even after redevelopment, ninety percent of the members of the Society can be from the backward category is not set aside, it will not be viable or feasible to redevelop the Land. The same shall effectively deprive the members of the Society of their rights to their property.

7.5 For all these reasons, Shri Tamboly submitted that the Petition be allowed.

8. On the other hand, Shri Patki, learned AGP appearing on behalf of the Respondents submitted that the Petitioner's society was allotted the Land, which was government land, free of cost under the PWR 219 Scheme meant for backward class members. Various terms and conditions were mentioned in the said scheme for securing the needs of the backward class community and for providing low cost housing, thereby affording financial assistance for construction of residential houses. The membership of such societies was being controlled by the Department of Social Justice and Special Assistance by issuing various policies and Government Resolutions. He submitted that the original PWR 219 Scheme has undergone a few changes, particularly as regards "the continuation of majority of membership" of the persons belonging to backward class community. He submitted that in case of

redevelopment such societies are required to adhere to all such terms and conditions as prescribed from time to time through various Government Resolutions, notifications and policy regulations issued by the Department of Social Justice and Special Assistance, Government of Maharashtra. He relied upon a Government Resolution dated 26<sup>th</sup> June 2009 to contend that the terms and conditions of the original PWR 219 Scheme requiring the ratio of membership of such societies to be maintained as ninety percent from backward class and ten percent from the open category is required to be maintained on redevelopment. The societies under the said scheme which intend to carry out redevelopment of their buildings are required to maintain this ratio of 90:10 even when the additional tenements are made available upon redevelopment.

8.1 Shri Patki contended that the judgment of this Court in *Dinanath's* case (Supra) would not apply to the facts of the present case. He contended that in that case, the stage at which the Court's interference was called for was when the new buildings in question had already been constructed, and thereafter the Occupation Certificate was sought to be withheld on the ground that the terms and conditions of the PWR 219 scheme were not complied with, that too at the instance of a stranger. It was in these circumstances that this Court passed the judgment in that case, and the same would not apply to the present case where the proposal for redevelopment of the Society is still in its infancy, according to Shri Patki.

8.2 Shri Patki concluded by contending that any stand taken by the Revenue and Forest Department of the State in the first Writ Petition would not bind the Social Justice and Special Assistance Department, which is the principal authority to uphold the beneficial intent of the PWR 219 Scheme in favour of persons belonging to backward communities.

8.3 For all of these reasons, Shri Patki contended that there is no merit in the Petition and the same deserves to be dismissed.

9. We have heard the learned counsel appearing for the respective parties at length. We have perused and considered the pleadings, documents and written submissions filed by both sides. Our findings are as follows :

9.1 The central issues which arise for determination in this Petition are :

(i) Whether after redevelopment, the Society is required to ensure that ninety percent of its members are from the backward category, and only ten percent can be from the non backward category?

(ii) In the course of redevelopment of the Society, what percentage of the additional / sale premises which become available due to consumption of additional FSI, TDR etc. can be disposed of in the open category, and what percentage is to be reserved for members of the backward community?

9.2 Admittedly all thirty - six members of the Society belong to the backward class category. The Society has been allotted the Land by the State under

the PWR 219 Scheme, which is meant for the benefit of the backward class category members. There is also no dispute about the fact that building which had been constructed on the Land had outlived its life and has been demolished in the year 2017. In this view of the matter, the only manner in which the members of the Society can regain the roofs over their heads is if the property is redeveloped.

9.3 The question is whether the State or its departments at the time of sanctioning such redevelopment is justified in imposing a condition that even after redevelopment, the ratio of members in the Society would have to be ninety percent from the backward class and ten percent from the non backward / open category. This would necessarily mean that after providing tenements to the existing members of the Society, the majority of the additional flats which would be constructed by utilizing the permissible FSI and TDR can only be transferred to persons from the backward class. Though Shri Patki has vehemently argued in support of this ratio, no material by way of any legislation, policy or government resolution which dictates the same has been placed before us.

9.4 On the contrary, in this regard we find the reliance placed by Shri Tamboly upon the decision of a Division Bench of this Court in the case of *Dinanath* (supra) to be apposite. That case is similar to the present one. The Petitioner society in that case had been allotted a plot of land in Andheri under the PWR 219 Scheme for the purpose of housing its members. In that case also, the buildings which were

constructed on the allotted land had deteriorated and were the subject matter of notices from the Municipal Corporation declaring the same to be ruinous. The Petitioner society in that case accordingly initiated the process of redevelopment of its property. A development agreement came to be executed in favour of Respondent No. 4 in that case. The developer applied to the Social Welfare Department of the State seeking its no objection for the proposed redevelopment. That Department responded by stating that no provisions were made in the PWR 219 Scheme requiring its NOC for redevelopment. In the meantime, the State issued a Circular dated 26<sup>th</sup> June 2009 issuing guidelines in respect of redevelopment of plots allotted to societies under the PWR 219 Scheme. These guidelines *inter alia* provided that (a) if a society is accepting a new member in place of an existing member belonging to the backward community, such new member must also be from the same community, and (b) the State's permission is mandatory for redevelopment of such societies. The developer took various steps towards development of the Petitioner society and obtained various permissions and approvals from the State and Municipal Corporation. The existing buildings were vacated and demolished. The developer constructed one wing of the new building to house all the original members of the Petitioner society. Utilizing the balance FSI and sanctioned TDR, the developer constructed another wing of the new building containing flats for sale as per the terms of the development agreement with the Petitioner society. As per permission received from the office of the Collector, the

developer was obliged to sell twenty percent of the sale flats to members of the backward class. The project was nearly completed when in furtherance of a complaint received from Respondent No. 5 in that case, a show cause notice came to be issued by the Assistant Commissioner, Social Welfare Department alleging violation of the Government Resolution dated 26<sup>th</sup> June 2009 by the Petitioner society. In furtherance of the show cause notice, the State passed an order staying further redevelopment of the Petitioner society. In furtherance of that order, the Municipal Corporation too passed an order staying further redevelopment work. These orders came to be challenged in a Writ Petition filed before this Court. The submissions made by the State Authorities to oppose that Petition are similar to those that have been made by the Respondents in the present case. Whilst dealing with the State's contention that even after redevelopment, ninety percent of the members of the society must be from the backward community, this Court held as follows :

*“85. Though Mr. Godbole would emphasise the stand in the affidavit of respondent no. 2 that in PWR-219 Scheme, the ratio of members of the Backward Class Co-operative Society is 90% Backward Class and 10% Open Class and this ratio has to be maintained even while redeveloping the society's property, Mr. Godbole has been unable to point out anything from the whole scheme to the above effect. We have carefully perused each and every document which has been placed before us by Mr. Godbole. We find that though the allotment of land or plot to the petitioner society consisting of Backward Class members is in accordance with the old PWR-219 Scheme, we have not found in the primary document or in the document, namely, Government Resolution dated 21st February, 1974 any condition which would oblige the*

*petitioner to maintain any specific ratio. Annexure 'A' to that Government Resolution having been carefully perused by us, we do not find that though the benefits of the scheme are available to Scheduled Caste, Schedule Tribe, Nomadic Tribe, Other Backward Class etc, still, the scheme postulates communal mixing. It also aims at removing untouchability. Therefore, 10% Non-Backward Class persons are permitted to be members of Backward Class Co-operative Housing Societies of all categories. These Non-Backward Class members are entitled to get the same financial benefits which are made available to the majority members of the Backward Class Co-operative Housing Societies. However, the Backward Class persons can join Non-Backward Class societies and they would be entitled to certain concession. Therefore, though Mr. Godbole vehemently relies on this Government Resolution, we do not find that the same prohibits enrollment of Non-Backward Class members. Now, with regard to the ratio, even in the additional affidavit filed, we do not find that after redevelopment, 90% members have to be from Backward Class.*

*For the redevelopment of such societies, a distinct policy is enunciated and in that, it is apparent that the essential composition has to be maintained. Meaning thereby, the original society of Backward Class persons must comprise of 90% Backward Class members and 10% Open Class members. After TDR is generated and additional premises are made available, they have to be disposed of in terms of the Government Resolution dated 25th May, 2007, which has been highlighted in the order of the Government dated 30th April, 2010 and the Collector's communication dated 5th May, 2010 (see page 96). **The ratio that has to be maintained is that the additional premises have to be disposed of as 20% to Backward Class and 80% to Open Class/Non-Backward Class. This is how the Government has understood its policy. That is part and parcel of the record and with the Government itself.** It is in these circumstances that presently we are not inclined to agree with Mr. Godbole that the redevelopment project suffered from fundamental legal infirmities or that the same defeats the very purpose and object of allotment of plots of land to Backward Class persons."*

[emphasis supplied]

9.5 Thus, the Division Bench of this Court has clearly returned a finding that there is nothing in the PWR 219 Scheme or other resolutions of the government which would demonstrate that even after redevelopment, such societies are required to maintain a particular ratio of backward class members to non backward class members, or that the same has to be 90:10. On the contrary, this Court has clearly found that during redevelopment, twenty percent of the additional premises which become available due to consumption of TDR have to be disposed of to persons from the backward category, and eighty percent can be disposed of in the open category. In view of these findings, we find that the Petitioners are correct in their submission that the impugned decision of Department of Social Justice and Special Assistance directing that ninety percent of the members of the Society even after redevelopment must be from the backward category is contrary to the decision of this Court in the case of *Dinanath* (supra).

9.6 We are unable to accept Shri Patki's submission that the *Dinanath* judgment would not apply to the facts of the present case, merely because the Court's interference in that case was called for at the stage after the redevelopment was nearly complete. We find this distinction too subtle to disregard the findings of this Court in that case. On the contrary, we find that the material facts involved in that case, which we have set out above, are quite similar to the facts of the present case. The principal

questions which are the subject matter of the present Petition, were squarely in issue in that case as well *viz.* whether after redevelopment, a society originally allotted land under the PWR 219 Scheme is required to maintain ninety percent of its members from the backward classes; and whether during redevelopment, such societies can dispose of eighty percent of the sale premises in the open category. Moreover, this Court has interpreted the scheme and the applicable government resolutions and circulars with respect to redevelopment of societies who have been allotted plots under the PWR 219 Scheme. The same is binding on the State. Hence, we see no reason why the *Dinanath* judgment should not apply to the present case.

9.7           The Petitioners have relied upon an order of the Revenue and Forest Department of the Government dated 12<sup>th</sup> September 2014 (at page 158 of the paper book) in the case of one Youngmens Progressive Co-operative Housing Society. That order categorically stated that in the case of redevelopment of backward class societies, if additional members are taken, then out of the total members a minimum of twenty percent of the total members will have to be from the backward class category. This in effect translates into a minimum of twenty percent for backward category members and the balance eighty percent for open category / non backward category members. This order incidentally also refers to the Government Resolution dated 25<sup>th</sup> July 2007 referred to in *Dinanath's* case.

9.8           In view of the aforesaid position enunciated by the judgment of this

Court in *Dinanath's* case, and the Government Order dated 12<sup>th</sup> September 2014 in the case of Youngmens Progressive Co-operative Housing Society, the impugned decision requiring the Society to maintain ninety percent of its members from the backward class even after redevelopment is not sustainable and deserves to be interfered with. Once this Court has held in *Dinanath's* case that the additional premises in the redevelopment can be disposed of in the ratio of eighty percent to the open category and twenty percent to the backward category, we do not see why the same should not apply to the Society in the present case as well.

9.9            Though it has been suggested by the Petitioners that redevelopment of the Society on the basis of the impugned order is not at all feasible as the TDR generated and the additional premises which would be available cannot be disposed in view of the restriction imposed, we are not inclined to enter into the said issue of feasibility in this Petition.

9.10           Respondent No. 2 in its Affidavit in reply has sought to contend that no other society had been permitted by the State to redevelop its property without maintaining the mandatory 90:10 ratio. We are unable to accept this contention. As set out above, there is material to show that at least two other societies which have been allotted plots under the PWR 219 Scheme *viz.* Dinanath Cooperative Housing Society and Youngmens Progressive Cooperative Housing Society have been permitted to maintain a ratio of eighty percent of members from non backward category of persons

and twenty percent from the backward category. Hence the restriction imposed by the decision impugned in this Petition amounts to treating equals unequally, and is violative of Article 14 of the Constitution of India.

9.11 With regard to the controversy in this Petition, we find that the Affidavit dated 13<sup>th</sup> August 2020 filed by the Revenue and Forest Department of the State in the first Writ Petition is telling. In paragraph 6 of that Affidavit, the State has stated as follows :

"6. I say and submit that considering the remarks so submitted by the Divisional Commissioner Kokan Division, the State Government had sought the views and remarks from the Social Welfare Department as regards granting the permission to redevelop the structure over the Government plot of land. It was necessary in that behalf to secure the interests of the persons for whose benefit the special scheme of having Society had been framed under which the concerned plot of land came to be allotted to the Petitioner Society. The Revenue Department is still awaiting the response from the Department of Social Welfare. **It is suffice to mention that in order to make the proposal for redevelopment viable certain percentage of Redevelopment Component be permitted to be sold to the other category of persons, apart from the Original allottee members. While redevelopment of a plot, additional tenements become available for sale. While disposing these additional tenements for considering the feasibility of the project. Revenue Department has**

**permitted 80% tenements for free sale and 20% tenements for backward class reserved category in a redevelopment case of Dinanath Co. Housing Society.** On the same view we had sent a proposal of a New Vikas Co. Hsg. Society to Social Justice Department for approval and consent. It was therefore proposed that after securing the views from the Social Welfare Department, the proposal of the Society could be processed expeditiously."

[emphasis supplied]

9.12 Thus, it is clear that the stand of the Revenue Department of the State itself is that from the sale component in the redevelopment, eighty percent can be disposed of in favour of non backward classes. We do not see how the State can now take a contrary stand in this Petition. Shri Patki has tried to contend that any stand taken by the Revenue and Forest Department of the State cannot affect the powers of the Social Justice and Special Assistance Department, which is primarily responsible for ensuring the protection of the backward communities. We are unable to agree with this submission. Ultimately, the decision to grant permission for redevelopment is that of the State Government. Hence, we do not see how one department of the State can take a stand contradictory to that of another. Even otherwise, this very submission was taken up by the State even in the *Dinanath* case. The submissions on behalf of the State in this regard are recorded in paragraphs 59 and 69 of the *Dinanath* judgment as follows :

“59. Finally, it is alleged that it was the duty of the petitioner society to take permission from the Social Justice and Special Assistance Department for redevelopment of the property.....

Once again, it is stated that the Revenue and Forest Department and the Social Justice and Special Assistance Department are two different Departments implementing different schemes. The PWR-219 Scheme is under the control of the Social Justice and Special Assistance Department and the Collector, Mumbai Suburban District has no power to waive any of the conditions prescribed by the Social Justice and Special Assistance Department. Hence, it is not admitted that the Social Justice and Special Assistance Department is not concerned with the use of TDR. The TDR has been granted on the land which was allotted under the PWR-219 Scheme. The petitioner cannot take benefit under this scheme and at the same time expect that rules and regulations of the said scheme would be relaxed. For all these reasons, it is submitted that the writ petition be dismissed.

69. On the other hand, Mr. Godbole, learned Special Counsel appearing on behalf of the State and particularly respondent nos. 2 and 3 would submit that there is no merit in the writ petition and it must be dismissed. He submits that it will be not proper and correct to proceed on the footing that all the powers and authority vests only in the Collector of the Mumbai Suburban District or the Revenue and Forest Department of the Government of Maharashtra. Mr. Godbole submits that an interpretation which would empower only the Collector to deal with allotments and of specific categories particularly favouring Backward Class citizens would nullify the scheme of allotment of Government lands to Backward Class citizens of the State. The Backward Class residents of the State and particularly in the Mumbai City look to only the Department of Social Justice and Special Assistance of the Government of Maharashtra.”

Despite these submissions, this Court had found in favour of the Petitioner society in *Dinanath's* case. For all of these reasons, we do not accept the submission of Shri Patki that this Court ought not to rely upon the stand taken by the State Government in the

Affidavit dated 13<sup>th</sup> August 2020 in the first Writ Petition.

9.13 The impugned decision of the Social Justice and Special Assistance Department is solely based upon the Government Circular dated 26<sup>th</sup> June 2009. That Circular has been considered by this Court in *Dinanath's* case as set out above. As per that Circular, in the case of such societies of persons belonging to backward classes, wherever change in membership is effected, then, the outgoing member shall be substituted by another backward class member. The Circular also states that before such a society undertakes work of redevelopment, it should obtain permission of the Government. We do not find any direction in this Circular that after redevelopment ninety percent of the members of such societies have to be from the backward class.

9.14 The Government Resolution dated 25<sup>th</sup> July 2007 read with the Government Order dated 12<sup>th</sup> September 2014 clearly hold the field in this case, in as much after TDR is generated and additional premises are made available, the ratio that has to be maintained is that the additional premises have to be disposed of as twenty percent to backward class and eighty percent to open class / non backward class.

9.15 Before we conclude, we must note that in its Affidavits filed both in the first Writ Petition and in this Petition, the Department of Social Welfare and Special Assistance has repeatedly contended that the State is considering formulating a policy to regulate the redevelopment of societies which had originally been allotted land under the PWR 219 Scheme. The State may do so in the exercise of its executive

functions. However, in the meantime, we cannot permit the redevelopment of the Society to be stalled. The members of the Society have been out of their homes since 2017. They are urgently awaiting redevelopment of the Society to regain the roofs over their heads. They must be permitted to proceed with the redevelopment on the basis of the judgment of this Court in *Dinanath's* case, and our findings rendered herein.

9.16 In view of the above discussion and findings, the issues requiring determination as enumerated in paragraph 19 hereinabove are answered as follows :

Q. NOS.	ISSUES	ANSWERS
(i)	Whether after redevelopment, the Society is required to ensure that ninety percent of its members are from the backward category, and only ten percent can be from the non backward category?	<b>No</b>
(ii)	In the course of redevelopment of the Society, what percentage of the additional / sale premises which become available due to consumption of additional FSI, TDR etc. can be disposed of in the open category, and what percentage is to be reserved for members of the backward community?	<b>80% to open / non backward community</b> <b>20% to backward community</b>

9.17 The impugned decision of the Department of Social Justice and Special Assistance as communicated by the letter dated 2<sup>nd</sup> February 2021 by Respondent No.

2 to the extent that it requires ninety percent of the membership of the Society to be from the backward community is accordingly quashed and set aside. It is clarified that in the course of redevelopment, the Society by itself or through its developer shall be entitled to deal with the premises in the sale component in the ratio of eighty percent in the open / non backward category and twenty percent to the backward community. The Writ Petition accordingly stands allowed in terms of prayer clauses (a) to (c) which read thus:

- (a) *that this Hon'ble Court be pleased to pass an order thereby directing the Respondent Nos. 1 to 4 to give benefit to the Petitioner's Society at par with other societies of PWR-219 Scheme thereby giving benefit of the redevelopment scheme at the ratio of 80% reserved for open category / Non backward class and 20% reserved for Backward class;*
- (b) *that his Hon'ble Court be pleased to pass an order thereby setting aside the impugned order dated 2<sup>nd</sup> February, 2021 to the extent of not giving benefits to the Society of the Petitioners of 80% to the open class / non backward class and 20% to the backward class and further the Respondent NO. 2 be directed to give benefit of 80:20 ratio as the same is to give by the Respondents to all the other societies in PWR-219 Scheme as like the Petitioners Society;*
- (c) *that this Hon'ble Court be pleased to pass an order thereby directing the Respondent Nos. 1 to 4 to forthwith allow the members of the Sangam Co-op Hsg. Soc. Ltd. To redevelop and further start the construction work on the plot bearing Plot No. 31 and 32, Survey No. 236A, City Survey No. 196, admeasuring 1442 sq. meter of Village Ghatkopar, Tal. Kurla, Mumbai Suburban District on the basis of 80% to the open class / non backward class and 20% to the backward class as the said ratio is made applicable to all the similarly situated societies coming under PWR-219 Scheme situated in Mumbai and the Petitioners be further permitted to pay the premium on the basis of the ratio of 80:20 for the redevelopment of plot bearing plot bearing Plot No. 31 and 32, Survey No. 236A, City Survey No. 196, admeasuring 1442 sq. meter of Village Ghatkopar, Tal. Kurla, Mumbai Suburban District;"*

9.18 Rule is made absolute in the above terms. Parties to act accordingly.

There shall be no order as to costs.

**( MILIND N. JADHAV, J.)**

**( S.J.KATHAWALLA, J. )**