

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.612 OF 2013

Transcon Sheth Creators Pvt. Ltd.	 Petitioner
V/s	
The State of Maharashtra & Ors.	 Respondents

WITH
NOTICE OF MOTION NO.270 OF 2013
IN
WRIT PETITION NO.612 OF 2013

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Mr. Joseph (alias Anthony) Reman Simoes & Ors.	Applicants/Intervenors
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IN THE MATTER OF

Transcon - Sheth Creators Pvt. Ltd.	 Petitioner
V/s	
State of Maharashtra & Ors.	 Respondents

WITH
NOTICE OF MOTION NO.280 OF 2013
IN
WRIT PETITION NO.612 OF 2013

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Barretto Compound Welfare Society & Ors.	 Applicants
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IN THE MATTER OF

Transcon - Sheth Creators Pvt. Ltd.	 Petitioner
V/s	
State of Maharashtra & Ors.	 Respondents

WITH

NOTICE OF MOTION NO.323 OF 2013
IN
WRIT PETITION NO.612 OF 2013

Mr. Deepak Pandurang Wadkar & Ors. Applicants/Intervenors

IN THE MATTER OF

Transcon - Sheth Creators Pvt. Ltd. Petitioner
V/s

State of Maharashtra & Ors. Respondents

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Mr. Ravi Kadam, Senior Advocate a/w Dr.Birendra Saraf & Mr.Swapnil Bangur i/b M/s. I.C. Legal for Petitioner.

Mr. H.S. Venegavkar, AGP for Respondent No.1/State.

Mr.P.K.Dhakephalkar a/w Mr. Jagdish G. Aradwad (Reddy) for Respondent No.2.

Mr. Sanjay Kukreja i/b Mr. W.W. Waishampayan for Respondent Nos.4 to 9 (Applicants in Notice of Motion No.280 of 2013).

Mr. Prashant P. Jadhav for Applicants/Intervenors in Notice of Motion Nos.270 of 2013 and 323 of 2013.

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CORAM : A.A. SAYED, J.

DATED : 23 DECEMBER, 2015.

ORAL JUDGMENT:

Invoking Article 226 of the Constitution, the Petitioner-original Respondent No.3 has filed this Petition to impugn the order dated 26 February 2013 passed by the President, Slum Tribunal in Appeal No.4 filed by Respondents Nos. 4 to 9/original Appellants. By the impugned order the Appeal of the Respondent Nos.4 to 9 filed under section 3(C)(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to "Slum Act") was allowed and the impugned Declaration/Notification dated 18 September

2010 (published in the Gazette on 21 September 2010) issued by Respondent No.2- Chief Executive Officer, Slum Rehabilitation Authority (CEO, SRA) under Section 3(C)(1) of the Slum Act was quashed and set aside to the extent of CTS No.371 admeasuring about 6649.15 sq.mts. and CTS No.374 admeasuring about 870.58 sq.mts.

2. The Petitioner/Original Respondent No.3 is a company incorporated under the Companies Act and owns several plots of land at village Valnai, Malad, Mumbai. Respondent No.1 is State of Maharashtra. Respondent No.2 is the CEO, SRA. Respondent No.3 is the Charity Commissioner, Mumbai. Respondents Nos. 5 to 9 were original Appellants in the Appeal and office bearers of Respondent No.4-Society. Respondent No.10 is the Chief Promoter of Aayappa Sairaj CHS (proposed), Respondent No.11 is the Chief Promoter of Sairaj Guriyapada CHS (proposed). Respondent No.12 is a partnership firm registered under the Indian Partnership Act, 1932. Respondent No.13 is President of Slum Tribunal.

3. The case of the Respondents Nos.4 to 9/original Appellants in the Appeal was as follows- that Respondent Nos.5 to 9 alongwith other

occupants have formed Respondent No.4- Society i.e. Bretto Compound Welfare Society. They are tenants/occupants residing with their respective families in five chawls situated on land covering portion of CTS Nos.326, 329, 371 & 374 of village Valnai, Tahsil-Borivali, Mumbai Suburban District. The Declaration mentioned at Sr.No.3, CTS No.371 and Serial No.4 of CTS No.374 of the Notification dated 18 September 2010 is the subject matter of the Appeal. The Petitioner and Respondents Nos.10, 11 and 12 have enveloped CTS No.326, 329, 371 & 374 for the purpose of rehabilitation scheme and for getting the plan sanctioned under the said scheme. Though there is no information about CTS No.326 and 329 having been declared as slum, the said CST Nos.326 and 329 have been made subject matter of the Appeal as and by way of abundant caution. There are as many as 75 families comprising of 290 occupants occupying their respective premises for more than 30 years. On 26 October 2009, Mr. Avdesh Singh, Advocate for one Ms. Liberata A. Rodrigues, the then landlady, issued notice to all the tenants/occupants of the Respondent No.4-Society intimating to them attornment of their tenancy. On 10 February 2010, Respondent No.4-Society served a letter of objection on the Additional Collector (ENC) & Competent Authority, Sub-Division Borivali, objecting to proposed declaration of the property in their

occupation as slum, and sought personal hearing. Respondent No.4-Society also sought information under the Right to Information Act (RTI Act) from the Slum Rehabilitation Authority. Reply dated 15 September 2011 from the Slum Rehabilitation Authority under the RTI Act was received by the Respondent No.4's Advocate, which revealed that the proposal for slum rehabilitation scheme covering CTS No.326, 329, 371 and 374 was under consideration and therefore information was not available with the Deputy Collector. Reply dated 30 November 2011 was also received from the Slum Rehabilitation Authority by the Respondent No.4's Advocate on 10 October 2011, interalia, in respect of declaration of slum and that the Petitioner was appointed as a Developer for the purpose of 347 slum dwellers. The Respondent No.4-Society made an Application for inspection of files in respect of declaration of slum of certain CTS Nos. and other parts. Inspection was given on 25 November 2011, upon which it transpired that CTS Nos.371 & 374 were declared as slum. However, no record could be seen as regards declaration of slum of CTS Nos.326 & 329. The copy of Notification dated 18 September 2010 was for the first time received by Respondents Nos. 4 to 9 on 8 December 2011 from their Advocate. The Declaration mentioned at Serial No.3 for CTS No.371 and Serial No.4 for CTS No.374 was affecting the rights and

interest of Respondents Nos.4 to 9 and other occupants of the Respondent No.4-Society, which is the part of subject matter of the Appeal and by inclusion of CTS Nos.326 and 329 in the proposal of the Petitioner and Respondents Nos.10, 11 & 12. For the first time, Respondent Nos.5 to 9 came to know of the impugned Declaration/Notification on 18 December 2011 only, when they received the copy of the impugned Notification dated 18 September 2010 from the State Information Officer, SRA and the delay in filing the Appeal was required to be condoned. Respondent Nos.4 to 9 also prayed for interim reliefs in the Appeal that the slum rehabilitation order be suspended.

4. The Appeal filed by Respondents Nos.4 to 9 was essentially on the following grounds:

- (i) There was violation of rules of natural justice as the Appellants were not granted an opportunity of being heard prior to the issuance of the Declaration/Notification dated 18 September 2010 under Section 3(C)(1) of the Slum Act.
- (ii) That there was no application of mind in issuing the Declaration/Notification dated 18 September 2010.
- (iii) The Declaration/Notification suffers from various infirmities and there was no substantive satisfaction of the Authorities.

(iv) That the CEO, SRA failed to consider that there were five chawls, in which Respondents Nos.5 to 9 and other tenants/occupants were residing and which were having basic amenities.

(v) That the CEO, SRA ought to have ensured joint survey of the subject properties.

(vi) That there were no structures other than those of Respondents Nos. 5 to 9 in CTS Nos.371 and 374 and the order of Respondent No.2-CEO, SRA was liable to be quashed in relation to CTS Nos.371 & 374.

(vii) Incorporation of CTS Nos.326 and 329 by the Petitioner and Respondent Nos.10, 11 & 12 in the scheme suffers from malafides, inasmuch as there was no Declaration of those CTS Nos. as slums.

(viii) The chawls or the portion of chawls of Respondent No.4-Society do not exist in CTS Nos.326 and 329 and the CEO, SRA could not have allowed the Petitioner and Respondent Nos.10, 11 & 12 to incorporate the lands covered under the said CTS Nos. in the scheme.

(ix) That the CEO, SRA had erred in exercising power under section 3(C)(1) of the Slum Act.

5. The case of the Petitioner-original Respondent No.3 in their Reply was as follows:

- (i) The Respondent Nos.4 to 9 had no locus-standi to file the Appeal and same was barred by law of limitation.
- (ii) Most of the occupants of CTS Nos.371 had already entered into individual Agreements with the Petitioner.
- (iii) The Petitioner had acquired various plots by various conveyances. By two registered Deeds of Conveyance dated 9 July 2007 and 29 August 2007 respectively, one Salsette Catholic Co-operative Housing Society Ltd. conveyed the larger property to the Petitioner for valuable consideration on 'as is where is basis'. The Petitioner relies upon Index-II and said Conveyances.
- (iv) Out of larger property being conveyed to the Petitioner, some CTS Nos. were declared as slum under Section 4 of the Slum Act on 30 June 1978. Subsequently, CTS No.325A admeasuring 4598.22 sq.mts., CTS No.331 admeasuring 172.61, CTS No.371 admeasuring 6649.15 sq.mts., CTS No.374 admeasuring 870.59 sq.mts., CTS No.375 admeasuring 288.94 sq.mts. were also declared as slum on 18 September 2010 under Section 3(C)(1) of the Slum Act.
- (v) The Petitioner was desirous of developing larger property in phase-wise manner and submitted plan for development of portion of the larger property admeasuring 20,770.07 sq.mts. pursuant to which LOI dated 26

October 2010 was issued to it. Majority of the slum dwellers residing on the portion of the larger portion had given their consent and entered into individual Agreements with the Petitioner, which was more than 70% consent necessary for implementation of the slum scheme.

(vi) So far as CTS No.371 is concerned, 34 members/slum dwellers gave their consent and entered into individual Agreements with the Petitioner, and the Petitioner has also submitted the scheme and proposal in respect of development of that portion of the larger property.

(vii) It was denied that Ms. Liberata Rodrigues-Respondent No.12 was the owner and landlord of the land and structures and that Respondent Nos.5 to 9 were the tenants residing in five chawls on the plot of land covering portion of CTS Nos.326, 329, 371 and 374.

(viii) Respondent No.12-Ms.Liberata Rodrigues never claimed ownership in respect of said properties. The properties originally belonged to Salsette Catholic Co-operative Housing Society Ltd. from the year 1961 or thereabout till about the year 2007 when the Petitioner purchased the same through two registered Deed of Conveyances.

(ix) Ms. Liberata Rodrigues was not impleaded as party in this Appeal and she was nothing but an impostor trying to create false record.

(x) There was delay in filing the Appeal, as the Notification was issued on 18 September 2010 and the Appeal was filed on 20 December 2011 and therefore the Appeal was required to be dismissed.

6. Affidavit-in-Reply was also filed on behalf of CEO, SRA- Respondent No.2, wherein it was, interalia, stated as follows- that the Petitioner on 1-7-2010 through their Architect had submitted an Application requesting to declare the property bearing CTS No. 325A (part), 331(part), 371(part), 374(part) and 375(part) of village Valnai, Tahsil-Borivali as slum rehabilitation area under the provisions of Section 3(C) (1) of the Slum Act. After receipt of the Application, the City Survey Officer of SRA personally visited the said property and found that the said area is a source of danger to the health, safety of the public of that area and its neighbourhood by reason of the area having inadequate basic amenity and sanitation and also squalid conditions. The area is overcrowded and it is unfit for human inhabitation since the structures are in dilapidated condition, affected by faulty arrangement, narrowness of street, lacking ventilation, light and sanitation facilities and hence detrimental to the health, safety and convenience of the public of that area and therefore the City Survey Officer of S.R.A. prepared a detailed Report on 27.8.2010 and

submitted the same to the office of the Dy. Collector/SRA. The Dy. Collector/SRA personally visited the said property on 30.8.2010 and he found that the said area is required to be declared as slum rehabilitation area since all the terms and conditions as contemplated U/sec. 4(1) of the Maharashtra Slum Areas (I C & R) Act, 1971 for declaring an area as a slum are fulfilled in respect of the said property and therefore the Dy. Collector/SRA recommended to the CEO/SRA to declare the said area as slum rehabilitation area. Thereafter, the said report of the City Survey Officer and the Dy. Collector/ SRA was put up before the Secretary/SRA. The CEO/SRA after going through the recommendations came to a conclusion that the said property is required to be declared as slum rehabilitation area under the provisions of Sec. 3-C (1) of the Maharashtra Slum Areas (I C & R) Act, 1971 as the CEO/SRA was satisfied that the circumstances exist in respect of the said area to be declared as slum rehabilitation area. Thus, by following the due process of law, the CEO/SRA declared the said area as slum rehabilitation area. Photographs taken out by the officers of the Slum Rehabilitation Authority of the said property clearly show that the entire area is a slum area and is required to be developed under the amended Development Control Regulations 33(10).

7. Affidavits-in-Rejoinder were filed on behalf of Respondent Nos. 4 to 9 (to the Affidavit-in-Reply filed by the Petitioner as well as by the Respondent No.2-CEO, SRA). Responding to the Affidavit-in-Reply filed by the Respondent No.2, the Respondent Nos.4 to 9 denied that the land bearing CTS Nos.371 and 374 was owned by the Petitioner. It was denied that there was any inspection of site on 13 August 2010. It was averred that no inquiries were made from a single occupant of the chawls of the Respondent No.4-Society. None of the chawls on CTS Nos.371(part) and CTS No.374(part) could be called hutment and the chawls were constructed of brick-masonry walls painted on either side. The area adjoining the chawls were open to sky. There was a pucca drainage system provided to all the five chawls of the Respondent No.4-Society, which was connected to the main drainage line abutting link road. On no occasion there was a flooding of water in and around the tenements in occupation of the tenants/occupants of the Respondent No.4-Society, including on 26 July 2005 when many pockets of the metropolitan and suburbs of Mumbai were submerged in water due to unprecedented heavy downpour of rains. It was denied that there was no sun-rays or fresh air or there was no common toilets at the site. There were as many as nine toilets blocks used by the tenants/occupants of

Respondent No.4-Society, besides the fact that in many of the tenements there were self-contained toilet, which were directly connected to the sewerage system. It was denied that there was any foul smell and garbage menace. The area in and around the chawls were in clean and in hygienic condition and there was no cause to declare the chawls of the Respondent No.4-Society as slum area. It was denied that the lands bearing CTS Nos.371 and 374 were reserved for Municipal Primary School, Recreation Ground or proposed DP Road. It was denied that there was any source of danger to health/safety or convenience of the public of the area and its neighborhood or that the chawls were short of requisite basic amenities, such as sanitation, overcrowding, proper street lights, lack of ventilation, roads etc. or that it was unfit for human habitation. Dealing with the Affidavit-in-Reply of the Petitioner, it was contended on behalf of the Respondent Nos. 4 to 9 as follows- that Respondent Nos.5 to 9 were in possession of various documents as tenants, including (i) 7/12 extract relating to Survey No.129 which relates to the part of the subject matter being CTS Nos.371 and 374 which shows the name of Ms.Luiza Barretto and also refers to the Injunction order dated 19.06.2000 granted in Suit No.4788 of 1999 in Bombay City Civil Court at Mumbai in favour of Ms.Liberata A. Rodrigues, to avoid interference

with her possession. (ii) the correspondence between the members of the Respondent No.4 -Society and BSES to indicate that they are tenant-occupants of Barretto Compound upon which the electricity connections were given. (iii) a few rent receipts in support of the contention of the members of the Respondent No.4 -Society (iv) Assessment Bills relating to 5 chawls of the members of the Respondent No.4 -Society standing in the name of Ms.Liberata A. Rodrigues, being landlady of the tenants/occupants and the members of the Respondent No.4 -Society. At one stage there were arrears towards Assessment bills of the chawls of members of the Respondent No.4 -Society and the Respondent No.4-Society paid the bills and in lieu thereof the said Smt.Liberata A. Rodrigues, the landlady, promised that the amounts paid by the Society will be adjusted against the rent due and payable by the Tenants. The Notification dated 30 June 1978 was also under challenge and was pending before the Slum Tribunal. The members of the Respondent No.4 -Society were bonafide tenants/occupants and got knowledge of the Notification only when they received certified copy of the Notification dated 18 September 2010. It was denied that Respondent Nos.5 to 9 were aware of the property being declared as slum in October 2010.

8. Affidavit-in-Surrejoinder was also filed by the Petitioner, wherein it was stated out that the conditions enumerated in section 20 of the Societies Registration Act do not permit the Respondent No.4-Society to be registered as a society and the Respondent Nos. 4 to 9 had no locus to file the Appeal. CTS No.371 comprises of various structures, out of which, 34 slum dwellers have granted their consent to the Petitioner and entered into individual Agreements. One of the Society under CTS No.371 has also entered into Development Agreement and also executed a Power of Attorney with in favour of the Petitioner. Smt. Liberata was not made a party nor has she ever challenged the declaration of the slum. Other Additional Affidavits were also filed before the Slum Tribunal.

9. After hearing the parties, the Slum Tribunal by the impugned order dated 26 February 2013 allowed the Appeal and set aside the Declaration/Notification dated 18 September 2010 in relation to CTS No.371 admeasuring about 6649.15 sq.mt. and CTS No.374 ademeasuring 870.58 sq.mts., as indicated in para 1 hereinabove.

10. Though the elaborate submissions have been made by learned Counsel for the parties and several judgments have also been cited before

me, in the nature of order I propose to pass, it is not necessary for me to deal with all the submissions and the judgments. Having heard the learned Counsel for the parties, I have no hesitation in concluding that the impugned order cannot be sustained on facts and in law.

11. Upon perusal of the impugned order, it is at the very outset noticed that one of the main grounds on which the Declaration under Section 3(C)(1) has been set aside (to the extent as stated in the impugned order) by the Slum Tribunal is that there has been violation of principles of natural justice inasmuch as there was no prior notice issued to the Respondent Nos. 4 to 9/original Appellants before the Declaration u/s 3(C)(1) of the Slum Act. This finding of the Slum Tribunal is contrary to the judgment of this Court in the case of **Jagannath Hanumant Sonawane vs. CEO, SRA, MUNU/MH/2161/2011**, wherein it has been held that prior to a Declaration under section 3(C)(1) of the Slum Act, there is no requirement of issuance of prior notice to all the occupants and notice is mandatory only to the land owner and the persons whose names are found on the property card. In the said judgment in paragraph 80, it has been held as under:

“80. In an area which is proposed to be declared as a Slum Rehabilitation Area, it is neither reasonably practical nor feasible that all persons who are affected be noticed and be afforded a personal hearing. Besides the persons whose name figure in the Property Card, there may be hundreds of structures owned by different persons and there may be still others who occupy those structures. In most of such areas which are proposed to be declared as slum area/slum re-habilitation area, the structures are unauthorised and there may be a number of persons who claim to be 'owners'. The Slum Act has therefore defined the term 'slumlord' under section 2 (h-a) and under section 2(f) the definition of 'owner' excludes a 'slumlord'. One has to bear in mind that under the Slum Rehabilitation Scheme a limited protection is available to the occupants, in that, the occupants of slums whose names and structures appear in the electoral roll prepared with reference to 1-01-1995 or a date prior thereto are eligible for rehabilitation. In my view, therefore, except for the interested persons whose names appear on the Property Card, no other person is required to be noticed. Insofar as the affected persons whose names are not reflected in the property card, in my view, the post-decisional remedy available to them in the form of an Appeal under would amount to a full review on merits and would be a substantive remedy to redress their grievance. In other words, except for the interested persons whose names are reflected in the Property Card, there would be no obligation on the Authorities to notice and hear other affected parties. Having said that, however, in a given case the Authorities would not be precluded from granting an opportunity of pre-decisional hearing to any other person if they find it expedient and necessary to do so in the interest of justice.”

In the circumstances, in my opinion, on this ground alone, the impugned order is liable to be set aside.

12. Apart from the above, as indicated earlier, it is seen that pursuant to the Application dated 01.07.2010 submitted on behalf of the Petitioner for the Declaration of certain portions of plots bearing CTS Nos. 371, 374, 325A, 331, 375 as “slum rehabilitation area” u/s 3C(1) of the Slum Act, the City Survey Officer (SRA) conducted a personal visit to the said plots on 13.08.2010. As stated in his Report dated 27.08.2010, he found the following conditions present at site:

- i) presence of huts, houses which are not pucca or well constructed;
- ii) absence of proper drainage system;
- iii) flood-prone areas where water enters the huts in the monsoon season;
- iv) lack of proper sunlight;
- v) lack of clean air;
- vi) congested development of huts; lack of adequate spacing between them interse;
- vii) inadequate community toilets (as compared to the population residing in the area);
- viii) presence of foul odour, garbage strewn all over at some places.

This was followed by a personal visit to the site conducted by the Deputy Collector (SRA) on 24.08.2010. In his Report dated 30.08.2010, he has confirmed the existence of slum conditions.

13. The aforesaid two Reports of the Deputy Collector (SRA) and the City Survey Officer (SRA) were submitted to the CEO of SRA. After considering the Reports, the CEO, SRA recorded his satisfaction of the existence of the slum conditions on the site and passed an order dated 09.09.2010, which led to the Declaration dated 18.09.2010 being issued under section 3(C)(1) of the Slum Act. Respondent Nos. 4 to 9 thereafter filed the Appeal u/s 3(C)(2) of the Slum Act challenging the Declaration dated 18.09.2010. The Appeal was allowed by the Slum Tribunal by the impugned order and the Declaration dated 18.09.2010 was set aside to the extent of CTS Nos. 371(part) and 374(part).

14. In the impugned order, the Slum Tribunal has observed that the Respondent No.2-CEO, SRA is required to inspect 'personally' and survey the circumstances or situation existing at a particular property and then to arrive at its conclusion about the need to declare the said property as slum rehabilitation area. The Slum Tribunal has observed that the Respondent No.2-CEO, SRA did not produce the entire record before the

Slum Tribunal and it has only produced the Report of Surveyor dated 27.08.2010 and official submission made thereon. The Slum Tribunal has stated in the impugned order that the CEO, SRA has not produced the survey map and boundaries of such area cannot be considered in absence of survey map. It is further observed that the Survey Report does not mention the number of huts found in each property and that the Surveyor has made some general observations about the condition of the huts which are not useful and there were no details of the lanes, passages and their width for the ingress and egress of the residents. In paragraph 46 of the impugned order, while dealing with the Report of the City Survey Officer, it is stated as follows:

“46. He has further reported that the arrangement of huts in the said area is much crowded and congested, and therefore, residents cannot get natural light and air. Further there is no material produced on record in support of the same. According to surveyor, number of water closets in the said area is inadequate as compare to the residents. However, he has not at all mentioned the population residing at the said area and number of water closets either public or private available thereto. Therefore, his conclusion that the water closet are inadequate has no base. Lastly, he has stated that at some places he found unhygienic situation and therefore, he has expressed his opinion that the aforesaid properties should be declared as slum rehabilitation area. The surveyor has not filed report about the specific survey of the properties involved in this appeal and availability of basic amenities and condition of structures located therein. Even the survey report is not specific about all such aspects.”

It is further observed that the Survey Report is not an honest one. It is stated that the CEO, SRA has not assigned reasons for the Declaration as slum rehabilitation area.

15. On behalf of the Petitioner, it is interalia contended (and as stated in their Written Submissions) that the due procedure was followed in accordance with law leading to the Declaration u/s 3(C)(1) of the Slum Act. It is further contended that the Slum Tribunal has completely ignored and/or disregarded the Report dated 30.08.2010 of the Deputy Collector (SRA), which also forms one of the fundamental basis on which the order dated 09.09.2010 was passed by the CEO, SRA for issuing the Declaration dated 18.09.2010 u/s 3(C)(1) of the Slum Act. It is contended that this Report dated 30.08.2010 of the Deputy Collector (SRA) was on record before the Slum Tribunal and the same formed part of the Affidavit in Reply of Dr. Bharat Bastewad, Deputy Collector, SRA, dated 10 January 2012 of the Respondent No. 2 to Misc Application No. 24 of 2012 in the Appeal. However, the impugned order proceeds on the footing that the said Report dated 30.08.2010 of the Deputy Collector (SRA) did not exist. It is further contended that while rejecting the Report of the City Survey Officer, SRA, the Slum Tribunal has based its decision

on Google Earth Satellite images and stray photographs submitted by the Respondent Nos. 4 to 9. It is pointed out that section 45(1) of the Slum Act confers all powers of Civil Court on the Slum Tribunal in the exercise of its jurisdiction under the Slum Act including power to take evidence, summoning and enforcing attendance of witnesses and issuing commissions for various purposes. Rule 31 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Tribunal Regulations, 1974 [framed in exercise of powers under section 45(4) of the Slum Act] provides that the Code of Civil Procedure, 1908 applies to matters not provided for in the Regulations. Reference is also made to Rule 29 of the 1974 Regulations which empowers the Slum Tribunal and/or any member (including the President) to visit any place for local inspection themselves if they consider such inspection to be necessary for elucidating any matter in dispute and circulate their notes regarding such inspection to the parties. In these circumstances, it is urged that if there was any doubt regarding the Report dated 27.08.10 submitted by the City Survey Officer (even if the Deputy Collector's Report dated 30.08.2010 which was ignored by the Slum Tribunal altogether), then several courses were open to the Slum Tribunal including (i) calling for additional evidence, (ii) summoning concerned officers (for examination by the

Tribunal/cross-examination by Respondent Nos. 4 to 9/original Appellants), (iii) conducting local inspection (under Rule 29 of 1974 Regulations), (iv) appointing commissions for local investigation (u/s 45(1) of Slum Act read with Rule 31 of 1974 Regulations read with Order 26, Rules 9 and 10 of CPC). However, the Slum Tribunal has wrongly relied upon stray photographs and vague Google Earth images annexed to the Written Submissions filed by the Advocates of Respondent Nos. 4 to 9 which could not have been relied upon as evidence for the purposes of showing the circumstances existing at site and for rejecting the Report dated 27.08.2010 of the City Survey Officer, SRA.

16. On behalf of the Respondent Nos.4 to 9, it is interalia contended (and as stated in their Written Submissions) that there were no documents produced by Respondent No.2 (SRA) before the Slum Tribunal except incomplete Survey Report, which is cryptic and perverse and not factual. In the incomplete Survey Report no Map was annexed by Respondent No. 2 (SRA) before the Slum Tribunal. It is contended that all the basic amenities and infrastructure are available at the site for 5 chawls of the tenant/occupants who are members of the Respondent No.4 Society and there was no justification for Respondent No.2 (SRA) to envelope CTS Nos.371 and 374 to declare and notify it as slum

rehabilitation area. It is further contended that the SRA Report is not reflecting the factual and actual position at site and the inquiry and the Report are vague, cryptic and perverse. It is stated that Respondent No.2 (SRA) who is the custodian of the record and proceedings pertaining to the inquiry has purposely not produced the entire records before the Slum Tribunal and it has only produced the incomplete survey Report dated 27.08.2010 and official submission made thereon and the Respondent No.2 (SRA) has purposely suppressed the survey map for reasons best known to them, even though it is specifically mentioned in the survey Report that such map has been prepared by the Surveyor and the Report does not mention about CTS No. 374 at all. It is contended that the entire exercise has been stage-managed by the Petitioner in collusion and the officers of the Respondent No.2 (SRA) have merely acted at the instance of the Petitioner.

17. The heart of the matter really is whether circumstances exist in respect of the subject area which justify the Declaration under section 3(C)(1). Section 3(C)(1) reads as follows:

“3(C)(1) As soon as may be after the publication of the Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied that circumstances in respect of any area justifying its declaration as slum rehabilitation area

under the said scheme, may be an order published in the Official Gazette, declare such area to be a “slum rehabilitation area”. The order declaring slum rehabilitation area (hereinafter referred to as “the slum rehabilitation order”), shall also be given wide publicity in such manner as may be specified by the Slum Rehabilitation Authority.”

Under sub-section (2) of Section 3C, any person aggrieved by the slum rehabilitation order may, within four weeks of the publication of such order prefer an Appeal to the Special Tribunal, and the decision of the Special Tribunal shall be final.

18. It is not in dispute that the entire record was not produced by the SRA before the Slum Tribunal and the City Surveyor Officer's Report was found allegedly lacking in details and particulars. In these circumstances, there were various courses open to the Slum Tribunal as rightly contended by the Petitioner including calling for additional evidence, conducting local inspection (under Rule 29 of 1974 Regulations), appointing commissions for local investigation (u/s 45(1) of Slum Act read with Rule 31 of 1974 Regulations read with Order 26, Rules 9 and 10 of CPC. The Slum Tribunal, however, has wrongly placed reliance upon photographs and Google Earth images annexed to the Written Submissions filed by the Advocate of Respondent Nos.4 to 9

which could not have formed the basis and used as evidence for the purposes of concluding that the circumstances for issuance of the Declaration u/s 3(C)(1) did not exist in respect of the subject site and for rejecting the Report dated 27.08.2010 of the City Survey Officer, SRA. It is also not disputed by the Respondent Nos.4 to 9 that the Deputy Collector's Report dated 30-08-2010 has not been considered and dealt with by the Slum Tribunal at all.

19. Moreover, it is seen that the Slum Tribunal in the impugned order has considered entirely irrelevant factors such as the title of the Petitioner, the tenancy rights of the members of the Respondent No. 4 Society, 70% consent of the members of the Respondent No. 4 Society and other factors which are factors required to be looked into only at post-Declaration stage (i.e the stage of implementation of the Scheme), which factors were non-germane to the issuance of the Declaration under section 3(C)(1) of the Slum Act.

20. In light of the above discussion and taking an overall view of the matter and in the interest of justice, I am inclined to remit the matter back to the Slum Tribunal. Hence, I pass the following order:

- (i) the impugned order of the Slum Tribunal is set aside and the matter is remitted back to the Slum Tribunal for consideration afresh;
- (ii) since whether or not factual circumstances exist at the subject site so as to justify the Declaration as slum rehabilitation area u/s 3(C)(1) is the principal and fundamental issue involved, it would be open for the Slum Tribunal to direct the City Survey Officer and Deputy Collector to visit the subject site and prepare their further Reports bringing on record the entire details and particulars and/or issue such appropriate directions and/or adopt such course as it thinks fit, which would facilitate the Slum Tribunal in arriving at its conclusions/decision;
- (iii) The Respondent No. 2–CEO, SRA shall ensure that the entire record and files leading to the Declaration u/s 3(C)(1) are produced before the Slum Tribunal;
- (iv) It is clarified that the parties and the Slum Tribunal shall confine themselves/itself to the issues germane to the issuance of the

Declaration u/s 3(C)(i) alone and not go into the issue of title of the Petitioner or the issue of tenancy rights of the members of the Respondent No.4 Society or the issue of 70% consent of the members of the Respondent No.4 Society or such post-Declaration factors. The statement of the learned Senior Counsel for the Petitioner is recorded that the Petitioner does not press the issue of locus of the Respondent Nos. 4 to 9 to file the Appeal;

- (v) It is further clarified that the fact that the Respondent No. 2 – CEO, SRA did not visit the subject site “personally” shall not be a ground to set aside the Declaration;
- (vi) The Appeal shall be decided expeditiously and preferably within 6 months from the date on which a copy of this order is placed before the Slum Tribunal;
- (vii) Until the Appeal is decided the interim order dated 14 March 2013 granted by this Court shall continue to operate. The statement of the learned Senior Counsel (upon of

pronouncement of this order) is also recorded that the Petitioner shall abide by their Statement as recorded in the order dated 27 June 2014 till the disposal of the Appeal.

21. The Writ Petition shall stand disposed of in the aforesaid terms. There shall be no order as to costs. The Notices of Motion shall also stand disposed of in view of the disposal of the Writ Petition.

(A.A. SAYED, J.)