

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

WRIT PETITION NO. 2110 OF 2014

1. Pratapsinh Shoorji Vallabhdas	}	
	}	
2. Dilipsinh Shoorji Vallabhdas	}	
	}	
3. Smt. Jyotsna W/o. Vikramsinh	}	
Shoorji Vallabhdas	}	
	}	
4. Smt. Jayalaxmi gopalji Virji	}	
Ganatra Damayanti Virji	}	
	}	
5. Damayanti Virji	}	
	}	
6. Kalyanji Aliaas Arunkumar	}	
Purshottam Bhanji	}	
	}	
7. Vasantkumar Purshottam	}	
Bhanji	}	
	}	
8. Saraswati, wife of Prahladrai	}	
Kheraj	}	
	}	
9. Damayanti, wife of Liladhar	}	
Kanji	}	
	}	
10. Mr. Raja babulal Majethia	}	
	}	
All adults, Indian Inhabitants	}	
having their address at Bhandup	}	
Estate, 707 Parmeshwari Centre,	}	
18 Dalmia Estate, Mulund West,	}	
Mumbai 400 080.	}	Petitioners

versus

1. State of Maharashtra	}
through the Government Pleader,	}
PWD Building, Ground Floor,	}
High Court, Mumbai - 400 023.	}

2. Deputy Collector,
(Encroachment and Removal)
and Competent Authority,
having his office at Topiwalla
College Building, Ground floor,
Dr. Sarojini Naidu Road,
Mulund (W), Mumbai - 400 080
3. Additional Collector
(Encroachment and Removal)
and Competent Authority,
having his office at Industrial
Assurance Building, First Floor,
Opp. Churchgate Station,
Mumbai - 400 020
4. Chief Executive Officer,
Slum Rehabilitation Authority
(SRA), Having his office at Slum
Rehabilitation Authority
Building, Anant Kanekar Road,
Bandra (E), Mumbai - 400 051
5. Mumbai Municipal Corporation
Having its office at Mahapalika
Marg, Fort, Mumbai - 400 001.
6. Sai Chaya Co-op. Housing
Society (Proposed),
Through its Secretary,
Sai Chaya Chawl, Anthony
Church Road, Patkar Compound,
Bhandup (W), Mumbai - 400 078

Respondents

Dr. Milind Sathe - Senior Advocate with
Mr. Pradeep Thorat, Mr. Shailesh Poria,
Mr. Swapnil Gupte i/b. M/s. Hariani and
Co. for the petitioners.

Mr. Milind More - Additional Government
Pleader for respondent no. 1.

Mr. P. K. Dhakephalkar - Senior Advocate
with Mr. Jagdish G. Reddy (Aradwad) for
respondent no. 4.

Mr. S. G. Surana i/b. Mr. Madhur Surana
for respondent no. 6.

**CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

**Reserved on 23rd June, 2016
Pronounced on 16th September, 2016**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. Heard the learned counsel appearing for the parties. Rule. Respondents waive service. By consent, Rule made returnable forthwith.

2. Now a days, we find that the landholders/owners of huge tracts of land in Mumbai City and Suburban Districts, leave them open, unguarded, unprotected and unsecured, allow them to be encroached and after they are encroached, structures are erected, which are nothing but huts and slums, they go on increasing, these and such other owners approach this court and complain that they are not responsible for the plight of the occupants of these slums. They are not responsible for endangering and threatening public health and safety. Though they neglect their own properties, but when their value in the market increases and they command a huge price, these so called owners resist acquisition of the land and assure the authorities and the court that they would improve the lot of these slum-

dwellers and rehabilitate them. Behind such owners are builders and developers looking out for an opportunity to cash on and exploit the potential of these huge lands. It is this modus operandi which has brought about a situation of indiscriminate and unregulated, uncontrolled construction activity especially in the suburbs of Mumbai. The pressure on existing already inadequate amenities, no breathing space, no playgrounds or parks and overcrowding, congestion and total breakdown of essential services. Those looking out for gains and profits have nothing but a lip sympathy and the real intent is to somehow or other get back these properties or obtain their release thereof from acquisition. The State acquires them so that those languishing in slums obtain a decent housing accommodation and thereafter not only their life can be improved but public health and public safety is equally protected. That is protected by obtaining for such slum dwellers the basic amenities, from which they were deprived for decades together. No inbuilt toilet, no clean drinking water, no light, no ventilation, no roads, no health care facilities till date, but all this can be provided with private participation and their rehabilitation is the real purpose of this acquisition. Such a measure and specially by the welfare State is sought to be defeated by raising technical objections and challenges.

3. By this petition under Article 226 of the Constitution of India, the petitioners pray for issuance of a writ of certiorari or any other writ, order or direction in the nature thereof calling for the records and proceedings in respect of acquisition of the area of land, more particularly described in prayer clause (a) of the writ petition leading to the issuance of a notification dated 3rd April, 2014 under the provisions of section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as “the Slum Act”) and upon scrutinising the same for its legality and validity, legality, quash and set aside the same.

4. The next relief sought is of issuance of a writ of mandamus or any other writ, order or direction in the nature thereof directing respondent nos. 1 to 6 to follow the due process of law and appoint the petitioners as Builders and Developers for development of the slum on the entire area, more particularly described in prayer clause (a).

5. Finally, a writ of certiorari is claimed to call for records and proceedings in relation to a notice dated 7th March, 2012 issued under the provisions of section 5 of the Slum Act and after considering its legality and validity to quash and set aside the same.

6. These reliefs are sought in the following facts and circumstances:-

7. The petitioners state that the competent authority of Kurla-1 Sub Division issued Notification No. SLM. 1077/5280/G dated 30th June, 1977 under the provisions of Section 4(1) of the Slum Act, *inter alia*, declaring the said land along with several of the parcels of land in village Bhandup as “slum area”. The petitioners state that the area reflected against CTS No. 82 in the notification was shown as 5414.4 square meters instead of 45,414 square meters, which was the actual area. The petitioners state that the fact that there has been error in notification dated 30th June, 1977, noticed by the petitioners at the time when one Milind Nagar Co-operative Housing Society (proposed), a proposed society of occupants of a portion of the said larger property approached respondent no. 2 Deputy Collector requesting respondent no. 2 to declare the entire said larger property as “slum” instead of portion of land being 5414.4 square meters and further requested to issue necessary corrigendum vide their application dated 12th February, 2009 and 4th June, 2009 for rectifying the area of said land in the notification dated 30th June, 1977.

8. The petitioners state that it appears that by a letter dated

8th February, 2009, respondent no. 6 approached the Deputy Collector (Encroachment and Removal) and Competent Authority, Bhandup i.e. respondent no. 2 with a request to declare the said land admeasuring 3747.384 square meters as “slum” and that the said land be acquired for the purpose of redevelopment.

9. The petitioners state that respondent no. 2 Deputy Collector (Encroachment and Removal) and Competent Authority, Bhandup forwarded the application to respondent no. 3 Additional Collector for initiating necessary steps to have the said land declared as a “slum” and for acquisition of the same under Section 14(1) of the Slum Act. The petitioner had, before that, filed their objections to the undated application through its letter dated 8th December, 2009 with respondent no. 2. The petitioners brought to the notice of respondent no. 2 that the petitioners are the owners of the said larger property including the said land and that there appears to be a discrepancy in the notification dated 30th June, 1977 when only an area of 5414.4 square meters was declared as “slum” instead of the actual area of 45,414.4 square meters and also pointed out that Milind Nagar Co-operative Housing Society (proposed) had applied to the Deputy Collector for issuing a corrigendum in the larger interest of slums on CTS No. 82 of village Bhandup. The petitioners stated that they have

no objection if the said larger property of CTS No. 82 is declared as a slum, however they have strong objection to any steps taken towards acquisition of the said land under Section 14(1) of the Slum Act. The petitioners also stated that the petitioner had never received any communication/correspondence from respondent no. 6, namely, Sai Chaya Co-operative Housing Society (proposed) in respect of the redevelopment of said land under the Slum Rehabilitation Scheme.

10. The petitioners stated that thereafter on 29th June, 2011 respondent no. 1 issued a notification under the provisions of Section 4(1) of the said Slum Act, *inter alia*, declaring CTS Nos.82, 82A, 82/2 to 82/5, having an area admeasuring 3747.384 square meters, out of the said larger property, as slum.

11. The petitioners state that respondent no. 2, thereafter, issued notice dated 23rd February, 2012 under Section 14(1) of the Slum Act to the petitioners and 17 others, thereby intimating that hearing would be held on 1st March, 2012 in the matter of acquisition of lands, namely CTS Nos. 82, 82A, 82/2 to 82/5 of village Bhandup, taluka Kurla, Mumbai Suburban District. The petitioners thereafter filed their objections dated 1st March, 2012, *inter alia*, stating that the petitioners are the owners of the lands, namely CTS Nos. 82, 82A, 82/2 to 82/5 and the petitioners intend

to develop the larger property including the said land. The petitioners also called upon respondent no. 2 to furnish them a copy of the letter dated 19th January, 2012 of the Additional Collector as well as documents submitted by respondent no. 6 to enable the petitioners to give their detailed and comprehensive say in the matter.

12. Respondent no. 2 issued notice dated 7th March, 2012 purported to be under Section 5 of the Slum Act to the petitioners, *inter alia*, stating that lands bearing CTS Nos. 82, 82A, 82/2 to 82/5 are declared as “slums” by notification dated 29th November, 2011. Respondent no. 2 sought information from the petitioners regarding repairs and/or management of the lands bearing CTS Nos. 82, 82A, 82/2 to 82/5 and called upon the petitioners to reply to the said notice within 15 days. From a reading of the notice, it appears to be issued under the provisions of Section 5C(1) of the Slum Act, which provides that at least 30 days time has to be granted for executing works of improvement. However, the notice of 7th March, 2012 called upon the petitioners to respond within 15 days, failing which, further action under section 6(1) will be initiated. The petitioners further state that it is pertinent to note that as the matter was closed for report under section 14(1) on 20th March, 2012, namely, within 13 days of

issuance of notice under Section 5(1) and hence the petitioners could not even file their say to the notice under section 5C(1) of the Slum Act.

13. The petitioners, on 20th March, 2012, filed their detailed written say dated 13th March, 2012 in the proceedings before respondent no. 2 in Application No. S.R. 49 of 2012 filed by respondent no. 6 Sai Chaya Co-operative Housing Society (proposed). The petitioners reiterated the grounds as stated by them in their written reply dated 8th December, 2009, once again pointing out that the petitioners are the owners of the said land and that the petitioners themselves intend to develop the entire said land. The petitioner also pointed out the fact that the applicant therein, namely respondent no. 6 society had admitted that their chawls were unauthorised.

14. The petitioners state that respondent no. 2, thereafter, prepared survey report dated 30th April, 2012 and forwarded a copy of the same to respondent no. 3, *inter alia*, explaining the status of the land admeasuring 3747.384 square meters required to be acquired for respondent no. 6 society (proposed). The petitioners were not intimated about the preparation of the report and were not aware of the same until the same was obtained under the Right to Information Act, 2005. The petitioners state

that according to the said report, the land admeasuring 3747.384 square meters falls in residential and special industrial zone and is reserved for housing of dis-housed in the revised sanctioned development plan for the city of Mumbai. The petitioners state that respondent no. 2 mentions in his report that the petitioners intend to develop the said land, however, the slum dwellers are not co-operating with them. Despite this, respondent no. 2, relying on the oral statement on behalf of respondent no. 6 society (proposed), despite the clear willingness of the petitioners and in contravention of provisions of Section 3(B), made a recommendation that there appears no hurdle in acquisition of the said land.

15. The petitioners state that, thereafter, respondent no. 3 issued notice dated 28th May, 2012 under the provisions of Section 14(1) of the Slum Act, *inter alia*, calling upon the petitioners and 16 others along with other interested persons to submit their objections to the acquisition of the land admeasuring 3747.384 square meters under the Slum Act within 15 days from the publication of the notice. The petitioners filed their reply on 22nd June, 2012, *inter alia*, objecting to the acquisition of the said area of 3747.384 square meters out of the total area of 45,414.4 square meters on several grounds, chiefly on the ground that the

petitioners being the owners of the said land, intended to develop the said land along with the entire larger property. The petitioners also made the prayer to direct respondent no. 6 to co-operate with them in consolidated development of the entire CTS No. 82 along with the said land.

16. The petitioners state that they filed their additional written say dated 17th July, 2012, the receipt of which is also acknowledged by Chief Promoter Pratap Laxman Sawant before respondent no. 3, *inter alia*, reiterating that the petitioners are the owners of the said land and that the petitioners themselves intended to develop the entire land. The petitioners also pointed out that the purported notice issued to the petitioners is bad in law and without complying with the provisions of section 5(1) of the Slum Act, the proceedings under section 14(1) for acquisition had been wrongfully initiated. The petitioners further state that they filed pursis before respondent no. 3 on 12th September, 2012 contending that their written reply dated 20th June, 2012 and further reply dated 17th July, 2012 be considered as petitioners' written submissions and arguments.

17. The petitioners state that respondent no. 3 thereafter submitted their letter/report dated 4th October, 2012 to the Principal Secretary, Housing Department, of respondent no. 1

regarding acquisition of lands bearing CTS Nos.82, 82A, 82/2 to 82/5 and admeasuring 3747.384 square meters under Section 14(1) of the Slum Act making one sided recommendation that considering the facts there appears no obstacle in acquisition.

18. The petitioners state that respondent no. 3 sent its letter/report dated 2nd November, 2012 to the Desk Officer, Housing Department of respondent no. 1. On perusal of the letter, it appears that respondent no. 3 had submitted the proposal on 4th October, 2012 to respondent no. 1 and whereby, respondent no. 1 had sought clarification on 13 issues and required respondent no.3 to submit revised proposal. Respondent no. 3 has stated in the letter that the society, namely, respondent no. 6 has submitted its clarifications on issues, on 21st October, 2012 and accordingly the letter/report is submitted. The petitioners state that no clarification was ever sought from the petitioners. The letter/report further mentions that newspaper advertisement with respect to property, namely, CTS Nos. 82, 82A, 82/2 to 82/5 admeasuring 3747.384 square meters had been published in two newspapers. The petitioners state, on perusal of clause (1) of the said report dated 2nd November, 2012, that it has been clearly mentioned that land owners, namely, the petitioners have informed that they are ready to develop the said land under the

Slum Rehabilitation Scheme. The petitioners state that in fact respondent no. 6 and its members were not co-operating with the petitioners for redevelopment of the said land. Respondent no. 3 once again made the one sided recommendation in contravention of provisions of section 3(B) of the Slum Act stating that there appears to be no objection in acquisition of the said land.

19. The petitioners state that, thereafter, respondent no. 4 the Chief Executive Officer, Slum Rehabilitation Authority (SRA) issued notice dated 14th March, 2013 informing the petitioners that hearing had been fixed on 22nd March, 2013 for considering the objections to acquisition of land bearing CTS Nos. 82, 82A, 82/2 to 82/5 admeasuring 3747.384 square meters. The petitioners submitted their written say dated 20th April, 2013 to respondent no. 4 reiterating the same set of facts as stated in the written say submitted before respondent no. 2.

20. The petitioners further state that respondent no. 6 Society also filed its reply dated 17th May, 2013 before respondent no. 4. The petitioners filed their rejoinder dated 23rd May, 2013 to the reply of respondent no. 6 society, *inter alia*, stating that members of respondent no. 6 society were encroachers on the land and the petitioners had not constructed any structure on the said plot admeasuring 3747.384 square meters as alleged by respondent

no. 6. The contention of respondent no. 6 that it had already entrusted the development of the said property to a builder clearly shows the intention of respondent no. 6 society to redevelop the land through some other private builder, thus depriving the owners/petitioners of their right and entitlement to undertake redevelopment of the said land. The petitioners once again reiterated their willingness to redevelop the entire land and stated that the petitioners are already carrying on redevelopment of certain adjoining lands which are declared as slum and hence, the said land can also be redeveloped under the Slum Act by the petitioners.

21. The petitioners state that respondent no.4, thereafter, submitted a letter/report dated 11th June, 2013 to the Principal Secretary, Housing Department of respondent no. 1 regarding acquisition of lands bearing Survey Nos. 82, 82A and 82/2 to 82/5 and admeasuring 3747.384 square meters under Section 14(1) of the Slum Act, making one sided recommendation that the members of respondent no. 6 are the protected hutment dwellers and they have legal right to develop the said land.

22. The petitioners state that, thereafter, respondent no. 1 issued impugned notification dated 3rd April, 2014 with respect to part of the said larger property bearing CTS Nos. 82, 82(A), 82/2

to 82/5 admeasuring 3747.384 square meters under Section 14(1) of the Slum Act.

23. It is in the above facts and circumstances that the reliefs prayed and referred above in details are sought.

24. An affidavit in reply has been filed on behalf of respondent no. 4 SRA, in which, firstly, it is contended that it is doubtful whether the present petitioners are the exclusive owners of the said Bhandup estate. Relying upon a mutation entry of the year 1969, it is claimed that name of one Ratansi Karsandas and 18 others are shown in the record of rights. It is difficult to ascertain whether all these are alive or dead. If the present petitioners are the heirs of the deceased land holders, then, they ought to come forward with definite proof. Presently, there is nothing on record to show that any succession certificate or letters of administration in respect of the Bhandup property has been obtained. It is claimed that there are certain power of attorney holders, but having found that the record reflects several names, each one of them ought to have been joined as party petitioner and if he/she is not alive, the persons claiming through or succeeding them ought to be disclosed. Having not done so, there is a cloud on the title of the petitioners, that on this short ground, the writ petition deserves to be dismissed. Once the petitioners

are claiming to be land holders of larger portion of the plot of land CTS No.82 of village Bhandup, which itself would show that they are not owners/holders of the total land. They cannot challenge the acquisition notification of the said plot of land.

25. It is then contended that there are number of slum dwellers, who are the affected parties, but they are not joined as respondents to the writ petition. It is then claimed that this plot of land is already vested in the State and in view of the request of the slum dwellers and occupants, it was declared as a slum, earlier. A large plot of land, namely, 25414.4 square meters has been declared as slum area vide notification dated 30th January, 1977. However, the area under acquisition is 3747.384 square meters from CTS Nos. 82/A/1A, 82/1 to 5. That has been again declared as a slum vide notification published in the Government gazette. That declaration of slum dated 30th June, 1999 and 10th August, 2011 has not been challenged and until and unless it is set aside, no relief can be granted to the petitioners.

26. It is then stated in the affidavit in reply that in pursuance of the amendment by the Maharashtra Act No. XI of 2012 on 19th June, 2012, if the Chief Executive Officer has submitted report in order to carry out the development under the Slum Rehabilitation Scheme, including the adjoining or surrounding area, the

Government can acquire the land under Section 3(D)(c)(i) of the Slum Act on the basis of representation to the Chief Executive Officer of SRA.

27. It is further submitted that the land has already been vested with the State Government and the State of Maharashtra is having complete control over the said land due to notification dated 3rd April, 2014 under Section 14(1) of the Slum Act. Upon publication of the notification under Section 14(1), the land completely vests in the Government and the owners are having right to claim compensation only when the acquisition is for public purpose.

28. It is further submitted that there are in all 221 slum dwellers. Out of the said 221 slum dwellers, 210 slum dwellers have given consent to develop the said property. Therefore, majority of the slum dwellers are interested in developing the said property.

29. It is further submitted that during the period of 32 to 35 years, the landlords did not look after the basic amenities and facilities for the slum dwellers. Therefore, there was no alternative before the slum dwellers but to develop the said property through their own society. There are more than 90%

hutment dwellers who were behind the developer to redevelop the property. The present petitioners have not made them party in the present petition and seeking the order against the wish and will of the said majority of the hutment dwellers.

30. It is further submitted that the petitioners themselves have admitted in the petition that the competent authority – Kurla-1 Sub-Division issued Notification No. SLM-1077/5280/G on 30th June, 1977 under the Slum Act. In spite of the declaration of the slum, the petitioners have not challenged the declaration of the slum before the appropriate authority.

31. It is stated that the office of Deputy Collector (Encroachment and Removal) as well as the competent authority had raised queries to the petitioners and asked them that (i) whether they have filed an appeal before the Slum Tribunal challenging the notification of slum issued by the Government; (ii) Further it was specifically asked that what amenities and facilities were provided by them to the occupants of the said area being the landlords/owners of the plot of land; (iii) whether facilities of water tap, construction of gutters for passing sewers and rain water is provided; (iv) whether provision of urinals, toilet, public bathrooms are made; (v) whether the existing roads, length and path have been properly made and fresh demarcation

is done in order to make flooring etc.; (vi) whether the area is properly leveled; (vii) whether there is a proper development of garden, recreation ground, welfare centre, community hall, school, dispensary, police station, fire brigade stations are provided in the said area. However, there was no positive reply from the petitioners.

32. It is further submitted that the petitioners were not having any information and therefore, no satisfactory explanation was given by the petitioners. The Chief Executive Officer perused the report submitted by the Additional Collector and was satisfied that the Additional Collector (Encroachment and Removal), Eastern Suburban issued public notice on 28th May, 2012 to the concerned land owners, also published the public notice on 2nd June, 2012 in the local news papers. Therefore, after thorough inquiry, it is found that it will be proper and in the interest of majority of occupants to acquire the land and therefore, he submitted the report to the Government for the acquisition of the said area dated 11th June, 2013. The Chief Executive officer found that there were in all 221 huts and their family members are residing in absolutely inhabitable and unhealthy conditions and the landlords of the premises are not looking after the interest of the occupants. No amenities and facilities are given for

human habitation to those persons and therefore, the said area admeasuring 3747.384 square meters was again declared as a slum pursuant to notification dated 4th August, 2011.

33. It is further stated that it is also observed by the Chief Executive Officer, on the basis of the report submitted by the Additional Collector that out of 221 hut holders, 210 hut holders have no objection for the Slum Rehabilitation Scheme. Accordingly, said 210 hut holders have given their consent letters for the scheme, that means, more than 95% hut holders were in favour of the land acquisition.

34. It is further stated that the said Sai Chaya Co-operative Housing Society applied to the Additional Collector (Encroachment and Removal), Eastern Suburban on 27th July, 2011 to acquire the said land for redevelopment. The said office sent the proposal to the Deputy Collector (Encroachment and Removal), Bhandup for inquiry and detailed report. The Deputy Collector (Encroachment and Removal), Bhandup submitted report to the Additional Collector (Encroachment and Removal), Eastern Suburban on 30th April, 2012 after giving notice to land owners under section 5(1) of the Slum Act. The Additional Collector (Encroachment and Removal), Eastern Suburban issued public notice in the local newspaper (Samna and DNA) dated 2nd

June, 2012. The notices were issued to all the concerned persons, including the present petitioners. Hearings were conducted on 17th July, 2012, 17th August, 2012, 29th August, 2012 and 12th September, 2012. The petitioners were present at the time of hearing before the Additional Collector (Encroachment and Removal), Eastern Suburbs. They raised their objection for land acquisition. The main contention was they would develop the land as owners. The Additional Collector (Encroachment and Removal), Eastern Suburbs submitted report to the Government about acquisition of the said land on 4th October, 2012.

35. It is further stated in the reply affidavit that in the Slum Act, the basic provision in Section 14(1) was as follows:-

“To execute any work of improvement in relation to any slum area or any building in such area or to redevelop any clearance area, it is necessary that any land within adjoining or surrounded by any such area should be acquired.”

36. The Slum Act has been amended by Maharashtra Act No.XI of 2012 on 19th June, 2012. The amendment is as follows:-

“To execute any work of improvement or to redevelop any slum area or any structure in such area, it is necessary that such area or any land within adjoining or surrounded by any such area should be acquired.”

37. To acquire the land for the rehabilitation of the slum dwellers, the amendment was made by Maharashtra Act No. VI of 1997 in section 14(1) of the Slum Act. The amendment is as

follows:-

“Where on any representation from the Chief Executive Officer, it appears to the State Government that, in order to enable the Slum Rehabilitation Authority to carry out development under the Slum Rehabilitation Scheme in any slum rehabilitation area”

38. To implement the slum rehabilitation scheme, the Chief Executive Officer of SRA has been empowered to send representation to the Government to acquire the land under section 3(D)(c)(i) of the Slum Act. As such, the Government of Maharashtra directed the Chief Executive Officer of SRA vide its letter dated 15th February, 2013 to send the representation in case of land acquisition cases which were forwarded by the competent authority (Additional Collector) directly to the Government. The Government forwarded 20 proposals to the Chief Executive Officer of SRA for making a report about the acquisition pursuant to the above said amendment.

39. It is further stated that in the present case, the Chief Executive Officer of SRA issued the notices under Section 14(1) of the Slum Act to all the concerned persons. The notices were served on concerned persons under Section 36 of the Slum Act. The notice was issued to the petitioners on 14th March, 2013. The hearing was conducted on 22nd March, 2013, 6th April, 2013, 20th April, 2013 and 17th May, 2013. Advocate Mr. Kakade was

present on behalf of the petitioners on 22nd March, 2013. Advocate Mr. Tare was present on behalf of the petitioners on 6th April, 2013, 20th April, 2013 and 17th May, 2013. Advocate Tare submitted objection of the landlords for the acquisition. The main objections were as follows:-

(a) The land owners are willing to redevelop the said land under Slum Rehabilitation Scheme. The SRA should give necessary instructions to the Sai Chaya Co-operative Housing Society to approach the landlords for redevelopment.

(b) The Deputy Collector (Encroachment and Removal), Bhandup has given notice dated 7th March, 2012 under Section 5(1). The period to raise the objection was fifteen days instead of thirty days.

(c) The notice under Section 14(1) by the Additional Collector (Encroachment and Removal) has been issued without compliance of the provisions and procedure under section 5 of the Act.

40. In respect of the above objections, it is stated in the reply affidavit that:-

(a) The application submitted by Sai Chaya Co-operative Housing Society, along with the report of the Additional Collector submitted to the Government was forwarded to the SRA to send the report to the Government under section 14(1) of the Slum Act. Section 14(1) of the Slum Act has been amended. The State Government can acquire the land

for the Slum Rehabilitation Scheme on the basis of report of the Chief Executive Officer.

(b) The Slum Act has been amended in 1997. As per the amendment, Sections 4, 5, 6, 7, 8, 9, 10 and 11 of the Slum Act have been deleted. To send the report to the Government to acquire the land for the rehabilitation scheme, the Chief Executive Officer is not required to issue notice under section 5 of the Slum Act.

(c) To acquire the land for the implementation of the rehabilitation scheme, the report of the chief Executive Officer, SRA only has to be considered by the Government as per amendment in the Slum Act in 1997.

(d) The Chief Executive Officer, SRA has issued notice in writing to the petitioner and other concerned persons why their land should not be acquired for the rehabilitation scheme. The landlords failed to submit the scheme of rehabilitation of slum dwellers to the Chief Executive Officer, SRA. As such, to implement the scheme of rehabilitation of slum dwellers, residing on the area which has been declared (slum area) in 2011, the Chief Executive Officer, SRA sent report to the Government on 11th June, 2013 to acquire the said land. Accordingly, the Government has decided to acquire the said land vide notification dated 3rd April, 2014 under section 14(1) of the Slum Act.

41. It is further submitted that the Chief Executive Officer also had observed that public notice under Section 14(1) under the

Slum Act has been issued through the news paper. The concerned landlords/owners were issued notices for the acquisition of the land. After the notices being issued, some of the landlords have forwarded their objections in respect of the acquisition of the property CTS Nos. 82, 82(A), 82/2 to 5. So far about one of the property owner, namely, Mr. Prasad Vinayak Walawalkar, made it clear that he doesn't have objection for the land acquisition excluding his plot of land Survey No. 232B admeasuring 2500 square yards in CTS No. 82A.

42. It is further stated that out of the said area of CTS No. 82A/1, the area admeasuring 42338.08 square meters is being occupied by some of the occupants. Out of the said area, about 717 square meters from CTS Nos. 82A/1 to 2 and 82/1C is under the ownership of M/s. Alpack Pvt. Ltd. Mr. Shri Naresh Rawal the director of the company gave his no-objection for the acquisition of the land excluding the aforesaid area.

43. It is further stated that after the notices were issued by the Additional Collector, the landlords, namely, Mr. Ratansi Karsandas and 16 other owners of the Bhandup property raised the objection. Accordingly, proper hearing was given to them on 22nd March, 2013, 6th April, 2013, 20th April, 2013 and 17th May, 2013. It was the basic submission of the landlords that they are

the lawful owners of CTS Nos. 82, 82A, 82/2 to 82/5 and they are having their own Slum Rehabilitation Scheme and therefore, they themselves are interested to develop the said property. Therefore, they have objection for the land acquisition. According to them, they have got their own joint venture with the group of land owners (Marathon Realty Pvt. Ltd.) and therefore, they may be permitted to develop the property. It is also pointed out by them that the property owned by them is occupied by the chawl holders illegally and the said hutment dwellers did not approach them for the development of the property. Therefore, it is submitted by the landlords that the proposal of land acquisition is required to be cancelled.

44. It is further submitted in the reply affidavit that on behalf of respondent no. 6 Sai Chaya Co-operative Housing Society, it was stated that they are residing in the said slum area for number of years, however, there are no amenities and facilities provided by the landlords and therefore, they are residing absolutely in inhabitable and unhygienic conditions, hence, they have formed the co-operative society and made representation to the Government and therefore, the Government declared the said area as a slum. Since no facilities of proper roads, lanes, electricity supply and drainage system were available, there was

no alternative except the declaration of the property as slum. They have submitted the proposal to the State Government and also requested the landlord, however, there was no consent from the landlords for the redevelopment and therefore, the Additional Collector (Encroachment and Removal) has made recommendation for the acquisition of the land under Section 14(1) of the Slum Act. It is further submitted that the land owners do not want to make redevelopment, otherwise they would have shown their interest immediately before the declaration in the gazette dated 30th June, 1977 or immediately thereafter. However, for a period of more than 32 to 35 years, the landlords remained idle inactive and hence, the land is required to be acquired by the Government for the slum dwellers' rehabilitation.

45. It is further submitted that after considering all the objections and suggestions by all the concerned interested parties, including the slum dwellers, land owners etc. and the report from the Deputy Collector, the Chief Executive Officer, SRA observed that the demand of hut holders is genuine as the area admeasuring 3747.384 square meters is declared as a slum area and the hut holders are demanding their rehabilitation. They are protected hut holders and therefore, they are entitled to move for

redevelopment on their own. Under these circumstances, the Chief Executive Officer, SRA forwarded a proposal to the Government for acquisition of total area admeasuring 3747.384 square meters out of CTS Nos. 82A/1A, 82/2 to 82/5 at village Bhandup, taluka Kurla.

46. In view of the said recommendation from the office of the Chief Executive Officer, the State Government decided to acquire the land as mentioned hereinabove. Before taking the decision of acquisition, it was found by the Government that appropriate notices were issued by the Chief Executive Officer, SRA to all the concerned parties. It is further observed that the Chief Executive Officer, SRA, Bandra also had submitted a report for the acquisition of the land and therefore, in order to carry out the development under the Slum Rehabilitation Scheme, the Government of Maharashtra has decided to acquire the said land in exercise of powers conferred under Sub-Section (1) of section 14 read with paragraph (A) of Sub-Clause (I) of clause (C) of Section 3D of the Slum Act.

47. Thus, the impugned action and the notification is justified on the ground that the same is initiated and concluded for protection of the interest of the occupants and slum dwellers. Once the landlords did not evince any interest, but the property

was neglected and for more than three decades that the State had to intervene and take the subject action. The land owners did not even furnish the scheme of redevelopment. Hence, there was no alternative for the Government but to acquire the land. It is in these circumstances that the notification under section 14(1) read with para (A) Sub-Clause (i) of Clause (c) of Section 3D was published on 3rd April, 2014. After publication of this notification in the Government Gazette, it was published in the local newspapers (English as well as Marathi). Even notices for determination of compensation were issued. It is in these circumstances that respondent no. 4 submits that the writ petition be dismissed.

48. We have also an affidavit on record filed by respondent no.6. There, it is contended that there is no substance in the writ petition. Once the slum dwellers' plight has been ignored and they are neglected by the petitioners claiming to be owners, then, the writ petition deserves to be dismissed.

49. There are two affidavits in rejoinder, which have been filed by the petitioners. The first affidavit in rejoinder deals with the reply of SRA respondent no. 4. In that, in paras 5, 6, 9 and 18, it is stated as under:-

"5. With reference to the paragraph NO. 3(i) of the

Affidavit-in-Reply, I deny that the present Writ Petition is not maintainable on the ground that it is difficult to understand from record that whether the present Petitioners are the exclusive owners of Bhandup Estate. I deny that the present Petition is not maintainable unless and until all the owners/holders are shown in the title of the Petition. I deny that the Petition is required to be dismissed on the ground of non-joinder of necessary parties and also for not mentioning exact description of the property as alleged or at all. I say that all constituents of Bhandup Estate are party Petitioners in the present Petition. In paragraph 1 of the Petition, it is clearly stated that Petitioners are co-owners of Bhandup Estate and known in revenue records as Ratansey Karsondas and Ors. Bhandup Estate came into effect as a result of grant by the East India Company i.e. United Company of Merchants of England, through the Collector of Salsette and Bombay to one Luke Ash Burner sometimes on or about 17 September 1803. By the year 1930, the ownership of Bhandup Estate was held by three individuals i.e. Shivji Raghavji, Sir Mathuradas, and Shoorji Vallabhdas. Upon the demise of Sir Mathuradas Vissanji, Shoorji Vallabhdas and Shivji Raghavji, the strength of Bhandup Estate by induction of their respective legal heirs and/or representatives, was increased and the Petitioners are the present constituents of Bhandup Estate.

6. With reference to the paragraph No. 3(ii) of the Affidavit-in-Reply, I deny that the Petitioners cannot challenge the notification of the said plot of land as they are not the holders of the total land as alleged. I deny that the Petitioners are not certain about their ownership right over the area of the plot of land as alleged. The Petitioners are owners of huge tracts of land in the revenue villages of Kanjur, Nahur and Bhandup including the subject land.

9. With reference to the paragraph Nos. 3(vi) to 3(vii) of the Affidavit-in-Reply, I deny that the Government can acquire the land under Section 3(D)(c)(i) of the Slum Act on the basis of representation to Chief Executive Officer, SRA as alleged. I deny that the owner is having only right to claim compensation as the land has already vested with the State Government. I deny that the Petition is not maintainable as 210 Slum Dwellers have given consent to develop the said property as alleged. As regards the contention that the slum dwellers are interested in developing the property, the Petitioners submit that it is consistently the case of the Petitioners that they are not only ready to develop but also entitled to develop the subject land. The Petitioners have all along stated that they are in a position to develop the land to the benefit of

the slum dwellers. There was therefore no occasion for the said land to be acquired by the State Government as is sought to be done. It however appears that another Developer is interested in developing the land, which the Respondent No. 6 Society is supporting and the process is abused for the benefit of a third party and to the detriment of the owner.

18. With reference to the paragraph Nos. 3(xxiii) and 3(xxiv) of the Affidavit-in-Reply, I deny that the Petitioners did not take any interest and kept the slum area as it is for more than four decades and therefore the land owners did not furnish their scheme of redevelopment. I deny that there was no alternative before the Government to acquire the land. I say that the Petitioners have always expressed their willingness to implement the Slum Rehabilitation Scheme on the said property. I say that however the Respondents have failed to consider the proposal of the Petitioners and only in order to support the cause of another Builder have proceeded to acquire the said property."

50. In the second affidavit in rejoinder, which deals with the reply filed by respondent no. 6, it has been stated that there is an attempt made by this respondent to snatch and take away the property of the petitioners at a nominal compensation. As far as the plight of slum dwellers is concerned, the petitioners state that they are ready to develop the property under the Slum Rehabilitation Scheme and as such respondent no. 6 ought not to have any objection in that regard. The mere fact that the sixth respondent is opposing development of the subject land by the petitioners establishes that respondent no. 6 and its office bearers want the land to be acquired for oblique motives. Thus, throughout, the stand is that the petitioners are ready and willing

to carry out redevelopment of their land. Rest of the affidavit in rejoinder is a denial of the statements in the reply affidavit and a reiteration of the averments in the writ petition.

51. It is on the above material that the rival contentions are based.

52. It is submitted by Dr. Sathe learned senior counsel appearing for the petitioners that the subject land is not declared as slum under section section 3C and, therefore, unamended provisions of Chapter III and Chapter IV of the Slum Act will apply to the present impugned acquisition. The declaration under section 14(1) of the Slum Act is vitiated for non-compliance with provisions of section 5(1).

53. Dr. Sathe submitted that section 14 provides that before an acquisition is made of any land, procedure under section 5 is required to be followed and is mandatory. He submitted that the provisions of section 5 are mandatory as held by this Court in the case of *Ramkali Sitaram vs. Deputy Collector, 2004 (3) Bom. C.R. 14 (para 10)*. This judgment has been confirmed by a Division Bench in the case of *Maruti Mane vs. Smt. Ramkali* [Appeal No. 324 of 2004, judgment dated 14/2/2011 (para 5)]. The Special Leave Petition against this judgment and order has been rejected

by the Supreme Court. Admittedly, in the instant case, there is no compliance with mandate of section 5 of the Slum Act.

54. Dr. Sathe submitted that respondent No.4 in his affidavit (page 220) has contended that the present acquisition proceeding is under Chapter I-A as amended by Maharashtra Act No.11 of 2012 and hence provisions of section 4, 5, 6, 7, 8, 9, 10 and 11, which stand deleted from chapter I-A, are not applicable. This submission is erroneous as the provisions of Chapter I-A will apply only on issuance of declaration under section 3C of the Slum Act.

55. He further submitted that in fact, a notice under section 5 was issued to the petitioners on 7th March, 2012 (Exhibit "E"/ page 59) to which the petitioners had applied on 13th March, 2012 (Exhibit "F" / page 64) and the said proceedings were dropped. The respondents, therefore, could not and ought not to have commenced action under section 14 of the Slum Act.

56. Dr. Sathe then submitted that the Division Bench in the order dated 14th February, 2011 in case of Maruti Mane has clearly observed that once there is a declaration under section 3C, scheme under sections 5 and 14 which is otherwise mandatory is deleted.

57. He further submitted that the present Slum Rehabilitation Scheme is contemplated under DCR 33(10) and for that purpose acquisition is sought to be undertaken under section 14(1) of the Slum Act.

58. Dr. Sathe further submits that the owner has preferential priority right to develop the Slum Rehabilitation Scheme and this right has been recognised in following judgments of this Court :-

(i) Anil G. Shah vs. State of Maharashtra, 2011 (2) BCR 93 (para 25) which reads as under :

“2.5 It has been the consistent stand of the petitioner that such an order was not issued. On the order having been published in the official gazette, the petitioner may not have the remedy of appeal as of now and knowing this position in law, he has pressed for the relief that owners of the suit plots must be given an opportunity to develop the slum area and rehabilitate the slum dwellers. Some of the slum dwellers have appeared before us and filed an affidavit supporting the proposal of the petitioner that he ought to be allowed in the first instance to undertake the Slum Rehabilitation Scheme.”

(ii) The Reserve Bank Employees Snehdhara Cooperative Housing Society Ltd. vs. State of Maharashtra, W.P. No. 91/2002, judgment dated 30/9/2014.

(iii) Twin Builders vs. State of Maharashtra, W.P. No. 474/2012, judgment dated 31/7/2014 (para 16).

59. He then submits that even section 13(1) of the Slum Act, on which the respondents rely, contemplates that the Slum Rehabilitation Scheme will be allowed to third party only if the land holders do not come forward with such a scheme. Even

section 12(1) also contemplates a priority right to the owner to develop the property.

60. Dr. Sathe submitted that DCR 33(10) also contemplates the right of the owner to redevelop the slum at the first instance. However, for submitting a slum scheme, it was incumbent to obtain prior consent of 70% of the slum dwellers.

61. He submitted that the SRA has now issued a Circular dated 9th November 2015, wherein it has relaxed the aforesaid condition and the owners of land which are occupied by slums can submit slum schemes without obtaining 70% consent from the slum dwellers.

62. He further submitted that the petitioners are ready and willing to implement the Slum Rehabilitation Scheme on the portion of land which is the subject matter of the impugned notification and extend all the benefits as permissible in law to eligible slum dwellers. He submitted that the petitioners valuable property rights are being violated.

63. Dr. Sathe has submitted that even after deletion of Article 19(1)(f) from Part III of the Constitution of India, the property right is recognised as valuable statutory right under Article 300A of the Constitution of India and the property, therefore, cannot be

acquired except in accordance with law. Dr. Sathe submitted that implicit in this is that the acquisition of property can be only for a public purpose and on payment of market compensation to the expropriated owner (not illusory compensation).

64. He further submitted that in the instant case, the acquisition of property would benefit only the developer which respondent No.6 would appoint. The land acquired under section 14 notification is 3747.384 square meters as against which the only obligation would be re-accommodating a maximum of 221 slum dwellers. The FSI of 3747.384 square meters would be 10,117.936 square meters (i.e. 3747.384 x 2.7). The balance area would be a bounty to respondent No.6 and the developer at the cost of the petitioners. As against it the petitioners would get a compensation of few thousand rupees. He submitted that such an exercise of eminent domain is clearly arbitrary, unjustified and wholly illegal as held by the Hon'ble Supreme Court in the case of *Royal Orchid Hotels vs. G.J. Reddy (2011) 10 SCC 608*.

65. Dr. Sathe further submitted that the Notification, as contended by the respondent, is under section 14(1) of the Act and according to them, is in compliance with both unamended and amended section 14. This assertion is factually untrue and illegally erroneous. The only procedure followed is starting with

notice under proviso to section 14(1) and then Notification of acquisition i.e. notices dated 20th May, 2012 and 14th March, 2013, followed by Notification dated 3rd April, 2014. There is admittedly no compliance with sections 5, 11, 12 and 13 and hence acquisition is invalid as held by this Hon'ble Court in a series of decisions. There is no report of the Competent Authority under sections 5, 11, 12 and 13. If the acquisition is undoubtedly only under amended section 14, which is evident from the last paragraph of the Notification which reads thus:-

“And whereas, as required by the proviso to sub-section (1) of section 14 of Chapter V read with Paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter 1-A of the said Act, on a representation dated 11th June 2013 from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, it appears to the State Government that in order to enable to Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme in the slum areas mentioned in column (4) of the said Schedule, should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 14 read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of the said Act, the Government of Maharashtra hereby declares, by his notice, that it has decided to acquire the said lands.”

66. Dr Sathe further submitted that the acquisition under amended section 14 as per Chapter 1-A, there has to be a declaration of the subject area as 'Slum Rehabilitation Area' as mandated by sections 3C, 3D and amended section 14 to be found

in section 3D. There is admittedly no declaration under section 3C.

67. Dr. Sathe then submitted that the contention urged relying on the judgment in the case of *Apurva Parikh v. SRA & Ors.* in Writ Petition No. 1965 of 2013 dated 15th April 2015 (Gavai & Gadkari, JJ) that since declaration under section 4 is not challenged since 1977, challenge to the acquisition is not maintainable. This submission is misconceived.

68. He further submitted that the declaration in respect of subject land under section 4 is not in 1977, but only on 22nd July, 2011 and immediately since then the present proceedings are going on. Besides, a mere declaration under section 4, even if it becomes final, cannot bar a challenge to the acquisition.

69. It is then submitted that the contention that section 14 which occurs in Chapter V is an independent power and is not referable to the provisions of the preceding sections 5 to 13 is erroneous since section 14 opens with the words “on representation from the Competent Authority ...” Besides, this point is concluded by the judgment of a single Judge in *Ramkali*, approved by the Division Bench in *Maruti Mane, Twin Developers* and *Om Sai* judgments (supra). No other judgment, including the judgment dated 1st March, 2016, in Writ Petition No. 165 of 2007

in the case of *Murlidhar Tekchand Gandhi* has differed or diluted the ratio of the Division Bench in *Ramkali Sitaram Vs. Maruti Mane*.

70. Dr. Sathe has submitted that the reliance placed on the judgments in the case of *Sara Demello* reported in (2013) 5 BCR 167 and *Nenji Monji vs. State of Maharashtra & Ors.*, in Writ Petition No. 1489 of 2008 to urge that the object of acquisition is in public interest is of no significance because any forcible acquisition of land must be for public purpose and must be strictly in accordance with law.

71. Dr. Sathe further submitted that the petitioners ought to be given an opportunity to submit the scheme and the Authority must cooperate by taking steps to evict the non-co-operating occupants. He submitted that this is important since the only right of the occupants is to establish their eligibility and then get the permanent rehabilitation. They cannot insist on who should be developing the scheme.

72. Dr. Sathe has relied upon the following judgments:-

(i) *Ramkali Sitaram Kushawaha and Ors. vs. Deputy Collector (ENC) and Competent Authority and Ors.*, **2004(3) Bom. C. R. 14.**

(ii) *Maruti V. Mane and Anr. vs. Smt. Ramkali Sitaram Kushawaha and Ors.*, **Appeal No. 324 of 2004** (Bombay

High Court), decided on 14th February, 2011.

(iii) Om-Sai Darshan Co-operative Housing Society (proposed) and Chandrakant Ramchandra Thakur vs. The State of Maharashtra and Ors., **2006 Vol. 108(3) Bom. L. R. 2219.**

(iv) M/s. Twin and Deccan Builders and Anr. vs. State of Maharashtra, **Writ Petition No. 747 of 2012** (Bombay High Court), decided on 31st July, 2015.

(v) Anil Gulabdas Shah vs. State of Maharashtra and Ors., **2011(2) Bom. C. R. 93.**

(vi) Royal Orchid Hotels Limited and Anr. vs. G. Jayarama Reddy and Ors., **(2011) 10 SCC 608.**

73. On the other hand, Mr. Dhakephalkar learned senior counsel appearing for respondent no. 4 SRA countered the submissions of Mr. Sathe. It was submitted by him that there is no substance in these contentions. He submitted that this writ petition has no merit and must be dismissed. It is submitted by Mr. Dhakephalkar that Annexure B-1 to the writ petition indicates as to how the Deputy Collector, Bhandup has been appointed as competent authority under section 3 of the Slum Act in respect of the lands or classes of lands other than the lands belonging to Municipal Corporation of Greater Mumbai or the Housing Board for protection of the occupiers from eviction and distress warrant. On the basis of the information about slum areas available, the competent authority was satisfied that the areas specified in the Schedule to this notification are source of danger to the health, safety or convenience of the public of that

area and of its neighbourhood by reason of it being overcrowded and lacking in basic amenities. That has been rendered insanitary, squalid and/or otherwise. It is in these circumstances that the lands have been declared as slum by this notification dated 22nd July, 2011 and published in the Maharashtra Government Gazette of August, 2011. Mr.Dhahephalkar submits that on 23rd February, 2012, the parties referred to in the communication at page 50 were informed that one Sai Chaya Co-operative Housing Society (proposed) had moved a proposal to acquire the land being CTS Nos. 82, 82A and 82/2 to 82/5 under section 14(1) of the Slum Act. A reference is also made in this communication to a letter from the Additional Collector dated 19th January, 2012. Based on this, on 1st March, 2012, the competent authority, namely, the Deputy Collector (Encroachment and Removal), Bhandup called upon the parties to remain present with all original documents.

74. The petitioners, on 1st March, 2012, addressed a letter to this competent authority, copy of which is at Annexure 'B' at page 55 of the paper book, stating therein that the aforesaid lands stand in the name of the present petitioners in the property card. Therefore, they are entitled to develop these lands. They were objecting to the acquisition of the same. However, before they

could make a detailed submission, they would require all the documents including the proposal from the proposed society and the communication from the Additional Collector, both of which are referred to in this notice. This is a letter dated 1st March, 2012. Then, there is a letter, according to Mr. Dhakephalkar, at Annexure 'E' at page 59, which states that the notification under section 4(1) under the Slum Act has already been published. However, within 30 days from the date of publication of this notification, whether the petitioners have filed any appeal before the Slum Tribunal, whether the property continues to be a slum and if the petitioners are claiming to be in possession thereof or the right, title and interest therein, whether they have taken any steps to provide any amenities or conveniences to the occupants. Whether they have taken steps to do so and whether repairs and maintenance of the property is still with them and this information be provided. The petitioners were called upon to provide information on the points enlisted in this communication, else, this letter stated that steps under section 6(1) would be initiated. However, the petitioners, at page 64 of the paper book (Annexure 'F') submitted their written say.

75. The written say stated that they are lawful owners of the land and that they intend to develop the property themselves.

That the applicant proposed society had neither approached the land holders nor made any attempt to express their willful consent for development of the property. The attention of the authority was invited to letter dated 8th December, 2009 expressing strong objection for slum declaration of CTS No.82(part) of village Bhandup and acquisition under section 14(1) of the Sum Act, which was received by the office. Mr.Dhakephalkar submits that beyond expressing willingness and their alleged interest to develop the entire CTS No. 82(part) all that the said owners/petitioners contended that they desire to develop the entire CTS No. 82(part). They also invited the attention of the competent authority to some correspondence and during the proposed development of Milind Nagar Co-operative Housing Society (proposed), who approached the petitioners allegedly. The petitioners were supporting the said Milind Nagar Co-operative Housing Society (proposed) and also requested to declare the entire CTS No. 82 as slum and that is clear from their own statement at page 67. Mr.Dhakephalkar submits that there is no substance in the contention of Mr. Sathe, simply because the petitioners were unable and in any event unwilling to carry out any development themselves. They entered into a joint venture with reputed groups for phase wise development within the periphery of said property in the interest of improvement and

clearance of slum area. It is in these circumstances that they objected to the acquisition of the property. However, on their own showing, they have been unable to demonstrate that concrete steps were taken by them for all these years. Mr. Dhakephalkar submits that all the land holders and whose lands have been acquired resort to these methods, simply because they are guilty of neglecting the property, the slum dwellers and occupiers residing in sub-human conditions. However, when they realise that the land bears great potential and the prices are increasing in the market that on the eve of acquisition proceedings, they make such attempts and to avoid the obvious. Mr. Dhakephalkar submits that it was not open for the competent authority to issue any directions, much less in terms of the prayers of this written say.

76. Mr. Dhakephalkar, therefore, submits that the proposal received from Sai Chaya Co-operative Housing Society (proposed) was rightly processed and there was a report submitted by the competent authority to the Additional Collector (Encroachment and Removal), Mumbai Suburban District (East). Inviting our attention to this report, copy of which is at Annexure 'G' at page 71 of the paper book, Mr. Dhakephalkar submits that this Sai Chaya Co-operative Housing Society (proposed) is a settlement at

Mouje Bhandup, Survey No. 132, Hissa No. A/1 admeasuring 13 acres 14 guntha, new Survey No. 82A/1. That was in lieu of the old CTS Nos. 82, 82/1 to 82/5. The property register card, as perused and relied upon in the report of 30th April, 2012 at page 71 reflects that the area is 42338.715 square meters and the original holders, from records, are Vinodkumar Radhyesham Mourya, Radhyesham Rambharose Mourya and 21 others. CTS Nos. 82/1 to 82/5 admeasure 239.70 square meters and the names of the holders as also the structure owners are Shravan Ladkya Kirkire, Lahanu Bhiva Babar, Khwaja Husain, Kalyanji Khadar Wala and Kalyanji Khadarwala. There are about 221 huts. 195 huts are residential and 23 are commercial, whereas, 3 are commercial-cum-residential. Outside the boundary of CTS No.82/1(part), there are 4 structures/huts and the numbers assigned to them are 98, 99, 100 and 101. The total area occupied by these 4 structures is 54 square meters. This area has been excluded from the area under consideration. That is what the maps would reflect.

77. This report of the competent authority indicates that the persons interested/owners were to be heard on several dates, namely, 23rd February, 2012, 1st March, 2012, 13th March, 2012 and 20th March, 2012 so also 22nd March, 2012. However, these

owners sent their written replies/say dated 1st March, 2012, 13th March, 2012 and 20th March, 2012. The copies of these are annexed to the report. Mr. Dhakephalkar emphasises that CTS Nos. 82, 82A and 82/1 to 82/5 and new CTS No. 82A/1 admeasuring 3747.384 square meters has been declared as slum on 22nd July, 2011. The City Surveyor has submitted a report on 15th February, 2012 indicating as to how the area of CTS No.82A/1 is 42338.8 square meters and the area of CTS Nos. 82/1 to 82/5 is 239.7 square meters. Thus, the total area is 42578.5 square meters and the proposed acquisition is regarding 3747.384 square meters. The breakup of the proposed acquired area is also set out in the report. Mr. Dhakephalkar submits that in terms of the development plan, the land falls in residential/special industrial zone. The Sai Chaya co-operative Housing Society (proposed) has filed an undertaking/affidavit on stamp paper stating that there are no proceedings pending in relation to this property in any court, namely, civil/criminal. On the area to be acquired, there are 221 huts and as indicated above. Out of these, 195 residential slum dwellers, 114 are eligible. The list of those, who are eligible and ineligible, is also attached to the report. All these slum dwellers have filed consent letters for acquisition. The lands have been measured by the City Survey Officer and Surveyor and the map prepared after this

measurement was also annexed to this report. It is stated that all the requisite records would indicate that according to the owners of the land, they intended to develop it on their own, but the slum dwellers did not co-operate with them. On the other hand, the slum dwellers indicated that the owners did not consent to any proposal for development by the slum dwellers themselves. Mr. Dhakephalkar submits that most importantly, this report indicates that at no occasion, in the past, the petitioners got in touch with or contacted the SRA officials claiming to develop the property. The report indicates that no proposal for development of the land under acquisition was received and no record in relation thereto is available in the office of the competent authority. It is in these circumstances that a notice was issued under section 5(1) of the Slum Act dated 7th March, 2012 to the persons interested/owners of the land. However, the notice was responded by the proposed society on 30th March, 2012 and a copy of this reply was annexed to the report.

78. Mr. Dhakephalkar submits that once the report, along with all 390 pages was submitted that the further steps were taken by the Additional Collector. He published a notice dated 28th May, 2012 in terms of the proviso to section 14(1) of the Slum Act. He also called upon all concerned and interested to respond to this

notice by producing requisite papers and documents and submit their explanation, failing which, the Additional Collector informed that he would proceed on the footing that they have nothing to say with regard to the proposed acquisition. Thereafter, the further steps were taken.

79. This notice dated 28th May, 2012 was received, admittedly, by the Bhandup Estate Ratansey Karsondas and Others. They replied to the same on 20th June, 2012 claiming to be lawful owners of the property. They only stated that they intend to develop the property themselves. They stated that M/s. Sai Chaya Co-operative Housing Society (proposed) never approached them nor made any attempt to seek their consent for development. Rather the owners expected the slum dwellers to consent so that they can carry forward their intent. Mr.Dhakephalkar submits that in this backdrop and when the petitioners, beyond this alleged intent, took no steps at all, that the legal contentions must be seen and considered. Mr.Dhakephalkar submits that we are in extraordinary, equitable and discretionary writ jurisdiction under Article 226 of the Constitution of India. We should not, in any manner, take note of these legal contentions of Mr. Sathe, when the whole attempt is to stall the acquisition proceedings. The petitioners never intended

to develop the property, much less carry out any improvements or effect any repairs. They just neglected the slum dwellers. The slum dwellers had never been provided any basic amenities and thus stand deprived of the essential amenities like sanitation, hygiene etc. It is in this backdrop that the complaint of the petitioners must be noted and considered. They claim that they have commenced development in and around Bhandup area. They also claim that they have displayed a board for the development of the property. They complain that most of the slum dwellers including their adjoining neighbours are aware of the address of the land holders, but they deliberately did not forward their letters at the correct address. Mr. Dhakephalkar complains that the petitioners on one hand stated that they had brought to the notice of the Deputy Collector, Bhandup that the chawls are unauthorised and existing since 1977. They claim that the applicants are encroachers in and upon the said property. Yet, they state that they have tolerated all this and not caused any harassment to the occupants. Mr. Dhakephalkar contends that the petitioners thus stand exposed. They take contrary and contradictory pleas. On the one hand they claim that their property is encroached by encroachers and all the structures are unauthorised and on the other hand they claim that they intend to develop the property and rehouse these

occupants of the slum structures. Such a person or owner can never be believed. Further, these petitioners accuse the Co-operative Housing Society, namely, Sai Chaya Co-operative Housing Society (proposed) of having associated with third party with the malicious intent of encroaching over their ownership right. In these circumstances, Mr. Dhakephalkar would submit that their grievance could never have been considered favourably. The slum notification, which is in operation since 1977 was sought to be rectified by the petitioners and they wrongfully raised the area correction issue. From 1977 till the present proceedings, they never thought that there was any error or mistake. It is in these circumstances that Mr. Dhakephalkar would submit that there is no substance in any of the contentions. Mr. Dhakephalkar submits that after due consideration of all the materials produced, the Additional Collector forwarded the papers on 4th October, 2012 to the Principal Secretary, Department of Housing, Government of Maharashtra. He gave his comments on each of the relevant issues. He also relied upon the report of the competent authority and also applied his independent mind. Mr. Dhakephalkar relied upon the report of the Additional Collector, which indicates that none of these owners were providing any basic amenities or conveniences. There are only 4 toilets. The roads are very narrow and

congested. Some of the structures face water logging in monsoon. There are open gutters and some of them are only covered by tiles. There is no better public lighting, but private electricity connection has been obtained by the slum dwellers themselves. The population of the area is about 1100 to 1200. There is no proper drainage and the structures are very close to each other. Thus, the area is congested and in need of improvement.

80. Mr. Dhakephalkar took us through this detailed report, copy of which is appearing from pages 131 to 138 of the paper book to submit that this is not a case of any malafides, much less non application of mind. There is a further report dated 2nd November, 2012, copy of which is at page 151, which indicates that up to October, 2012, no proposal was received from the owners for rehabilitation of the slum dwellers. Thus, in respect of two portions of the lands, which have been declared as slums, a consolidated proposal for development has been submitted. This further report and the comments would indicate as to how the Additional Collector as also the competent authority and all concerned duly complied with the requirement of fairness, equity and justice. All the objections and grievances were duly considered. All the concerned were duly heard. After compliance with the provisions of law, the detailed reports forwarded would

indicate as to how the SRA throughout supported these proposals. Mr.Dhakephalkar also took us through the copy of the application from the proposed society, namely, Sai Chaya Co-operative Housing Society (proposed), a reply thereto by the petitioners and the rejoinder.

81. Mr. Dhakephalkar submits that it is in these circumstances on 11th June, 2013 a detailed letter containing a report of the SRA was forwarded to the Housing Department for the simple reason that the Department of Housing called for by letter dated 15th February, 2013 the remarks and comments from the SRA. This report also indicates as to how the Chief Executive Officer of the SRA proceeded in the matter.

82. Mr. Dhakephalkar would, therefore, would submit that after considering the objections received from the owners, the Government of Maharashtra considered it expedient to acquire the land for implementation of the scheme of rehabilitation of the slum areas mentioned in column 4 of the Schedule. Mr.Dhakephalkar submits that in the backdrop of all this, we must consider the notification, which is published in the Maharashtra Gazette dated 3rd April, 2014. Mr. Dhakephalkar would submit that in view of the above, no fault can be found with the notification. Mr. Dhakephalkar would submit that the

notification refers to the representation from the Additional Collector indicating as to how for carrying out works of improvement, it is necessary that the land should be acquired. Then, the notification refers to the publication of the notice dated 3rd July, 2012 and its service. Then, the notification refers to the compliance with the proviso to Sub-Section (1) of section 14 of Chapter V of the Slum Act read with Paragraph (A) of Sub-Clause (i) of Clause (c) of Section 3D of Chapter I-A of the Slum Act and the notice served by the Chief Executive Officer dated 14th March, 2013. It refers to the proposal for acquiring the land and the hearing and the objections raised during the course thereof. That is how the Chief Executive Officer, SRA, after considering the objections of owners and the request made on behalf of the proposed co-operative housing society, finds that for protecting the legitimate interest of the slum dwellers, it is necessary to proceed and acquire the land. That is how the notification refers to his representation dated 11th June, 2013.

83. Mr. Dhakephalkar submits that Dr. Sathe is not right in contending that this notification is contrary to law. Mr. Dhakephalkar would submit that not much can be made of this reference in the notification to the two provisions. He would submit that there is no scope for the argument that Section 14 of

the Slum Act is inapplicable. Mr. Sathe, on the one hand relies on all the proceedings commencing from issuance of slum notification from 1977 culminating in the present acquisition and then states that unless and until due compliance is made with the amended Chapters of the Slum Act, no acquisition proceedings can be commenced. Mr. Dhakephalkar has relied upon the affidavit in reply of respondent no. 4. He would submit that once the land has already vested in the State and it was neglected for nearly 32 to 35 years by the landlords, then, we should not interfere in our writ jurisdiction. No technical objections should be entertained. Mr. Dhakephalkar also invites our attention to the Slum Act and Section 14(1) thereof. He also refers to the contents of the notification to submit that at best and without prejudice, it would be said to be composite one. In any event, once the factual position is noted, then, this is not a fit case for interference in writ jurisdiction. The other respondents supported Mr. Dhakephalkar.

84. Mr. Dhakephalkar has relied upon the following judgments:-

- (i) Sara Harry D'mello vs. State of Maharashtra and Ors., **(2013) 4 Mah. L. J. 348.**
- (ii) Nenshi Monji (Bombay) and Ors. vs. State of Maharashtra and Ors., **(2015) Mah. L. J. 397.**
- (iii) Smt. Halimabee Abdul Hadi and Ors. vs. The State of Maharashtra and Ors., **Writ Petition No.1377 of 2012** (Bombay High Court), decided on 18th November, 2015.

(iv) Apurva Natvarlal Parikh vs. Slum Rehabilitation Authority and Ors., **Writ Petition No. 1965 2013** (Bombay High Court), decided on 15th April, 2015.

(v) Murlidhar Teckchand Gandhi and Ors. vs. State of Maharashtra and Ors., **Writ Petition No. 165 of 2007** (Bombay High Court), decided on 1st March, 2016.

85. For properly appreciating the rival contentions, we must make a reference to the Slum Act. Maharashtra Act No. XXVIII of 1971 is titled as “Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. It is an Act to make better provision for the improvement and clearance of slum areas in the State and their redevelopment and for the protection of occupiers from eviction and distress warrants. Chapter I of this Act contains preliminary provisions. By section 1, it is clarified that this extends to the whole of the State of Maharashtra and it comes into force in such areas and on such date as the State Government, by notification in official gazette appoint and different dates may be appointed for different areas. Some of the definitions are important for our purpose. The term “building” is defined in section 2(b). The term “Chief Executive Officer” is defined in section 2(ba), which was inserted by Maharashtra Act No. 6 of 1997. It means a Chief Executive officer of the SRA appointed under section 3A(2). The term “Collector” is defined in section 2(b-1) and the term “Competent Authority” is defined in section 2(c) to mean a person or body appointed to be the

competent authority under section 3. The “Developer” means a developer registered under section 3B and that definition is to be found in section 2(c-a). The term “eligible slum dweller” means a slum dweller who fulfills such criteria or eligibility as may be prescribed, from time to time, and is declared so eligible by the competent authority. Then, the term “land” is defined in section 2(d). The terms “occupier” and “owner” respectively are defined in section 2(e) and (f) and section 2(g) describes the term “prescribed” to mean prescribed by rules made under the Act. We shall come to some of the definitions and a Chapter inserted by Maharashtra Act No. 4 of 1996 a little later.

86. The appointment of competent authority is made by section 3 and it also falls in Chapter I.

87. Then comes Chapter I-B, which also shall be referred a little later, because that was inserted by Maharashtra Act No. 10 of 2002. We now refer to the provisions of section 4. Section 4 deals with declaration of slum areas, which reads thus:-

- “4. (1) Where the Competent Authority is satisfied that -
- (a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise or
 - (b) the buildings in any area, used or intended to be used for human habitation are

(i) in any respect, unfit for human habitation;
or

(ii) by reason of dilapidation, overcrowding, faulty arrangement and design of such building, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area,

the Competent Authority may, by notification in the *Official Gazette*, declare such area to be a slum area. Such declaration shall also be published in such other manner (as will give due publicity to the declaration in the area) as may be prescribed.

Explanation. - For the purposes of clause (b), the expression "buildings" shall not include, -

(a) cessed buildings in the island City of Mumbai as defined in clause (7) of section 2 of the Maharashtra Housing Area Development Act, 1976, or old buildings belonging to the Corporation.

(b) buildings constructed with permission of the relevant authority at any point of time;

(c) any building in an area taken up under the Urban Renewal Scheme.

(2) In determining whether buildings are unfit for human habitation for the purposes of this Act, regard shall be had to the condition thereof in respect of the following matters, that is to say, -

- (a) repairs;
- (b) stability;
- (c) freedom from damp;
- (d) natural light and air;
- (e) provision for water-supply;
- (f) provision for drainage and sanitary conveniences;
- (g) facilities for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid, if, and only if, it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

(3) Any person aggrieved by a declaration made under sub-section (1) may, within thirty days after the date of such declaration in the *official Gazette*, appeal to the Tribunal. No such appeal filed after the expiry of thirty days as aforesaid shall be entertained.

(4) When an appeal is presented under sub-section (3), the Tribunal shall, by a public notice published in a newspaper in the Marathi language circulating in the local slum area, call upon the residents of the slum area to file their objections, if any, to the appeal within a period of fifteen days from the date of publication of such public notice in the newspaper as aforesaid, either by themselves or through any association of residents in the slum area of which they are members.

(5) On expiry of the period of fifteen days as aforesaid the Tribunal shall fix a day for hearing the appeal and inform the appellant about the same by letter under certificate of posting and the residents of the slum area by displaying the notice of hearing at some conspicuous place in the slum area and upon hearing the appellant and the residents or representative of their association in the slum area, if present, or on considering the written objections, if any, made by such residents or association, if absent, the Tribunal may, subject to the provisions of sub-section (6), make an order either confirming, modifying or rescinding the declaration; and the decision of the Tribunal shall be final.

Explanation - For the purposes of sub-section (4) and this sub-section, the expression "any association of residents in the slum area" means a society, if any, of such residents registered under the Societies Registration Act, 1860 or under the Maharashtra Co-operative Societies Act, 1960.

(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)."

88. A bare perusal of section 4 would reveal as to how the

competent authority can notify an area referred to therein and declare it to be a slum area. Thus, that declaration has to be published in such manner as will give it due publicity in the area as notified. However, prior thereto, the declaration must be by a notification published in the official gazette. That notification has to be issued by the competent authority, which has been given a discretionary power to notify the area mentioned in clauses 1(a) and (b) to be a slum area. However, before the notification is issued, the competent authority must be satisfied that any area is or may be a source of danger to the health, safety or convenience of the public of that area or its neighbourhood by reason of the area having inadequate or no basic amenities or being insanitary, squalid, overcrowded or otherwise. Similarly, if the buildings in any area, which are used or intended to be used for human habitation are in any respect unfit for human habitation or by reason of dilapidation, overcrowding, faulty arrangement and design of such building, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area.

89. It is rightly emphasised before us that there is no decent housing for the occupants of a slum area which affects the residents nearby. Whenever any area, in which such structures are erected and occupied, their numbers increase gradually, they become a source of danger to the health, safety and convenience not only of the public of that area, but its neighbourhood. It is common ground that those residing in slums do not have even the basic amenities. They do not have access to toilets, leave alone clean drinking water, electricity etc. In most of the cases, these areas once found to be vacant, are inhabited by persons, who cannot afford any housing accommodation or are brought on vacant lands by those styled as slumlords taking advantage of their unemployment and poverty. Looked at from any angle, in the absence of basic amenities, these areas then are source of nuisance to those residing in neighbourhood. It is common ground that proliferation of slums adversely affects public health. People should not reside in inhabitable and sub-human conditions for they themselves suffer and together with them, those residing in the neighbourhood. Thus, these slums take toll of the health of the residents of a city itself. The diseases with which the occupants thereof suffer because of lack of basic amenities then spread around and affect others. For all this, therefore, an enactment was necessary so that the competent authority can

take requisite measures.

90. One cannot forget that even the buildings in and around can be declared as slums and the notification/declaration under Section 4 (1) can cover them. The buildings are also defined in the explanation in an inclusive manner.

91. It is not as if this declaration in relation to buildings can be issued by the competent authority without considering the relevant and germane matters. These matters are incorporated in sub-section (2) of section 4 and for the purposes of those buildings, which are unfit for human habitation. As far as those areas, the competent authority has to record a satisfaction. As far as the areas themselves, the competent authority has to record a satisfaction in terms of clause (a) of sub-section (1) of section 4. There is an appeal provided against the declaration to the tribunal. By section 4A, certain slum areas are deemed to be slum improvement areas.

92. Chapter III is titled as “Slum Improvement” and sections 5, 5A, 5B and 5C thereof read thus:-

“5. (1) Where the Competent Authority is satisfied that any slum area or any part thereof is capable of being improved, at a reasonable expense, so as not be a source of danger to the health, safety or convenience of the public of that area, it may serve upon a notice informing them of its intention to carry out such improvement works as in its opinion are necessary and asking each of

them to submit his objections or suggestions, if any, to the Competent Authority, within thirty days from the date of such notice. A copy of such notice shall also be displayed at some conspicuous places in the area for the information of the occupiers thereof and for giving them also an opportunity to submit their objections or suggestions, if any. On such display of the notice, the owners, occupiers and all other persons concerned shall be deemed to have been duly informed of the matters stated therein.

(2) After considering the objections and suggestions received within the time aforesaid, from the owners, occupiers and other persons concerned, the Competent Authority may decide and proceed to carry out the improvements works with or without modifications or may postpone them for a certain period or cancel the intention to undertake the works.

5A. For the purpose of this Act, the improvement works may consists of all or any of the following.-

(a) laying of water mains, sewers and storm water drains;

(b) provision of urinals, latrines, community baths and water taps;

(c) widening, realigning or paving of existing roads, lanes and pathways and constructing new roads, lanes and pathways;

(d) providing street lighting;

(e) cutting, filling, levelling and landscaping the area;

(f) partial development of the area with a view to providing land for unremunerative purposes such as parks, playgrounds, welfare and community centres, schools, dispensaries, hospitals, police stations, fire stations and other amenities run on a non-profit basis;

(g) demolition of obstructive or dilapidated buildings or portions of buildings;

(h) any other matter for which, in the opinion of the Competent Authority, it is expedient to make provision for preventing the area from being or becoming a source of danger to safety or health or a nuisance.

5B. (1) Where the Competent Authority undertakes the improvement works in any area and is of opinion that any of the occupiers thereof should vacate their premises, it shall give them notice to vacate by a specified date or dates. It may as far as practicable offer such occupiers alternative sites in any other area. If any occupier fails to vacate and to shift to the alternative site offered to him within the specified period, the responsibility of the Competent Authority to provide him alternative site shall cease.

(2) Notwithstanding anything contained in this Act, where any occupier does not vacate his premises, the Competent Authority may take or cause to be taken such steps and use or cause to be used such force as may be reasonably necessary for the purpose of getting the premises vacated.

(3) The Competent Authority may, after giving fifteen clear days' notice to the persons removed under sub-section (2), and affixing a copy thereof in some conspicuous place in the area, remove or cause to be removed or dispose of by public auction any property remaining on the premises.

(4) Where the property is sold under sub-section (3), the sale proceeds shall after deducting the expenses of sale, be paid to such person or persons as may be entitled to the same :

Provided that, where the Competent Authority is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the appointment of the same, it shall refer such dispute to a Civil Court of competent jurisdiction and the decision of the Court shall be final.

5C. (1) Where the Competent Authority, upon report from any of its officers or other information in its possession, is satisfied that any buildings in a slum area are in any respect unfit for human habitation, or any slum area or part thereof is or is likely to be a source of danger to the health, safety or convenience of the public in that area or in its neighbourhood by reason of the area having no basic amenities or having inadequate amenities or being insanitary, squalid, overcrowded or otherwise a source of such danger, the Competent Authority may, unless in its opinion the buildings or the

area are not capable at a reasonable expense of being rendered so fit or free from such danger, serve upon the owners of the buildings or lands in the area a notice requiring them, within such time, which shall not be less than thirty days, as may be specified in the notice, to execute such works of improvement, either within or outside the buildings or the area, as may be specified in the notice and stating that in the opinion of the Authority those works will render the buildings or the area fit for human habitation or free from such danger, as the case may be.

(2) In addition to serving a notice under this section on the owners, the Competent Authority may serve copy of the notice on every mortgage of the building or land so far as it is reasonably practicable to ascertain such persons and further a copy of such notice shall also be displayed at some conspicuous place in the slum area for the information of the occupiers thereof. Such display of the notice shall be conclusive proof that the owners, occupiers and other persons concerned have been duly informed of the matter stated in the notice.

(3) In determining for the purposes of this Act whether the building can be rendered fit for human habitation or the area can be rendered free from danger aforesaid, at reasonable expense, regard shall be had to the estimated cost of the works necessary for these purposes and the value which it is estimated that the buildings or lands will have when the works are completed.”

93. A perusal of these provisions would reveal as to how the slum improvement and dealt with by Chapter III has to be carried out. Section 5 spells out the power of the competent authority of execution of works of improvement. That is when the competent authority is satisfied that any slum area or any part thereof is capable of being improved at a reasonable expense, so as not be a source of danger to the health, safety or convenience of the public of that area, it may serve upon the owner or owners and every

mortgagee of the properties in that area or any part thereof a notice informing them of its intention to carry out such improvement works as in its opinion are necessary. After considering the objections or suggestions, which they are called upon to submit, the competent authority may decide and proceed to carry out improvement works with or without modification or may postpone them for a certain period or cancel the intention to undertake the works. This is dealt with by section 5. Whereas, section 5A deals with improvement works.

94. For that purpose, by section 5B, the competent authority has been conferred with a power to require occupiers to vacate the premises. By section 5C, the competent authority, upon report from any of its officers or information in possession is satisfied that any building in a slum area is in any respect unfit for human habitation or any slum area or part thereof is or likely to be source of danger to the health, safety and convenience of public in that area or in its neighbourhood by reason of the area having no basic amenities or having no adequate amenities or being insanitary, squalid, overcrowded or otherwise a source of such danger, unless in its opinion the buildings or the area are not capable at a reasonable expense of being rendered so fit or free from such danger, serve upon the owners of the buildings or lands

in the area a notice requiring them, within such time, which shall not be less than thirty days, as may be specified in the notice, to execute such works of improvement, either within or outside the buildings or the area, as may be specified in the notice and stating that in the opinion of the authority those works will render the buildings or the area fit for human habitation or free from such danger, as the case may be. The further power is the one to be exercised after issuance of notice under section 5C and that being not complied with. By section 6, the competent authority itself can carry out these works. It can also call upon the notices to reimburse for expenses of these works of improvement or maintenance thereof and if they are not paid within the time specified by it, they shall be recoverable as arrears of land revenue. There is a provision by which restrictions can be placed on buildings in slum area and that is to be found in section 8. Section 9 enables the competent authority to order demolition of buildings unfit for human habitation and the procedure to be followed where demolition order has been made is set out in section 10.

95. By section 10A, which has been inserted later on, there is a power conferred in the competent authority to entrust improvement and other works to any agency, but for that

purpose, it must seek previous approval of the State Government.

96. Chapter IV deals with slum clearance and redevelopment.

Then comes Chapter V, which deals with acquisition of land.

Therein falls section 14, which reads as under:-

“14. (1) Where on any representation from the Competent Authority it appears to the State Government that, in order to enable the Authority to execute any work of improvement or to redevelop any slum area or any structure in such area, it is necessary that such area, or any land within adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the Official Gazette a notice to the effect that the State Government has decided to acquire the land in pursuance of this section:

Provided that, before publishing such notice, the State Government, or as the case may be, the Competent Authority may call upon by notice the owner of, or any other person who, in its or his opinion may be interested in, such land to show cause in writing why the land should not be acquired with reason therefor, to the Competent Authority within the period specified in the notice; and the Competent Authority shall, with all reasonable despatch, forward any objections so submitted together with his report in respect thereof to the State Government and on considering the report and the objections, if any, the State Government may pass such order as it deems fit.

(1A) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.

(2) When a notice as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances.”

97. A bare perusal of section 14 would indicate as to how certain words were substituted therein by Maharashtra Act 11 of 2012. By Sub-Section (1) of section 14, the State Government,

which has the power to acquire, on any representation from the competent authority, may consider acquisition of the property in order to enable the authority to execute any work of improvement or to redevelop any area or any structure in such area. It can, if necessary, acquire such area or any land within, adjoining or surrounded by such area and then it can publish a notice to that effect. That is a notice which is to be published in the official gazette indicating that the State Government has decided to acquire the area or land in pursuance of this section.

98. The proviso to Sub-Section (1) of section 14 states that before the notice is published, the State Government, as the case may be, the competent authority may call upon by notice the owners of or any other person, who, in its opinion, may be interested in such land to show cause in writing why the land should not be acquired with reasons therefor and the competent authority, upon considering the cause shown, namely any objections, together with his report in respect thereof, forward all this to the State Government. On considering the report and the objections, if any, the State Government may pass such order as it deems fit.

99. By Sub-Section (1A), it has been clarified that the acquisition of any of the land for any purpose mentioned in Sub-

Section (1) shall be deemed to be a public purpose. By Sub-Section (2), the land shall, on and from the date of which the notice is so published vest absolutely in the State Government free from all encumbrances. On such powers, which are noticed by us as above, we must consider as to whether the petitioners deserve any relief in writ jurisdiction.

100. By an order dated 29th September, 2014 on this petition, this court directed that no coercive steps shall be taken for dispossessing the petitioners. On 7th January, 2015, this court passed an order in terms of prayers (d-1) to (d-3). Then, this petition appeared before several benches until we heard it and the arguments were concluded.

101. The notification dated 3rd April, 2014 (the impugned one) proceeds to read thus:-

“HOUSING DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 3rd April 2014

NOTIFICATION

MAHARASHTRA SLUM AREAS (IMPROVEMENT,
CLEARANCE AND REDEVELOPMENT) ACT, 1971.

No. Bhusampa. 2012/C. R. 343/Zopni-2. - Whereas, on a representation from the Additional collector (Encroachment and Removal) and Competent Authority, Eastern Suburbs, Mumbai Suburban District, Mumbai, it appears to the Government of Maharashtra that in order to enable the said Authority to execute the works of

improvement in relation to the slum areas mentioned in Schedule appended hereto (hereinafter referred to as “the said Schedule”) it is necessary that the land specified in column (5) of the said Schedule (hereinafter referred to as “the said land”) should be acquired;

And whereas, as required by the proviso to sub-section (1) of section 14 of Chapter V of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as “the said Act”) as amended from time to time the Additional Collector (encroachment/Removal) and Competent Authority, Eastern Suburbs, Mumbai Suburbs District, Mumbai has by his Notice No. Addl.Coll./ENC/REM/Mes/Desk-1/WS-195/12, dated 3rd July 2012 served in the prescribed manner and also notice published by Additional Collector (Encroachment/Removal) and Competent Authority, Eastern Suburbs, Mumbai Suburbs District, Mumbai in the daily News Papers “Samna” and “DNA” dated 2nd June 2012 called upon the persons mentioned in column (6) of said Schedule, who are the owners of the said land to show cause, within a period of fifteen days from the receipt of the aforesaid notice, as to why the said land should not be acquired;

And whereas, as required by the proviso to sub-section (1) of section 14 of Chapter V read with Paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of the said Act, Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, as by his notice No. SRA/ Dy.Coll./ T/D4/ Saichhaya/ Hearing/ 2013/ 401, dated the 14th March 2013 served in the prescribed manner, called upon the persons mentioned in column (6) of the said schedule who are the owners of the said land to be heard on 22/03/2013, 06/04/2013, 20/04/2013 and 17/05/2013 as to why the proposal to acquire the said land for implementation of the Slum Rehabilitation Scheme for the concerned protected slum dwellers should not be sent to the State Government for approval;

And whereas, chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai after considering objections received of the owner of said land and the pleading on behalf of the proposed Co-operative Housing Society of the Slum dwellers, entries as to the rights in the land record, reservation in Development Plan and the legitimate request of the protected slum dwellers, Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai submitted a proposal of the acquisition of

the said land mentioned in column (6) of the said schedule;
by his representation dated 11th June 2013;

And whereas, as required by proviso to sub-section (1) of section 14 of Chapter V read with Paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of said Act, on a representation dated 11th June 2013 from the Chief Executive officer, Slum Rehabilitation Authority, Bandra, Mumbai, it appears to the State Government that in order to enable to Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme in the slum areas mentioned in column (4) of the said Schedule, should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 14 read with Paragraph (A) of sub-clause (i) of clause (c) of section 3D of the said Act, the Government of Maharashtra hereby declares by his notice, that it has decided to acquire the said lands.”

102. The petitioners state that they had, by several communications in writing, indicated that they are ready and willing to implement the Slum Rehabilitation Scheme on the portion of the land, which is the subject matter of the impugned notification and offered all the benefits permissible in law to eligible slum dwellers. We deem it fit to start our reasoning with this issue and consider whether the documents relied upon by Dr.Sathe and annexed to the petition at all demonstrate that the petitioners were sincere, genuine and acted *bonafide* when they addressed such communications.

103. Reliance in this regard is placed heavily on page 44 of the writ petition first and that is a letter dated 8th December, 2009. Pertinently, this is a letter addressed to the competent authority

in response to the proposal or request from Sai Chaya Co-operative Housing Society (proposed) requesting the competent authority to make the necessary inquiry and report and proceed to initiate steps for acquisition of the subject property, particularly CTS No. 82(part). In this communication, which is essentially an objection to the proposal of the said Sai Chaya Co-operative Housing Society (proposed), the petitioners do not dispute that the property admeasuring 45414.4 square meters from larger property is declared as slum on 30th June, 1977. Then, they indicated that one Milind Nagar Co-operative Housing Society (proposed) commenced slum redevelopment work and at that time, it came to the notice of the petitioners that the area of 45414.4 square meters of CTS No. 82 is wrongly mentioned as 5414.4 square meters. Therefore, it requested that a corrigendum be issued to correct the area. The petitioners indicated that Milind Nagar Co-operative Housing Society (proposed), with the consent of the petitioners, had moved for declaration of the entire area as a slum and that request was made in writing on 12th February, 2009 and 4th June, 2009. This letter indicates that the petitioners have prepared all the requisite documents. They had made the preparation and have taken steps to obtain redevelopment agreements, membership agreements, power of attorney from the slum dwellers. It is in

these circumstances that they supported the proposal of M/s. Sai Chaya Co-operative Housing Society (proposed) that CTS No. 82 should be declared as a whole as slum area. However, they were opposing the redevelopment of the property by Sai Chaya Co-operative Housing Society (proposed) or through other developer.

104. To our mind, this letter does not indicate anything other than the petitioners' readiness and willingness for declaring the property as a slum area. It does not indicate that any steps were taken beyond some preparatory measures.

105. Then at page 64 Annexure 'F' is written say of the land holders, namely, the petitioners in opposition of the proposal of Sai Chaya Co-operative Housing Society (proposed). We have already indicated in the course of noting the arguments of Mr.Dhakephalkar that this letter only sets out that the petitioners are intending to develop the said property themselves. They fault the applicant Sai Chaya Co-operative Housing Society (proposed) for not approaching them nor making any attempt to give their consent to develop the property. They would only refer to the earlier letter dated 8th December, 2009. This say, at best, indicates that the petitioners not by themselves, seeking to develop most of their lands lying and situate at Bhandup Estate and they have already entered into a joint venture with reputed

groups. Then, at page 87 of the paper book, the petitioners respond to the notice under section 14(1) issued by the Additional Collector. In that as well, nothing but the so called intendment is reiterated. However, beyond urging that there is a necessity of development of most of the petitioners' land at Bhandup Estate and they have entered into a joint venture with reputed groups, no details and particulars are set out. This is an endorsement of the written say referred above. Then, at page 114 of the paper book, the petitioners filed their additional written say and that is in reply to the above notice. In that, they stated that the proceedings for acquisition of the property under section 14(1) were initiated by the Deputy Collector (Encroachment and Removal) and Competent Authority and an intimation was given to them on 23rd February, 2012. There is a reference to these proceedings and a notice sent under section 5(1) to the land owners on 7th March, 2012. This notice was received and a composite reply was given to both the notices under section 14(1) and section 5(1), in which, it was stated that the proceedings under section 5 and a notice contemplated thereby were closed by the competent authority on 20th March, 2012. Then, what this additional reply states is that the proceedings under section 5(1) be reinstated and no further proceedings under section 14 of the Slum Act be initiated. At the

same time, a request was made to quash the notice under section 14(1) dated 23rd February, 2012. In this as well, we do not find any reference to some steps, much less real and concrete being taken. Then, there is a reference made to page 165 of the paper book. That as well is nothing but a written submission on behalf of the land owners and filed before the Chief Executive Officer of the SRA. In that, it is stated that the land holders' constituted attorneys, on behalf of the co-owners of the property belonging to Bhandup Estate alias Bhandup Khot alias Ratansey Karsandas and Others are fully empowered to deal with and carryout the development under Slum Rehabilitation Scheme in the interest of improvement and clearance of slums. They refer to certain power of attorneys. Beyond stating that the owners intends to develop the property themselves and faulting the Sai Chaya Co-operative Housing Society (proposed) for not approaching them for seeking any consent for redevelopment of the property, nothing has been stated which would indicate that by then some steps were taken. The steps, which were referred to in the prior communication were also not taken to their logical end. There is absolutely nothing beyond reiterating the contents of the earlier communications. It is in these circumstances we do not think that any of these documents can be said to be evidencing the petitioners' sincere and genuine desire to extend all benefits to

the eligible slum dwellers and to implement a Slum Rehabilitation Scheme. This does not indicate that there was any attempt made to obtain the consent of the 70% slum dwellers. This does not indicate that the slum dwellers, who had throughout been requesting the authorities to take steps either to commence the works of improvement or to take them to their logical end by acquiring the property, were convinced by these petitioners or the joint venture allegedly entered into. They never gave their consent and to join any scheme. There was never any scheme from the petitioners. These communications are nothing but responses to the notices of the competent authority and the Additional Collector and extracts from the written submissions filed during the proceedings before them. Beyond one sentence or one line that the petitioners were intending to and always ready and willing to carry out the improvements or develop the property, nothing has been done. These documents, far from assisting Mr.Sathe, would evidence that the petitioners did not pay any attention to the maintenance and repairs of the property, its upkeep and extended to the slum dwellers the basic amenities. They did not create any hygienic and healthy conditions, by which, the slum dwellers would feel safe and secure. Instead, by their acts of omission and commission, they allowed the property to deteriorate and to such an extent that it became completely

unsafe and started posing a danger not only to the life of the occupants but to the neighbourhood. These are typical responses from those for whom any plot piece or parcel of land, whether or not in a vacant state, situate in Mumbai city or suburbs, but held or owned by them commands a price in the market. Even if there are encumbrances or encroachment thereon it has potential for development. Such persons do not care for those residing in the dilapidated structures or slums on such lands. Providing them basic amenities so that they can live as human being is never there concern.

106. The parties like the petitioners are never bothered about the slum dwellers. They never intend to rehabilitate them and it is then either the duty of the State or the slum dwellers themselves to take the initiative to develop the land. Mr. Sathe then relied upon grounds 'A', 'E', 'I' and 'M' to the petition. In ground 'A' at page 13 of the paper book, the petitioners state that as per Chapter I-A under the provisions of Section 3B of the Slum Act, the owners of the property, which is declared as a slum, have a peremptory right to develop the slum. In the event, if the owners desire to redevelop the property, the provisions lay down the parameters for declaration of any area as slum rehabilitation area and manner in which rehabilitation of such area shall be

carried out including the provision for obligatory participation of the landholders and occupants of the area declared as slum rehabilitation area in the implementation of Slum Rehabilitation Scheme and the provision gives option to the SRA for taking up such development in the event of non-participation of the landholders or occupants. Beyond one sentence that respondent nos. 2, 3 and 4 failed to appreciate that the petitioners being landholders were always willing to develop the said land under the Slum Rehabilitation Scheme nothing has been stated as to whether any Slum Rehabilitation Scheme was made and presented to the SRA and approval and permission sought for its implementation.

107. In ground 'E', we find nothing but a statement that respondent no. 6 Sai Chaya Co-operative Housing Society (proposed) neither approached the petitioners nor made any attempt to express their willful consent for development of the land by the petitioners. In ground 'I', the petitioners have stated that they had issued the no-objection certificate to the Milind Nagar Co-operative Housing Society (proposed) for redevelopment. The petitioners state that Milind Nagar Co-operative Housing Society (proposed), with the consent of the petitioners, had moved an application to respondent no. 2 to

develop portion of the entire said land admeasuring 45414 square meters and accordingly, made applications to respondent nos. 2 and 3 to issue corrigendum to that effect. This application was made prior to the application of respondent no. 6, but that application of Milind Nagar Co-operative Housing Society (proposed) is still pending. How that proves that the petitioners' are redeveloping the property as owners and by themselves has not been clarified at all. In ground 'J', it is stated that the petitioners entered into a joint venture with reputed groups. The said vague statement has come in several communications emanating from these petitioners. No particulars of any joint venture have at all been furnished, leave alone any steps taken in pursuance of the alleged joint venture. In ground 'M' as well, the petitioners, barring reiterating the same statement that they were ready and willing to develop entire larger property, including the said land, fault everybody, particularly respondent nos. 2 to 4 for taking cognizance of the application and request of respondent no. 6. These are thus absolutely no steps or measures which have been taken by the owners themselves. If the owners really care for the property and were moved by the plight of the occupants and slum dwellers, by this time, they would have definitely taken the requisite steps. In the memo of the petition itself, they have narrated as to how the competent authority

issued a notification dated 30th June, 1977 declaring the parcels of land of village Bhandup as slum area. They capitalised on the so called error in the notification, copy of which is at Annexure 'A', namely, dated 30th June, 1977. The petitioners have themselves disclosed as to how the further notification dated 22nd June, 2011 and which declared the lands in the Schedule, namely new CTS No. 82A/1 and old CTS Nos. 82, 82A and 82/1 to 82/5 as slum areas came to be issued. This notification is also issued under section 4(1) of the Slum Act. This indicates the number of huts/structures and the area of 3747.384 square meters. The earlier notification of 1977 was issued for the areas mentioned more particularly therein, but suffers from some alleged typographical error. We do not think that the owners and those before us through their constituted attorneys are really interested in development of the property. They claim to be citizens of India and co-owners of Bhandup Estate, which is comprising of huge tracts of land in the revenue villages, namely, Bhandup, Kanjur and Nahur. This estate came to the predecessor of the petitioners as a grant by the East India Company.

108. We have respondent no. 6, which, on the own showing of the petitioners, is proposed co-operative housing society of the occupants of CTS Nos. 82A/1 and 82/2 to 82/5 of village Bhandup,

taluka Kurla, Mumbai Suburban District. Thus, a larger property as also the above mentioned portions are both slums. They are slums because of the notifications issued under section 4(1). Those notifications have been issued under section 4(1) of the Slum Act upon the satisfaction of the competent authority and which we have enumerated above. That satisfaction of the competent authority has never been challenged and therefore, the legality and validity of the notifications thus has not been put in issue at all. The petitioners have accepted the position that there are slums and those living therein have no basic amenities. Once the subjective satisfaction is recorded and in terms of the statutory provisions, then, it is proved that the area is a danger to the health, safety or convenience of public and occupants thereof by reason of the same having no basic amenities. The areas are thus insanitary, squalid and overcrowded. When the legislature uses these words and phrases, they are not merely inserted to describe the state of such properties, but how an account of lack of basic amenities a slums presents an extremely ugly and unpleasant site. People residing in such areas cannot be allowed to suffer. It is not just they who suffer by lack of basic amenities like clean drinking water, toilets, proper roads and sanitation, but even those residing in the neighbourhood. It is a continuing threat to public health as well. These places breed illness and

contagious diseases. There is no sewerage. Thus, no drainage or an underground conduct for carrying off drainage and waste matter. This untreated waste water and human waste brings with it several serious ailments and diseases. They pollute the whole city and suburbs. It is common ground that open defecation is unhealthy that affects adversely human health. Mumbai city has already earned a name and reputation. There are 12 lac slums, in which about 57 lac people approximately reside. These structures and the alarming increase in their number, therefore continues to be a source of danger to safety and health of all residents. The garbage, waste, is open and lying everywhere. Even the railway tracks, roads, pavements and footpaths are full of debris and waste. We do not think that if such is the state of one of the properties and in a suburb of Mumbai city then we must allow the owners to raise frivolous complaints and grievances, which have no substance. They have lost the rights in the property for now the property vests in the State. We do not see how any complaint can be made by the petitioners, who are claiming to be owners of the property and when they do nothing for its repairs, maintenance and upkeep, much less improvement and development. At the instance of such petitioners, therefore, we are not inclined to exercise our writ jurisdiction. They do not deserve any relief in our discretionary and equitable jurisdiction.

109. They also do not deserve any relief because having accepted that all the notifications declaring the properties as slum were issued, they are now complaining that the acquisition of the said properties for carrying out works of improvement and redevelopment is bad in law.

110. They have not been able to demonstrate any prejudice, much less serious for ample opportunities were provided to them to carry out such works. The petitioners, in their writ petition itself have annexed several documents, which would indicate that notices were served upon them from time to time. A complete elaboration of the steps taken prior to the issuance of the impugned notification is enlisted in the affidavit in reply of respondent no. 4. We have reproduced these statements in the affidavit in reply only with a view to reinforce our conclusion that none of the statements or facts are denied. The petitioners in their rejoinder affidavit and when they deal with the reply of respondent no. 4 do not deny that the notification dated 30th June, 1977 was never questioned. They have not denied that they received the notices from the competent authority and from the Additional Collector and they duly replied to them. All their written replies and written arguments were noted and extensively. The petitioners do not deny even the statements

made in the affidavit in reply of respondent no. 6 for that society denies that the petitioners have supported any proposal of Milind Nagar Co-operative Housing Society (proposed) or that any such proposal was ever on the record of the authorities. In fact, these replies reiterate that the petitioners received all the notices and were offered due opportunities to place their version before the authorities. Thus, this is a clear after thought on the part of the petitioners and when they realise that they have lost the right, title and interest in the property that they have now raised some grounds and submitted that they give rise to questions of law. They now say that the notification acquiring their property is not valid and legal.

111. We do not think that at the instance of such petitioners we should examine any larger issues or questions.

112. The petitioners have never put in issue the power of the respondents to take recourse to section 14(1) of the Slum Act. That provision itself has been held as constitutionally valid and legal by a Division Bench judgment of this court in the case of *Sara Harry D'mello vs. State of Maharashtra*¹

113. We do not find the petitioners' grievance to be of substance. They first raised the issue of the subject notification being issued

¹ (2013) 4 Mah. L. J. 348.

under Section 14(1) of the Slum Act and then stated that the notification could not have been issued under that provision unless compliance was made with sections 5, 11, 12 and 13 of the Slum Act. We think that such complaint cannot be made by the petitioners for the simple reason that on facts we have found several opportunities being provided to them not only to raise objections, but these objections were duly noted and considered. They form part of the report of the authorities, which precede the issuance of this notification and based on which the Government came to the conclusion that the authorities ought to be enabled to carry out necessary measures and take the requisite steps so as to redress the serious grievances of the slum dwellers. They are languishing in the slums for nearly four decades. The steps and as envisaged by the above provisions were taken and at all stages the petitioners were aware of the same. They knew that they have to meet the case of a acquisition of their property in exercise of the power of eminent domain so also in terms of Section 14 (1) of the Slum Act. The representation of the Competent Authority and the Additional Collector was forwarded after giving the petitioners complete opportunity of hearing at which all the documents could have been produced. That is not the complaint either. The petitioners' stand as reflected in their written replies is peculiar. They do not dispute ever that the basic amenities are

not available. They do not dispute that there was a notification issued in 1977 declaring the area more particularly referred in para 8 as slum. That was never challenged. If one Co-operative Society of Slum Dwellers (Milind) is seeking to develop the property for obtaining basic amenities, the petitioners were agreeable thereto, then, that exposes them totally. For the balance area or another slum pocket falling in the estate, the petitioner cannot be heard to say that they are agreeable to that being declared a slum but they are not ready or rather opposing its acquisition. The petitioners are not agreeable to the respondent no. 6 developing the slum area declared as such in 2011. That area was equally neglected and lacked basic amenities. If the State steps in to acquire it for redevelopment, then, that is a acquisition for a public purpose (See Section 14(1A)). A redevelopment of a specific slum area is thus the purpose of acquisition which fulfills the aim and object of the Slum Act. We cannot countenance any arguments to the contrary in the light of the facts emerging from the record. More so, when the same are admitted.

114. Once we come to the above conclusion, we do not think that we should examine the contention of Mr. Sathe that the present acquisition proceeding is under Chapter I-A as amended by the

Maharashtra Act 11 of 2012 and hence, the provisions of sections 4, 5, 6, 7, 8, 9, 10 and 11 stand deleted and are inapplicable. This contention is raised by Mr. Sathe by submitting that provisions of Chapter I-A will apply only on issuance of declaration under section 3C of the Slum Act. We do not think that the petitioners can raise this grievance and merely by referring to some of the contents of the notification and reading them in part.

115. If the subject notification at page 216 is read in its entirety, it may be referring to some other provisions, but it is essentially based on the representation from the Additional Collector and Competent Authority, Eastern Suburbs, Mumbai Suburban District, Mumbai. It refers to the proviso to sub-section (1) of section 14 as amended from time to time, but then points out that the Additional Collector and Competent Authority had, by the notice dated 3rd July, 2013, served in the prescribed manner and also published in the daily newspapers, called upon the persons mentioned in column 6 of the Schedule to the notification, who are owners of the said land to show cause as to why the land should not be acquired. It is making reference to proviso to sub-section (1) of section 14 of Chapter V and some other Chapter, namely, Chapter I-A, but that is nothing but a reference to the steps taken by the Chief Executive Officer of the SRA. Even he

issued the notice and called upon the owners to indicate as to why the property should not be acquired. That course was adopted in order to consider the feasibility of implementing a slum rehabilitation scheme. Thus, it is an additional representation and material on record enabling the State to exercise its power of acquisition. The Chief Executive Officer agreed, as set out in paras 32 to 34 with the Competent Authority and the Additional Collector. Their reports were already forwarded to the State Government. Merely because the State Government in this case and in peculiar facts called for a report from the CEO of the SRA does not mean the respondent no. 1 had abandoned its earlier exercise or decided to proceed only under the amended chapter IA of the Act. The CEO also gave several opportunities, considered the objections and submitted a proposal for acquisition by his representation dated 11th June, 2013. It is in these circumstances that both provisions are referred, but if one refers and considers the entire factual data, it would be clear that the steps were taken pursuant to the declaration dated 30th June, 1977 and thereafter, the proposal of respondent no. 6 to declare an area measuring 3747.384 square meters as slum because that area or portion on which their structures are standing and which were occupied by them, was taken into consideration. The petitioners even objected to this proposal and request from

respondent no. 6. Then, the notification under section 4(1) was issued, which declares the area admeasuring 3747.384 as slum and which is in addition to the earlier 1977 notification. Thereafter, notice was issued by respondent no. 2 to this writ petition under section 14(1) of the Slum Act. The petitioners replied thereto on 1st March, 2012. Now in one breath the petitioners term these notices at page 48 not as notices under section 14(1) but under section 5(1). We have clearly indicated that Annexure 'C' at page 50 of the paper book is a notice dated 23rd February, 2012, which refers to section 14(1) of the Slum Act. That was replied on 1st March, 2012. It may be that the petitioners were also in receipt of a notice dated 7th March, 2012. That refers to firstly the proceedings under section 14(1) at the instance of respondent no. 6 and then the letter dated 19th January, 2012. Therefore, this is a compliance made with section 5. Therefore, this notice at page 59 is also a compliance made with section 5(1) of the Slum Act. The petitioners cannot make a grievance that notice under section 5 was not issued. Even that has been issued and the petitioners filed detailed reply thereto on 20th March, 2012. In that reply, they clearly say that they are replying to an application filed for acquisition of land under section 14(1) of the Slum Act. They prayed that this notice be dropped. Then, it is clear that there was a report made by the

Deputy Collector and Competent Authority to the Additional Collector dated 30th April, 2012, after which, notice under section 14(1) was also issued on 20th May, 2012. It is in these circumstances that the further steps were taken by the Additional Collector. His representation forms the essential foundation on which section 14(1) was invoked and the proceedings for acquisition were initiated and duly completed. In such circumstances, we do not think that the petitioners, who claim that they were ready and willing to take requisite steps and carry out redevelopment but did nothing, should be granted any relief. The Petitioner's did not enjoy the support of 70% of the slum dwellers inhabiting the area covered by the 2011 Slum Notification. They also did not take forward nor did the Milind Society pressed its proposal which the petitioners were heavily banking upon. The Petitioner's version and stand is perplexing to say the least. They rely on a Circular issued in November, 2015 to urge that the consent of 70% is not mandatory. Their request is that this condition of 70% consent of slum dwellers now stands dispensed with. We do not see how the concluded Acquisition proceedings in this case can be set at naught by us by relying on this circular. We also cannot hold that the petitioners or Milind Society's proposal was pending and that covered the entire slum area. No such proposal is on record of the Authorities. Hence,

there was no impediment in considering the proposal of Respondent No.6. Hence, all the judgments of this court on this point are distinguishable on facts. Similarly, we do not think that there is any necessity of deciding any wider legal controversy bearing in mind the facts of this case. Hence, we do not deem it fit to refer to any alleged divergence in the views recorded by the Division Benches in *Ramkali* (supra) and *Maruti Mane* (supra) and those in the case of the later judgment in *Apurva Parikh* (supra). That can be considered in a more deserving case. Lastly, the acquisition can neither be held to be arbitrary nor *mala fide*. It is not to favour any builder or developer, but to implement a scheme of rehabilitation of the slum dwellers represented by the proposed society of slum dwellers (Respondent no.6) and to re-develop the property for the benefit of eligible slum dwellers. How, then we can interfere with such measure, more so when it is taken after due compliance with law. Thus, equity and justice is not with the petitioners but heavily against them.

116. For the above reasons, we do not think that the writ petition has any merit. It is dismissed. Rule is discharged. However, there would be no order as to costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)