

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4440 OF 1992

**Shri. S. D. Killedar, the Competent
Authority, the Assistant Commissioner
Solapur Municipal Corporation, Solapur .. Petitioner**

Versus

**Shri. S. K. Chintalwar,
35 Modi Khana, Solapur .. Respondent**

Shri. R. S. Alange, for the Petitioner.

Ms. A. R. S. Baxi, for the Respondent.

**CORAM : R.M. SAVANT, J.
DATE : 20th MARCH, 2015**

ORAL JUDGMENT

1. The Writ Jurisdiction of this Court is invoked against the order dated 31.12.1991 passed by the Learned President of the Slum Tribunal by which order the Appeal No.56 of 1991 filed by the Respondent herein came to be allowed and resultantly the declaration dated 31.01.1990 published in the Government Gazette dated 25.04.1990 in so far as it relates to lands bearing CTS Nos.401 to 438 situated at Modikhana, Solapur came to be set aside.

2. The facts to be cited for adjudication of the above Petition can

in brief be stated thus. The Petitioner herein is the Competent Authority of the Solapur Municipal Corporation in so far as slums are concerned. The controversy in the present Petition is as regards the declaration of City Survey Nos.401 to 438 situated at Modikhana Solapur as a slum. The said survey numbers are out of properties which were declared as slum being City Survey Nos.400 to 473, 369, 364, 351 at Chintalwar Vasti, Solapur. The said properties were declared as slum initially by notification which was published in the Government Gazette on 26.10.1978. However, at the said time, the declaration was on the basis of the description of the property as T.P. III Final Plot No.115 (Part). It appears that after the said declaration, in view of the objections raised to the description of the property in the said Gazette Notification dated 26.10.1978 a fresh notice of intention was issued on 17.05.1988 and was published in the local newspapers on 19.05.1988. It appears that during the said period some works of improvements were carried out by the Slum Improvement Board in the matter of constructing toilets, improving the hygiene etc. in the notified area. Ultimately declaration came to be issued vide Notification dated 25.01.1990 which was published in the Government Gazette on 05.04.1990. In so far as the said Notification which was issued under Section 4(1), the same refers to the property notified by its city survey numbers being City Survey Nos.400 to 473, 369, 364, 351 at Chintalwar

Vasti, Solapur.

3. The Respondent No.1 herein who claims to be the owner filed an Appeal being Appeal No.56 of 1991 challenging the said Notification dated 31.01.1990. The said challenge was inter-alia on the grounds mentioned in the said Appeal. Suffice it to state that the said grounds were to the effect that the Appellant was not served with any preliminary notice or any show-cause notice of the intention to declare the said property as slum, no report was called for or site visit was made ascertaining the situation on site, that there are numerous mistakes in the said Notification which according to the Appellant could not be overlooked whilst deciding the Appeal. The Maharashtra Slum Areas (I. C. & R.) Tribunal, Bombay considered the said Appeal and has by the impugned order dated 31.12.1991 has allowed the Appeal and as indicated above has set aside the declaration issued vide the Notification dated 31.01.1990 in so far as the lands relating to the Appellants are concerned bearing Survey No.401 to 408 at Chintalwar Vasti, Solapur. The gist of the reasoning of the Tribunal as can be seen from the impugned order is that the declaration spells out that it was required to be issued so as to give protection to the occupiers of the said property and that in view of the improvements which have been carried out by way of construction of toilets, providing water tap, drainage etc., there is no necessity to continue with the declaration.

As indicated above, it is the said order dated 31.12.1991 passed by the Learned President of the Slum Tribunal which is taken exception to by way of the above Petition.

4. The Learned Counsel appearing for the parties i.e. Shri. R. S. Alange appearing for the Solapur Municipal Corporation and Ms. A. R. S. Baxi appearing for the Respondent i.e. owner would make submissions for and against the declaration of the property as slum.

5. In so far as the declaration of slum is concerned, the provisions of law i.e. Slum Act as also the judicial pronouncements lay down the parameters as to when such a declaration can be issued. The tests laid down are whether the basic amenities are available to the slum dwellers i.e. amenities by way of toilets, supply of water, drainage etc.. A useful reference could also be made to Section 4 and especially Sub Section 6 thereof which for the sake of ready reference is reproduced herein under :-

“4. Declaration of slum area.

(1).....

(2).....

(3).....

(4).....

(5).....

(6) While deciding the appeal the Tribunal shall ignore the works of improvement executed in such slum area by any agency of the Government or any local authority after the declaration thereof as such slum area by the Competent Authority under sub-section (1).”

6. A reading of the said provision therefore, discloses that the Tribunal whilst considering an Appeal against a declaration of a slum has to ignore any improvements carried out in the property by Government or by an authority. In the instant case, as indicated above, after the Notification came to be issued, improvements were carried out in the property in the matter of providing amenities to the slum dwellers by the Slum Improvement Board. The Tribunal as indicated above has set aside the declaration of slum on the ground that the area which has been declared as slum by way of basic amenities like toilets, water taps, drainage etc. and therefore, there is no necessity to continue the declaration. The Tribunal in the said process has not taken note of Sub Section 6 of Section 4, which provides that any improvements which are carried out by the Government or an authority is not to be taken into consideration whilst adjudicating the Appeal filed against the declaration of a slum. The Tribunal as the impugned order discloses does not seem to have taken note of the said provision. In the instant case, as indicated above the facts disclose that after the Notification of intention was issued, the improvements were carried out by the Slum Improvement Board. In so

far as the second ground on which the Tribunal has set aside the declaration namely that the said Notification is issued to protect the occupier is concerned, in my view the Tribunal has unnecessarily laid emphasis on the said aspect when obviously the said ground cannot be a ground to issue a notification for declaration as a slum. In my view, therefore, it would be just and proper to set aside the impugned order dated 31.12.1991 and remand the Appeal back to the Tribunal for a de-novo consideration of the same in the light of the observations made in the instant order. The impugned order is accordingly quashed and set aside and the Appeal is remanded back to the Slum Tribunal for a de-novo consideration of the Appeal on merits. Needless to say that the contentions of the parties are kept open for being urged before the Tribunal on remand. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs. On remand the Tribunal to decide the Appeal on or before 31.10.2015. The parties to appear before the Tribunal on 15.04.2015. R & P be remitted back to the Tribunal forthwith.

[R.M. SAVANT, J]