



order, the petitioners are required to vacate their respective structures, as the SRA scheme is to be executed upon the property.

4. Out of total number of 34 occupants upon the property, all, except 7 petitioners, have vacated their structures, as a result of which, the development cannot commence. Mr. Suryavanshi, learned Counsel for petitioners, has questioned the impugned orders by stating that till date, there is no order or direction issued by the SRA in the matter of eviction of the petitioners. In absence of any such order or direction, there arises no question of exercise of powers under Section 33 of the Slum Act. Mr. Suryavanshi further submitted, without prejudice, that the issue of eligibility of petitioner nos.1, 3, 4 and 7 is pending before the Deputy Collector (Encroachment), the Competent Authority. Until the same is sorted out, there is no question of ordering the eviction of the petitioners. Mr. Suryavanshi further submitted that in terms of circular dated 06/06/2015, the petitioners are entitled to rent in lieu of alternate accommodation at the rate of Rs.12,000/- per month, whereas, the developers are offering rent only at the rate of Rs.8,500/-. Further, there is no clarity as to whether all the petitioners will be accommodated in the same building and further, whether agreements in respect of area of 269 sq.ft. will at all be executed by the developer.

5. Although, there is no merit in the contention raised by Mr.Suryavanshi on the aspect of exercise of powers under Section 33 of the Slum Act, from time to time, orders were made and the

developers were directed to file affidavit in the context of apprehensions expressed by the petitioners. The SRA as well as the developer have filed their replies and on basis of the same, it cannot be said that the legitimate apprehensions of the petitioners persist.

6. At the outset, it is to be noted that out of 34 occupants, all except the petitioners, have vacated their structures. The petitioners have virtually held up further development upon the project. The project has been sanctioned by all the competent authorities including the SRA. The sanctions, prescribed time limit and consequently, it is necessary that the developer commence the work at the site as early as possible. That apart, the SRA, by communication dated 29/06/2015, has not only ordered the eviction of the petitioners by accepting compensation in lieu of alternate accommodations as well as the other benefits, but further, offered an opportunity to the petitioners to show cause as to why they should not be evicted. In the facts and circumstances of the present case, this is sufficient compliance with the provisions of Section 33 of the Slum Act. This, in the facts and circumstances of the present case, is required to be construed as a direction by the authority to the petitioners to vacate their structures. There is nothing wrong in the owner of the building or the developers approaching the authority for action under Section 33 of the Slum Act, once the project has been approved by the authority and some of the occupants refuse to vacate their structures and the implementation of the project is delayed. Accordingly, there is no jurisdictional infirmity in the impugned order.

7. Out of the 7 petitioners, 3 petitioners have already adjudged as eligible. In the affidavits filed by the developer as well as the authority, it is made clear that these 3 petitioners will be allotted permanent accommodation once the project is complete and that the same will admeasure 269 sq.ft. The learned Counsel for SRA as well as the developer states that along with all other occupants, necessary agreements will be entered into with these petitioners clarifying this position. In the meanwhile, the statements made by the developer and the authority on affidavits in this petition, are accepted. There is no reason at this stage to proceed on the basis that such statements will not be complied with.

8. On the aspect of rent/compensation in lieu of alternate accommodation, the learned Counsel for respondent no.1 points out that there is a resolution of the society, by which the rent is fixed at Rx.8,500/- per month. This is the rent which is being paid to all the occupants who have already vacated. The learned Counsel for petitioners, however, submits that in terms of circular dated 06/06/2015, the rent has to be Rs.12,000/- per month. He points out that the circular will apply to the case of the petitioners since the petitioners have been in occupation of the structures as on the date of coming into force of such circular but this rate will not apply to the other occupants who have already vacated. It is not possible to accept this contention. The occupants, who, in compliance with lawful direction, have vacated the structures, cannot be placed in a position worse than the petitioners. Conversely, the petitioners who have

defied lawful directions, cannot get any unfair advantage on account of such defiance. It is on account of the unlawful defiance, the authorities were required to take action under Sections 33 and 38 of the Slum Act. As such, the petitioners, cannot claim any increased rate assuming that the circular does provide for such increased rate. Similarly, there is no merit in the contention that until the issue of eligibility of petitioner nos.1, 3, 4 and 7 is sorted out, the said petitioners cannot be required to evict the structures. As on date, the said petitioners have not even been adjudged as eligible. The Deputy Collector before whom the proceedings for eligibility are pending, is hereby directed to dispose of such proceedings as expeditiously as possible and in any case, within a period of four months from the production of authenticated copy of this order. However, that by itself, does not mean that such petitioners, can continue to occupy the structures. There is no merit in this submission. The impugned orders cannot be interfered with at the behest of such petitioners.

9. Though not legally bound, the developer has agreed to pay even the ineligible petitioners compensation in lieu of alternate accommodation until the issue of eligibility is determined. Further, the developer has stated that in case the said petitioners are adjudged as eligible, then they will also be given the same benefits as are accorded to other eligible occupants. This takes care of the apprehensions of the said petitioners as well.

10. Therefore, subject to the acceptance of statements as aforesaid, there is no reason to interfere with the impugned orders. This petition is dismissed. There shall be no order as to costs.

11. The petitioners shall, however, be at liberty to place authenticated copy of this order before the Deputy Collector who is taking up the case of eligibility of some of the petitioners and the said Deputy Collector is directed to dispose of the proceedings pending before him as expeditiously as possible and in any case, within a period of four months from the date of production of authenticated copy of this order.

12. The learned Counsel for petitioners states that some time be granted to the petitioners to evict their structures. Subject to the petitioners filing an undertaking in this Court within a period of one week from today that they shall, on their own, vacate the structures latest by 15/01/2016, the orders of eviction shall not be executed up to the said date. If, however, the undertakings are not filed and copies thereof not furnished to the learned Counsel for respondents before the same are filed in the Registry within a period of one week, then this direction shall not operate and the authorities shall have the liberty to execute the impugned orders upon the expiry of one week from today.

**(M. S. SONAK, J.)**