

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8949 OF 2015

- | | |
|--|----------------|
| 1. Slum Rehabilitation Authority, |] |
| Pune and Pimpri Chinchwad Area Pune, |] |
| Having its office at Mutha Chamber-II, |] |
| S. B. Road, Near Chaturshrungi, |] |
| Shivajinagar, Pune 411 016. |] |
|
2. The Chief Executive Officer, |] |
| Of SRA Pune and Pimpri Chinchwad Area, |] |
| Pune, having its office at Mutha Chamber-II, |] |
| S. B. Road, Near Chaturshrungi, |] |
| Shivajinagar, Pune 411 016. |]..Petitioners |

Versus

- | | |
|---|---|
| 1. Smt. Kantabai Vasant Ahir |] |
| Age- 66 years, occupation household |] |
|
2. Shri. Santosh Vasant Ahir |] |
| Age- 33 years, Occupation business |] |
|
3. Shri. Gaurishankar Vasant Ahir |] |
| Age- 31 years, Occupation business, |] |
|
4. Shri. Nilesh Vasant Ahir |] |
| Age 29 years, Occupation business, |] |
| Respondent No.1 to 4 residing at |] |
| Matru Chhaya Hsg. Society, Near Agakhan |] |
| Palace, Pune-Ahmednagar Road, |] |
| Yerwada, Pune 411 006. |] |
|
5. Mrs. Radhika Sandip Choudhary |] |
| Age-adult, Occupation Housewife, |] |
| R/at – SBI Colony, Court Road, Paratwada, |] |
| Taluka – Achalpur, District – Amravati. |] |
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6. Mr. Vasudeo Ramanna Pujari, |] |
| adult, Occupation Business, |] |

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| 7. Mr. Chandrakant Ramanna Pujari |] |
| Age-adult, Occupation business, |] |
| Having address at 28/1A/1, Wadgaon Sheri |] |
| Taluka-Haveli, District Pune. |] |
| 8. Mr. Sanjay Vijay Pabashettiwar, |] |
| Age-adult, occupation service, |] |
| Having address at 28/1A/1, |] |
| Wadgaon Sheri, Taluka Haveli, Dist. Pune. |] |
| 9. Mr. Suresh Tejbahaddur Thakur, |] |
| Age-adult, Occupation business, |] |
| Having address at Wadgaon Sheri, Ramwadi |] |
| Taluka – Haveli, District Pune. |] |
| 10. Shri. Tukaram Sopanrao Mulik, |] |
| Age – 60 years, Occupation – Business, |] |
| Having address at S. No.289, Ramwadi, |] |
| Mulik Vasti, Wadgaon Sheri, Pune. |] |
| 11. The President, |] |
| Maharashtra Slum Area (I.C. & R.) |] |
| Tribunal, Mumbai . |]..Respondents |

ALONGWITH
WRIT PETITION NO.8948 OF 2015

- | | |
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| 1. Slum Rehabilitation Authority, |] |
| Pune and Pimpri Chinchwad Area Pune, |] |
| Having its office at Mutha Chamber-II, |] |
| S. B. Road, Near Chaturshrungi, |] |
| Shivajinagar, Pune 411 016. |] |
| 2. The Chief Executive Officer, |] |
| Of SRA Pune and Pimpri Chinchwad Area, |] |
| Pune, having its office at Mutha Chamber-II, |] |
| S. B. Road, Near Chaturshrungi, |] |
| Shivajinagar, Pune 411 016. |]..Petitioners |

Versus

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3. Shri. Gaurishankar Vasant Ahir]
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Age-adult, Occupation business,]
Having address at Wadgaon Sheri, Ramwadi]
Taluka – Haveli, District Pune.]
10. Shri. Tukaram Sopanrao Mulik,]
Age – 60 years, Occupation – Business,]
Having address at S. No.289, Ramwadi,]

Mulik Vasti, Wadgaon Sheri, Pune.]

11. The President,]
Maharashtra Slum Area (I.C. & R.)]
Tribunal, Mumbai .]..Respondents

ALONGWITH
WRIT PETITION NO.8947 OF 2015

Shri. Tukaram Sopanrao Mulik]
Age 60 years, occupation business,]
Having address at S. No.28, Ramwadi,]
Mulik Vasti, Wadgaon Sheri, Pune.]..Petitioner

Versus

1. The State of Maharashtra]
(At the instance of the Slum Tribunal,]
Bandra, Mumbai)]
(to be served upon the Govt. Pleader,]
High Court, Bombay)]

2. Slum Rehabilitation Authority,]
Pune and Pimpri Chinchwad Area Pune.]
Having its office at Mutha Chamber,]
S.B. Road, Near Chaturshrungi,]
Shivajinagar, Pune 411 016.]

3. The Chief Executive Officer,]
Of SRA Pune and Pimpri Chinchwad Area,]
Pune, having its office at Mutha Chamber,]
S. B. Road, Near Chaturshrungi,]
Shivajinagar, Pune 411 016.]

4. Smt. Kantabai Vasant Ahir]
Age- 66 years, occupation household]

5. Shri. Santosh Vasant Ahir]
Age- 33 years, Occupation business]

6. Shri. Gaurishankar Vasant Ahir]
Age- 31 years, Occupation business,]

7. Shri. Nilesh Vasant Ahir]
Age 29 years, Occupation business,]
Respondent No.1 to 4 residing at]
Matru Chhaya Hsg. Society, Near Agakhan]
Palace, Pune-Ahmednagar Road,]
Yerwada, Pune 411 006.]
8. Mrs. Radhika Sandip Choudhary]
Age-adult, Occupation Housewife,]
R/at – SBI Colony, Court Road, Paratwada,]
Taluka – Achalpur, District – Amravati.]
9. Mr. Vasudeo Ramanna Pujari,]
adult, Occupation Business,]
10. Mr. Chandrakant Ramanna Pujari]
Age-adult, Occupation business,]
Having address at 28/1A/1, Wadgaon Sheri]
Taluka-Haveli, District Pune.]
11. Mr. Sanjay Vijay Pabashettiwar,]
Age-adult, occupation service,]
Having address at 28/1A/1,]
Wadgaon Sheri, Taluka Haveli, Dist. Pune.]
12. Mr. Suresh Tejbahaddur Thakur,]
Age-adult, Occupation business,]
Having address at Wadgaon Sheri, Ramwadi]
Taluka – Haveli, District Pune.]..Respondents

ALONGWITH
WRIT PETITION NO.8946 OF 2015

Shri. Tukaram Sopanrao Mulik]
Age 60 years, occupation business,]
Having address at S. No.28, Ramwadi,]
Mulik Vasti, Wadgaon Sheri, Pune.]..Petitioner

Versus

1. The State of Maharashtra]

- (At the instance of the Slum Tribunal,]
Bandra, Mumbai)]
(to be served upon the Govt. Pleader,]
High Court, Bombay)]
2. Slum Rehabilitation Authority,]
Pune and Pimpri Chinchwad Area Pune.]
Having its office at Mutha Chamber,]
S.B. Road, Near Chaturshrungi,]
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3. The Chief Executive Officer,]
Of SRA Pune and Pimpri Chinchwad Area,]
Pune, having its office at Mutha Chamber,]
S. B. Road, Near Chaturshrungi,]
Shivajinagar, Pune 411 016.]
4. Smt. Kantabai Vasant Ahir]
Age- 66 years, occupation household]
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Age- 33 years, Occupation business]
6. Shri. Gaurishankar Vasant Ahir]
Age- 31 years, Occupation business,]
7. Shri. Nilesh Vasant Ahir]
Age 29 years, Occupation business,]
Respondent No.1 to 4 residing at]
Matru Chhaya Hsg. Society, Near Agakhan]
Palace, Pune-Ahmednagar Road,]
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8. Mrs. Radhika Sandip Choudhary]
Age-adult, Occupation Housewife,]
R/at – SBI Colony, Court Road, Paratwada,]
Taluka – Achalpur, District – Amravati.]
9. Mr. Vasudeo Ramanna Pujari,]
adult, Occupation Business,]
10. Mr. Chandrakant Ramanna Pujari]

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11. Mr. Sanjay Vijay Pabashettiwar, |] |
| Age-adult, occupation service, |] |
| Having address at 28/1A/1, |] |
| Wadgaon Sheri, Taluka Haveli, Dist. Pune. |] |
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12. Mr. Suresh Tejbahaddur Thakur, |] |
| Age-adult, Occupation business, |] |
| Having address at Wadgaon Sheri, Ramwadi |] |
| Taluka – Haveli, District Pune. |] |
| |]. Respondents |

Mr. P. S. Dani, Senior Advocate i/by Mr. Vijay Killedar for the Petitioners in Writ Petition No.8949 of 2015, Writ Petition No.8948 of 2015 and for Respondent No.2 in Writ Petition No.8946 of 2015, Writ Petition No.8947 of 2015.

Mr. Y. S. Jahagirdar, Senior Advocate i/by Mr. S. A. Inamdar for the Petitioners in Writ Petition No.8946 of 2015 and Writ Petition No.8947 of 2015.

Mr. A. Y. Sakhare, Senior Advocate i/by Mr. P. V. Dube for the Respondent Nos.1 to 9 in Writ Petition No.8949 of 2015 and Writ Petition No.8948 of 2015 and for Respondent Nos.4 to 12 in Writ Petition No.8946 of 2015 and Writ Petition No.8947 of 2015.

CORAM : R. M. SAVANT, J.
RESERVED ON : 23.03.2017
PRONOUNCED ON : 28.04.2017

JUDGMENT

1 Rule in all the Petitions, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The above Petitions take exception to the order dated

12.03.2015 passed by the Learned President of the Maharashtra Slum Areas (I.C. & R.) Tribunal in Appeal No.25 of 2014 and Appeal No.24 of 2014. By the said order, the said Appeals came to be partly allowed and the Slum Rehabilitation Area Declaration Order dated 24.05.2006 issued under Section 3C and the Slum Clearance Order under Section 3D of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as “the Slum Act”) to the extent of the area of 1045.50 sq.mtrs. came to be set aside. However the said Declaration and Clearance order was sustained in so as the area of 4123 sq.mtrs. is concerned.

3 The above Writ Petition No.8949 of 2015 and Writ Petition No.8948 of 2015 have been filed by the Slum Rehabilitation Authority, Pune (“SRA” for the sake of brevity) challenging the said orders dated 12.03.2015. The remaining two Petitions i.e. Writ Petition No.8946 of 2015 and 8947 of 2015 have been filed by the owner of the lands in question one Tukaram Sopanrao Mulik challenging the same order dated 12.03.2015 passed by the Slum Tribunal. Since the challenge in all the above Petitions runs parallel and since the Petitions involve common questions of fact and law, they are heard together.

By the consent of the Learned Counsel for the parties, Writ

Petition No.8949 of 2015 is treated as the lead matter.

4 The lands involved in the above Petitions are Survey Nos.27 and 28 at Wadgaon Sheri (Ramwadi), Mulik Vasti, Pune admeasuring 4123 sq.mtrs. The said lands were occupied by structures. The said land came to be declared as slum by a notification issued under Section 4(1) of the Slum Act. The said declaration was published by the Competent Authority in the Government Gazette on 10.11.1983 and copy thereof was made available for perusal of the public by affixing the same at conspicuous places in the said area and panchanama to that effect came to be prepared.

5 The Slum Rehabilitation Authority for Pune, Pimpri and Chinchwad area i.e. SRA came to be established under Section 3A of the Slum Act on 30.06.2005. After its establishment, the SRA prepared a Slum Rehabilitation Scheme for the city of Pune which was under Section 3B of the Slum Act. The said Slum Rehabilitation Scheme inter-alia defined the constitution of the SRA, its scope and powers under the Slum Act, its obligations towards the slum dwellers as also towards the owners and the developers. After its establishment, the SRA conducted a survey to inter-alia prepare a list of eligible and ineligible slum dwellers from amongst the persons who had their structures on the land in

question. The SRA accordingly carried out a detailed survey by visiting the site. The Respondent Nos.1 to 9 herein who have their structures on the lands in question participated in the said survey and showed their willingness to be the part of the said scheme. In pursuance of the said survey, the first list of slum dwellers came to be published on 18.04.2006 by affixing the same at a conspicuous place in the said area. In terms of the Government Resolution dated 08.09.2001, a notice came to be published on 12.05.2006 calling for objections from the aggrieved slum dwellers in respect of the list prepared of the eligible slum dwellers by the SRA vide Annexure-II. The Respondent Nos.1 to 9 herein whose structures are situated on the lands in question approached the SRA vide their objections dated 26.05.2006, 21.06.2006, 20.07.2006 and 07.08.2006. After considering the objections of the Respondent Nos.1 to 9, the SRA published another list on 16.05.2007. In the said list the Respondent Nos.1 to 9 herein were declared as eligible.

6 The SRA thereafter in its capacity as a slum rehabilitation authority passed an order under Section 3C of the Slum Act whereby an area admeasuring 5168.50 sq.mtrs. (i.e. 4123 sq.mtrs.) already declared as slum, plus 1045.50 sq.mtrs out of the said land bearing Survey Nos.27 and 28 came to be declared as a Slum Rehabilitation Area by order dated 24.05.2006. The said Slum Rehabilitation Area Declaration Order issued

under Section 3C of the Slum Act was published in daily newspaper “Lokmat” on 28.05.2006 as also in the Gazette on 01.06.2006. The said notification was thereafter served upon the concerned persons not only by publishing the same but also by affixing the same on the front side of the structures of the Respondent Nos.1 to 9 on 13.06.2006. Hence by affixing the same and by publishing the same in the daily newspaper “Lokmat” the SRA, can be said to have complied with the requirement of serving the notice on the affected parties. The SRA thereafter added an additional area of about 7212.50 sq.mtrs which is adjacent to the area already declared as a Slum Rehabilitation Area which additional area was also of the ownership of the same owner.

7 Thereafter a Slum Clearance Order came to be issued on 01.09.2009. The same was in respect of 4123 sq.mtrs. already declared as Slum Rehabilitation Area plus 1045.50 sq.mtrs. which was an undeclared area and the additional area of 7212.50 sq.mtrs. which is the adjacent land belonging to the owner i.e. the Respondent No.10. The said Slum Clearance Order was published in the Government Gazette on 10.09.2009 and was also published in daily newspaper “Pudhari” in its edition dated 12.09.2009. The said order was also pasted on the conspicuous part of the locality and panchanama to the said effect was drawn on 15.10.2009. It is pursuant to the said Slum Clearance Order

that the developers i.e. M/s. Mulik Developers started the work of rehabilitation on the said property. In view of the fact that the Respondents were not vacating their structures, a notice came to be issued to them under Section 33 of the Slum Act which notice was dated 03.09.2014 calling upon the Respondent Nos.1 to 9 to vacate and hand over possession of their structures so as to facilitate implementation of the rehabilitation scheme for the slum dwellers on the said plot of land. The issuance of the said notice has triggered the filing of the Appeals by the Respondents against the declaration of the Slum Rehabilitation Area dated 24.05.2006 issued under Section 3C and the Slum Clearance Order dated 01.09.2009 issued under Section 3D of the Slum Act. The Appeals filed on 22.04.2013 by the Respondent Nos.1 to 9 were numbered as 25 of 2014 and 26 of 2014 respectively. The Appeals were principally founded on the fact that it is only in respect of an area declared as slum under Section 4(1) that a declaration could be issued in respect of a Slum Rehabilitation Area and consequently a Slum Clearance Order could be passed. It was also the case of the Appellants i.e. Respondent Nos.1 to 9 herein that the said declaration of the Slum Rehabilitation Area has been issued without notice to the persons like the Appellants and without their consent. It was the case of the Appellants that they were lessees in respect of the area of 5000 sq.ft. in the said plot

of land since 1960 and that the Appellant Nos.6 to 9 were tenants of the landlord and were therefore required to be issued a notice and their consent was required to be obtained. It was also the case of the Appellants that the Slum Clearance Order dated 01/09/2009 has been issued without hearing them. It was the case of the Appellants that they became aware of the declaration of the Slum Rehabilitation Area and the issuance of the Slum Clearance Order when in the Civil Suit No.97 of 2013 filed by them against the SRA, the Advocate for the SRA filed the documents in question for the first time. It was the case of the Appellants that they thereafter applied for certified copies of the said documents which were inter-alia declaration of the Slum Rehabilitation Area and the Slum Clearance Order on 18.03.2013 and obtained the same on 22.03.2013. It was therefore the case of the Appellants that the Appeal as filed by them after obtaining the certified copies was within time. The Appellants also questioned the declaration of an additional area of 1045.50 sq.mtrs. as Slum Rehabilitation Area and questioned the said declaration on the ground that before taking any such drastic action the Appellants were required to be heard. The Appellants also questioned the implementation of a Slum Rehabilitation Scheme on the plot of land on the ground that the owners did not have the consent of 70% of the occupants as required. The Appellants also contended that in terms of the

information they had got under the Right to Information Act, their structures were not within the Slum Area declared as such and therefore the SRA did not have the jurisdiction and power to remove the structures of the Appellants and implementation of the Slum Rehabilitation Scheme on the additional area of 1045.50 sq.mtrs. The Appellants had therefore sought the quashing of the declaration of the Slum Rehabilitation Area Order dated 24.05.2006 as also the Slum Clearance Order dated 01.09.2009 passed by the Chief Execution Officer of the SRA.

8 On behalf of the SRA, a reply affidavit dated 31.01.2015 came to be filed by the Additional Chief Executive Officer Shri. Sudhakar Deshmukh. In the said reply the facts antecedent to the declaration of the Slum Rehabilitation Area have been stated. It was stated that an area survey was carried out. In the said survey the actual conditions existing on site were reported. It was stated that on being satisfied that conditions contemplated under Section 4(1) were satisfied that CEO, SRA had passed the Slum Rehabilitation Area Declaration Order on 24.05.2006. It was further stated that the objection of the Appellants in respect of their eligibility was considered and that the Appellants were held to be eligible. It was further stated in the said affidavit that pursuant to the declaration of the Slum Rehabilitation Area a Slum Clearance Order came to be issued on 01.09.2009 in respect of the said Slum Rehabilitation

Area. The publication of the said Slum Clearance Order was adverted in the affidavit. It was therefore the case of the SRA in the said affidavit that no relief could be granted to the Appellants in the said Appeal as the procedure required to be followed by the SRA was followed as such by the SRA prior to the declaration of the Slum Rehabilitation Area as also the issuance of the Slum Clearance Order.

9 On behalf of the Opponents in the said Appeals, the owner Shri. Tukaram Sopanrao Mulik filed his reply dated 21.02.2015. In the said reply, the facts antecedent to the issuance of the declaration of the Slum Rehabilitation Area under Section 3C(1) of the Slum Act are mentioned. It was averred in the said affidavit that the amended provisions of the Slum Act as contained in Chapter I-A are applicable. The affiant has referred to the suit filed by the Appellants being Civil Suit No.97 of 2013 challenging the Slum Clearance Order dated 01.09.2009 in which suit an application was made for interim reliefs on 05.09.2014 which application was rejected by the Learned Civil Judge Senior Division, Pune on 09.09.2014 the affiant therefore prayed that no relief could be granted to the Appellants in the above Appeal and that the said Appeal was required to be dismissed.

10 On the basis of the pleadings of the parties, the Slum

Tribunal framed the following issues :-

- “(i) Whether the Appellants proved that they are persons aggrieved as contemplated under Section 12(4) of the Slum Act ?
- (ii) Whether the Respondents have adopted the due process of law while issuing the impugned order dated 01.09.2009 ?”

The parties in support of their respective assertions produced a number of documents. The Respondents herein i.e. the Appellants before the Tribunal filed a copy of the Civil Suit No.365 of 2000, the proposal submitted by the owners to the SRA on 20.09.2005 for an area admeasuring $4123 + 1045.50 = 5168.50$ sq.mtrs., the letter dated 25.11.2005 issued by the Assistant Commissioner of the Municipal Corporation informing the Appellants that they do not fall in the area declared as slum, the amendment application filed in Civil Suit No.365 of 2000 by the owners i.e. the original Plaintiffs to incorporate the averment that the Respondents herein are in a private property and not in a slum, the copy of the agreements entered into by the owners with the slum dwellers, the slum declaration dated 16.05.2005, the rent receipts in respect of the payment made in Civil Suit No.365 of 2000, notice published in newspaper “Jagruti Times”, copy of the notice issued by the Respondents i.e. the Appellants in the Appeal to the SRA dated

27.11.2012. On behalf of the SRA, the documents showing that the Respondents i.e. the Appellants are eligible, the various declarations and the notifications issued under Section 3C and 3D of the Slum Act, the order dated 01.09.2009 calling upon the Respondents to vacate and hand over possession of their structures were placed on record on behalf of the SRA herein i.e. Respondent Nos.1 and 2 to the Appeal.

11 The Tribunal on the basis of the material on record and especially having regard to the report of the Assistant Commissioner, Pune Municipal Corporation informing the Appellants that they do not come within the area declared as slum held that the Appellants i.e. the Respondents herein are aggrieved persons under Section 12(4) of the Slum Act. In so far as the second issue is concerned, the Tribunal adverted to the fact that since the dispute is as regards the order dated 01.09.2009, the said order discloses that the same has been issued in respect of Survey Nos.27 and 28 out of which 4123 sq.mtrs. is the declared slum area and 1045.50 sq.mtrs. is the undeclared area. The Tribunal then adverted to the fact of the Slum Clearance Order under Section 3D read with Section 12 by which SRA had called upon the Respondents herein i.e. the Appellants to hand over their structures. The Tribunal therefore ventured to consider whether before passing the said order the SRA had complied with the procedure which was required to be

followed. The Tribunal then adverted to Section 36 of the Slum Act which provides for the manner in which notices under the Slum Act are required to be issued. The Tribunal held that since before passing of the order dated 01.09.2009 it was necessary to issue notice under Section 36 to the Appellants and since the Appellants are held to be eligible slum dwellers as per the admission of the Respondent Nos.1 and 2 in their written statement, the Respondent Nos.1 and 2 were therefore bound to issue notice to the Appellants and an opportunity of hearing was required to be given to the Appellants before passing the order under challenge. The Tribunal observed that such a procedure was not followed by the SRA as is revealed from the documents filed on record. The Tribunal further observed that since the report of the Assistant Municipal Commissioner records that the structures of Vasant Dagadu Ahir, Chandrakant Ramanna Pujarim, Vijay Baburao Pabashettiwar, Suresh Tejbahadur Thakur are not covered by the declaration. The Tribunal held that the SRA had not complied with Section 36 of the Slum Act in the matter of issuing notices to the Appellants who were not covered by the declaration of the slum. The Tribunal whilst answering issue No.3 came to a conclusion that the order under challenge i.e. order dated 01.09.2009 was liable to be quashed and set aside in respect of only the non-declared area i.e. 1045.50 sq.mtrs. Hence the Tribunal by the impugned judgment and

order dated 12.03.2015 has partly allowed the Appeal filed by the Respondents herein and resultantly quashed and set aside the Slum Declaration Area Order dated 24.05.2006 and the Slum Clearance Order dated 01.09.2009 only in respect of the non-declared area i.e. 1045.50 sq.mtrs. out of Survey Nos.27 and 28 situated at Ramwadi, Wadgaon Sheri, Pune. As indicated above, it is the said judgment and order dated 12.03.2015 passed by the Learned President of the Slum Tribunal which is taken exception to by way of the above Petitions.

12 **SUBMISSIONS OF THE LEARNED SENIOR COUNSEL MR. P. S. DANI ON BEHALF OF THE PETITIONERS i.e. SRA :-**

I) That the Tribunal has mis-interpreted and misconstrued the provisions of the Slum Act whilst coming to a conclusion that notices under Section 36 of the Slum Act were required to be issued to the Respondents and that they were required to be heard prior to the issuance of the declaration of the Slum Rehabilitation Area under Section 3C as also the Slum Clearance Order under Section 3D of the Slum Act.

II) The Tribunal has failed to appreciate that the statutory scheme as comprised in Chapter I-A which comprises of Section 3A to 3Z-2 stands in contradistinction to the provisions of Chapter II of the Slum Act.

III) That the declaration of slum area under Section 4(1) of the Slum Act has no application in so far as the declaration of the Slum Rehabilitation Area under Section 3C is concerned.

IV) That the word “Slum area” in Section 3C is used in its generic sense and does not have any connection with the “slum area” as posited in Section 2(ga) of the Slum Act.

V) That no pre-decisional hearing was required to be granted prior to the declaration of Slum Rehabilitation Area within the Slum Rehabilitation Scheme being issued having regard to the manner in which Section 3B and 3C are structured. The power conferred on the CEO, SRA is legislative in nature and therefore the principles of natural justice in the matter of affording an opportunity of hearing prior to issuance of declaration are not attracted. Reliance is placed on the judgment of the Apex Court reported in (1989) 3 SCC 396 in the matter of Sundarjas Kanyalal Bhatija Vs. Collector, Thane, Maharashtra and others.

VI) That it is not necessary for an area to be declared as slum area under Section 4(1) for it to be declared as a Slum Rehabilitation Area so as to implement a Slum Rehabilitation Scheme in the said area. In

support of the said contention reliance is placed on the judgments of the Division Benches of this Court reported in 2005(3) ALL MR 889 in the matter of Amba Chawl Wadi Rahiwasi Seva Sangh Vs. Municipal Corporation of Greater Mumbai and others, 2006(5) ALL MR 323 in the matter of Om-Sai Darshan Co-operative Housing Society and another Vs. State of Maharashtra and others and the reported judgment of a Division Bench of this Court dated 14.07.2010 in the matter of Sayed Anwar Gaffar and others Vs. Administrator and Divisional Commissioner, Konkan Division and others.

VII) That the Tribunal has mis-interpreted and misconstrued Section 36 of the Slum Act so as to read into it that any notice issued under the Slum Act has to be served on the affected party. It was submitted that the said Section 36 only stipulates the manner in which a notice/order under the Slum Act has to be issued to the affected party and therefore cannot be interpreted to mean that every notice under the Slum Act has to be issued to the affected party when a particular provision does not provide for the same.

VIII) That the Tribunal after coming to a conclusion that the Respondents are eligible slum dwellers has thereafter erred in holding that they are an aggrieved party within the meaning of Section 12(4) of

the Slum Act and therefore ought to have been issued a notice under Section 36 when all that is required to be done by the proponents of the Slum Rehabilitation Scheme is to rehabilitate the Respondents in the said scheme.

IX) That the interpretation as sought to be given by the Tribunal to the provisions of Section 3C and 3D of the Slum Act would result in the said provisions being impossible to implement as every affected party would have to be given a notice when the said provisions do not contemplate any such procedure that is required to be followed. The same would also result in delay being caused in implementing a Slum Rehabilitation Scheme.

13 The Learned Senior Counsel Mr. Y. S. Jahagirdar appearing for the Petitioners in the companion Writ Petitions would adopt the submissions of the Learned Senior Counsel Mr. P. S. Dani but in addition thereto would contend that the procedure as provided for in Section 3C and 3D has been followed prior to the issuance of the declaration of the Slum Rehabilitation Area and prior to the Slum Clearance Order issued under Section 3D of the Slum Act. That save and except the Respondents, the rest of the occupants have vacated their structures to facilitate the implementation of the Slum Rehabilitation Scheme and in fact have now

been rehabilitated in the rehab building constructed under the said scheme.

14 **SUBMISSIONS OF THE LEARNED SENIOR COUNSEL MR.**

A. Y. SAKHARE ON BEHALF OF THE RESPONDENTS :-

A) That no land or area can be declared as a Slum Rehabilitation Area unless the same is declared as a slum area under Section 4(1) of the Slum Act.

B) That in the instant case, the land on which the Petitioners have their structures i.e. land admeasuring 1045.50 sq.mtrs. could not be made part of the Slum Rehabilitation Area as the same is undisputedly an undeclared area.

C) That the Tribunal was therefore right in quashing the declaration of Slum Rehabilitation Area as well as the Slum Clearance Order in so far as the area of 1045.50 sq.mtrs. is concerned.

D) That the declaration of a Slum Rehabilitation Area under Section 3C could not have been issued without hearing the Respondent Nos.1 to 9. In support of the said submission, reliance is sought to be placed on the unreported judgment of a Learned Single Judge of this Court in Writ.

Petition No.2488 of 2011 in the matter of **Jagnath Hanumant Sonawane and others Vs. Slum Rehabilitation Authority and others.**
dated 11.05.2011.

E) That for an area to be declared as a Slum Rehabilitation Area the parameters laid down in clause (4) of Section 3B of the Slum Rehabilitation Scheme are required to be satisfied. In the instant case, there is nothing on record to indicate that the Slum Rehabilitation Area has satisfied itself that the area of 1045.50 sq.mtrs. qualifies to be declared as a Slum Rehabilitation Area.

F) That in declaring the area of 1045.50 sq.mtrs. as Slum Rehabilitation Area when the said area does not satisfy the conditions mentioned in the said Slum Rehabilitation Scheme would amount to a colourable exercise of power on the part of the SRA. Reliance is placed on the Division Bench judgment of this Court reported in **2015(2) Mh.L.J. 899** in the matter of **Reserve Bank Employees Snehdhara Co-op. Housing Society Ltd. Vs. State of Maharashtra and others.**

G) When the entire exercise of declaring the area of 1045.50 sq.mtrs. as Slum Rehabilitation Area and thereafter including the area of 7212.50 sq.mtrs. which is adjoining land in the Slum Clearance Order is to favour

the land owner as one son of the owner is a sitting MLA and other son is a Municipal Corporator in the Pune Municipal Corporation.

H) That in the alternative, in the event this Court comes to the conclusion that in so far as the area of 1045.50 sq.mtrs. which is declared as a Slum Rehabilitation Area, the principles of natural justice are not required to be followed, this Court would then remand the matter back to the Slum Tribunal to consider as to whether the parameters as laid down in the Slum Rehabilitation Scheme are satisfied as the Slum Tribunal has not considered the said aspect whilst deciding the Appeal.

CONSIDERATION

15 A reading of the impugned judgment and order of the Slum Tribunal discloses that what has weighed with the Slum Tribunal whilst setting aside the declaration issued under Section 3C in so far as the area of 1045.50 sq.mtrs. as also the Slum Clearance Order issued under Section 3D is the fact that the Respondent Nos.1 to 9 were aggrieved persons and were not issued a notice before the declaration of the Slum Rehabilitation Area and the Slum Clearance Order. Hence incidental to the said issue is the issue whether the principles of natural justice,

namely in the matter of the Respondent Nos.1 to 9 being issued a notice and being heard were required to be complied with before issuance of the declaration of the Slum Rehabilitation Area and the Slum Clearance Order. Since the said issue can be adjudicated having regard to the relevant provisions of the Slum Act, it would be necessary to refer to the said relevant provisions. The said provisions are Section 2(ga), Section 2(h-c), Section 2(h-d), Section 4 and Section 36 of the Slum Act. The same are reproduced hereinunder for the sake of ready reference. However it is required to be noted that the said provisions appear in Chapter I, II and VII of the Slum Act.

“2. Definitions. - In this Act unless the context otherwise requires,-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(ga) "Slum areas" means any area declared as such by the Competent Authority under sub-section (1) of section 4] [and includes any area deemed to be a slum area under section 4A];

(h-c) "Slum Rehabilitation Authority" means the Slum Rehabilitation Authority or Authorities appointed by the State Government under section 3A;

(h-d) "Slum Rehabilitation scheme" means the Slum Rehabilitation Scheme notified under section 3B];”

“4. Declaration of Slum Areas.- [(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 neighborhood, 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 reasons of dilapidation, overcrowding, faulty arrangement and design of such buildings, 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.]

“36. Service of notice, etc.- (1) Every notice, order or direction issued under this Act shall, save as otherwise expressly provided in this Act, be served-

(a) by giving or tendering the notice, order or direction [or] by sending it by registered post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the notice, order or direction on some conspicuous part of his last known place of above or business, or by giving or tendering the notice, order or direction to some adult member or adult servant of his family or by causing it to be affixed on some conspicuous part of the building or land, if any, to

which it relates.

(2) Where the person on whom a notice, order or direction is to be served is minor, service upon his guardian or upon any adult member or adult servant of his family shall be deemed to be the service upon the minor.

(3) Every notice, order or direction, which by or under this Act is to be served as a public notice order or direction or as a notice, order or direction which is not required to be served on any individual therein specified shall, save as otherwise expressly provided, be deemed to be sufficiently served if a copy thereof is affixed in such conspicuous part of the office of the Competent Authority or in such other public place during such period, or is published in such local newspaper or in such other manner, as the Competent Authority may direct.”

16 Section 2(ga) as above therefore defines what is a “Slum area”, means any area declared as such by the Competent Authority under sub-section (1) of Section 4. In so far as Section 2(h-c) is concerned, the said Section defines the “Slum Rehabilitation Authority”, means an Authority appointed by the State Government under Section 3A. In so far as Section 2(h-d) is concerned, it defines “Slum Rehabilitation Scheme”, means the Scheme notified under Section 3B. In so far as Section 4(1) is concerned, it posits that if the Competent Authority is 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 of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise; or any

building in any area, used or intended to be used for human habitation can declare the said area to be a slum area. Sub Section (3) of Section 4 postulates that any person aggrieved by a declaration made under sub-section (1) may, within thirty days from the date of such declaration in the Official Gazette, appeal to the Tribunal. In so far as Section 22 is concerned, it provides for the consequences which would flow from the declaration issued in respect of an area being a slum area. In the said Section also certain restrictions have been imposed in respect of the institution of any suit or proceeding for obtaining any decree or order for the eviction of an occupier from any building or land in a certain area. The said Section also imposes restrictions in so far as the execution of any decree or order in any building or land in such area or for recovery of arrears of rent or compensation from such occupier. In so far as Section 36 is concerned, it deals with the manner in which notice, order or direction issued under the Slum Act have to be served.

17 The Slum Act was substantially amended by Maharashtra Act IV of 1996. The Statement of Objects and Reasons as contained in the Bill set out the reasons for amending the Slum Act. It is stated in the said Statement of Objects and Reasons that although the schemes in the Slum Act have helped in improving the hygiene and environment in the slum areas, the problem of slum development has, to a large extent, remained

unresolved. The State Government therefore constituted a study group under the Chairmanship of Shri. Dinesh Afzalpurkar with a view to find out a permanent solution to the problem and to provide for the rehabilitation of the slum and hutment dwellers through reconstruction. Pursuant to its appointment the study group submitted a report to the State Government making certain suggestions which inter-alia include the establishment of an independent authority for the said purpose which is now the “Slum Rehabilitation Authority” (SRA). It is pursuant to the said recommendations that the Slum Act came to be amended so as to incorporate Chapter I-A therein which consists of Section 3A to 3W.

18 In so far as the present controversy is concerned, Sections 3A to 3D of Chapter I-A are central to it and the same are therefore required to be reproduced hereinunder :-

3A. Slum Rehabilitation Authority for implementing Slum Rehabilitation Scheme.- (1) Notwithstanding anything contained in the foregoing provisions, the State Government may, by notification in the Official Gazette, appoint an authority to be called the Slum Rehabilitation Authority for such area or areas as may be specified in the notification; and different authorities may be appointed for different areas.

(2) Every Slum Rehabilitation Authority shall consist of a Chairman, a Chief Executive Officer and fourteen other members, all of whom shall be appointed by the State Government.

[(2A) Every Slum Rehabilitation Authority appointed under sub-section (1) shall be a body corporate by the name of "TheSlum Rehabilitation Authority" and shall have perpetual succession and common seal; with power to contract, acquire, hold and dispose of property, both movable and immovable, and to do all things necessary for the purposes of this Act, and may sue and be sued by its corporate name.]

[(3) The powers, duties and functions of the Slum Rehabilitation Authority shall be,-

- (a) to survey and review existing position regarding slum areas;
- (b) to formulate schemes for rehabilitation of slum areas;
- (c) to get the Slum Rehabilitation Scheme implemented;
- (d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slums.]

(4) The terms and conditions of appointment of the non-official members of the Slum Rehabilitation Authority shall be such as may be specified by the State Government.

(5) The Slum Rehabilitation Authority may appoint Committees consisting of its members and experts to facilitate its working and speedy implementation of the scheme prepared under section 3B.

3B. Slum Rehabilitation Scheme.- (1) The State Government, or the Slum Rehabilitation Authority concerned with the previous sanction of the State Government, shall, prepare a general Slum Rehabilitation Scheme for the areas specified under subsection (1) of section 3A, For Rehabilitation of slums and hutment colonies in such areas.

(2) The General Slum Rehabilitation Scheme prepared under sub-section (1) shall be published in the Official Gazette, by the State Government or the concerned Slum Rehabilitation Authority, as the case may be, as the Provisional Slum Rehabilitation Scheme for the area specified under section 3A(1), for the information of

general public, inviting objections and suggestions, giving reasonable period of not less than thirty- days, for submission of objections and suggestions, if any, in respect of the said Scheme.

(3) The Chief Executive Officer of the Slum Rehabilitation Authority shall consider the objections and suggestions, if any, received within the specified period in respect of the said Provisional Scheme and after considering the same, and after carrying out such modifications as deemed fit or necessary, finally publish the said scheme, with the approval of the State Government or, as the case may be, the Slum Rehabilitation Authority in the Official Gazette, as the Slum Rehabilitation Scheme.

(4) The Slum Rehabilitation Scheme so notified under subsection (3) shall, generally lay down the parameters for declaration of any area as the slum rehabilitation area and indicate the manner in which rehabilitation of the area declared as the slum rehabilitation area shall be carried out. In particular, it shall provide for all or any of the following matters, that is to say,-

- (a) the parameters or guidelines for declaration of an area as the slum rehabilitation area;
- (b) basic and essential parameters of development of slum rehabilitation area under the Slum Rehabilitation Scheme;
- (c) provision for obligatory participation of the landholders and occupants of the area declared as the slum rehabilitation area under the Slum Rehabilitation Scheme in the implementation of the Scheme;
- (d) provision relating to transit accommodation pending development of the slum rehabilitation area and allotment of tenements on development to the occupants of such area, free of cost.
- (e) scheme for development of the slum rehabilitation areas under the Slum Rehabilitation Scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the option available to the Slum Rehabilitation Authority for taking up such

- development in the event of non-participation of the landholders or occupants;
- (f) provision regarding sanction of Floor Space Index and transfer of development rights; if any, to be made available to the developer for development of the slum rehabilitation area under the Slum Rehabilitation Scheme;
 - (g) provision regarding non-transferable nature of tenements for a certain period, etc.

[(5) For the purposes of this Chapter, the State Government may register any person or an association of persons, or a partnership firm registered under the Partnership Act, 1932 (IX of 1932) or a company registered under the Companies Act, 1956 (1 of 1956), as a Developer in the prescribed manner.]

3C. Declaration of a slum rehabilitation area.- (1) As soon as may be after the publication of the Slum Rehabilitation Scheme, [the Chief Executive Officer] on being satisfied that circumstances exist in respect of any area, justifying its declaration as slum rehabilitation area under the said scheme, may by an order published in the Official Gazette, declare such area to be a "slum rehabilitation area". The order declaring slum rehabilitation area (hereinafter referred to as "the slum rehabilitation order"), shall also be given wide publicity in such manner as may be specified by [the Slum Rehabilitation Authority].

(2) Any person aggrieved by the slum rehabilitation order may, within four weeks of the publication of such order prefer an appeal to the Special Tribunal; and the decision of the Special Tribunal shall be final.

[(3) On the completion of the Slum Rehabilitation Scheme, the Slum Rehabilitation Area shall cease to be such area.]

3D. Application of other Chapters of this Act to Slum Rehabilitation Area with modification.- On publication of the Slum Rehabilitation Scheme under sub- section (1) of section 3B, the provisions of other Chapters of this Act shall apply to any area declared as the slum rehabilitation area,

subject to the following modifications, namely:-

(a) Chapters II and III shall be omitted;

(b) in Chapter IV,-

(i) section 11 shall be omitted;

(ii) in section 12,-

(A) for sub-section (1), the following sub-section shall be substituted, namely :-

"(1) As soon as may be, after '[the Chief Executive Officer] has declared any slum area to be a slum rehabilitation area, [he] shall make a clearance order in relation to that area, ordering the demolition of each of the buildings specified therein, and requiring each such building to be vacated within such time as may be specified in the clearance order.'";

(B) sub-sections (2) and (3) shall be omitted;

(C) for sub-section (4), the following Sub-Section Shall be substituted namely :-

"(4) Any person aggrieved by the clearance order may, within four weeks of the publication of such order prefer an appeal to the Special Tribunal; and the decision of the Special Tribunal shall be final."

(D) in sub-section (5), for the word "Tribunal" in both the places where it occurs, the words "Special Tribunal" shall be substituted;

[(E) in sub-section (7), for the words "Competent Authority" the words "Chief Executive Officer" shall be substituted;

(F) in sub-section (8), for the words "Competent Authority" the words "Chief Executive Officer" shall be substituted;

(G) in sub-section (9), for the words "Competent Authority", wherever they occur, the words "Chief Executive Officer" shall be substituted;

(H) in sub-section (10),-

(a) for the words "Competent Authority" the words "Slum Rehabilitation Authority" shall be substituted;

(b) in the proviso,-

(i) for the words "Competent Authority" the words "Slum Rehabilitation Authority" shall be substituted;

(ii) for the word "Tribunal" the words "Special Tribunal" shall be substituted;

(iii) for section 13, the following section shall be substituted, namely.-

"13. Power of Slum Rehabilitation Authority to develop slum Rehabilitation area.- (1) Notwithstanding anything contained in sub-section (10) of section 12, the Slum Rehabilitation Authority may, after any area is declared as a Slum Rehabilitation Area, if the landholders or occupants of such area do not come forward within a reasonable time, with a scheme for re-development of such land, by order, determine to re-develop such land by entrusting it to any agency for the purpose.

(2) Where on declaration of any area as a Slum Rehabilitation Area the Slum Rehabilitation Authority, is satisfied that the land in the Slum Rehabilitation Area has been or is being developed by the owner in contravention of the plans duly approved, or any restriction or conditions imposed under sub-section (10) of section 12, or has not been developed within the time, if any, specified under such conditions, it may, by order, determine to develop the land by entrusting it to any agency recognised by it for the purpose: -

Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why the order should not be passed.";

(c) in Chapter V,-

(i) in section 14, in sub-section (1),-

[(A) for the portion beginning with the words "Where on any representation" and ending with the words "clearance area" the following portion shall be substituted, namely;
"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";]

(B) after the proviso, the following proviso shall be added, namely :-

"Provided further that, the State Government may delegate its powers under this sub-section to any officer not below the rank of Commissioner.";

(ii) in Section 15,-

(A) for sub-section (3), the following sub-section shall be substituted namely:-

"(3) Where the land has been acquired for the Slum Rehabilitation Authority, the State Government shall, after it has taken possession thereof, by notification in the Official Gazette, upon such conditions as may be agreed upon between Government and Slum Rehabilitation Authority, transfer the land to the Slum Rehabilitation Authority and thereupon the Slum Rehabilitation Authority may entrust, in accordance with the provisions of section 3B(4), the word of development of such area to any other agency as provided in sub-section (1) of section 13, or to a Co-operative Housing Society of the occupants of such rehabilitation area or occupants of any other area which has been declared as Slum Rehabilitation Area;

(B) for sub-section (4), the following sub-section shall be substituted, namely:-

“(4) The Slum Rehabilitation Authority may, subject to such terms and conditions as the State Government considers expedient for securing the purposes of this Act, transfer by way of lease such land to the Co-operative Housing Societies of such occupants.”;]

[(iii) in section 17,

(A) for the words "Competent Authority", wherever they occur, the words, "Chief Executive Officer", shall be substituted

(B) for the words "Tribunal", in both the places wherever it occurs, the words "Special Tribunal" shall be substituted;

[(iv).in section 18,

(A) for the words "Competent Authority", wherever they occur, the words. "Chief Executive Officer", shall be substituted

(B) for the words "Tribunal", in both the places where it occurs, the words "Special Tribunal" shall be substituted;

[(v) in section 19, for the words "Competent Authority", at both the places where they occur, the words "Chief Executive Officer" shall be substituted;

(vi) in section 20, including in the marginal note, for the words "Competent Authority", wherever they occur, the words "Chief Executive Officer" shall be substituted;

(vii) in section 21, for the words "Competent Authority" the words "Chief Executive Officer" shall be substituted;]

(d) in Chapter VI,-

(i) sections 22, 23, 23A and 26 shall mutatis mutandis apply to the slum rehabilitation area;

(ii) for sections 24 and 25, the following section shall be substituted, namely :-

"24. Allotment of tenements to occupants.- (1) Where an occupant of any premises in an area declared as a slum rehabilitation area has vacated, or is evicted from such premises, on the ground that, the premises are required for the purpose of development under Slum Rehabilitation Scheme, such occupant may, within such time as may be prescribed, file a declaration with the Slum Rehabilitation Authority that he desired to be rehabilitated in that area after its redevelopment under the said Scheme.

(2) On the receipt of such declaration, the Slum Rehabilitation Authority shall register his declaration in the prescribed manner and on completion of the development of the area and reconstruction of the buildings in the said area under the Scheme, give notice to the registered

occupants by affixing it in some conspicuous part of the building and sending it by post to the address which may have been registered with the Slum Rehabilitation Authority by such occupants and in such other manner as may be determined by the Slum Rehabilitation Authority, that the building is likely to be or is ready for occupation from a specified date, and that they should vacate transit accommodation, if any, given to them, and occupy the building so erected within a period specified in the notice.";

(e) in Chapter VII,-

[(i-a) ***]

(i) in section 28, for the words "slum area" the words "slum rehabilitation area" shall be substituted;

(ii) in section 34, for the words "slum area" in both the places where they occur, the words "slum rehabilitation area" shall be substituted;

[(iii) ***]

(iv) in section 37, for the words "clearance area" the words "slum rehabilitation area" shall be substituted;

(v) in section 38, in sub-section (1),-

(i) the words and figure "of the provisions of section 8 or" shall be deleted;

(ii) for the words "clearance area" the words "slum rehabilitation area" shall be substituted;

(vi) in section 41, after the words "Competent Authority" the words "Slum Rehabilitation Authority" shall be inserted;

(vii) in section 42,-

[(A) after the words "in respect of any matter which" the words "Slum Rehabilitation Authority" shall be inserted;]

(B) for the word "Tribunal" the words "Special Tribunal" shall be substituted;

(viii) in section 43, after the words "Competent Authority" the words "Slum Rehabilitation Authority" shall be inserted;

(ix) in section 44, for the word "Tribunal" wherever it occurs, the words "Special Tribunal" shall be substituted;

(x) in section 44 A,-

(A) in sub-section (2) for the word "Tribunal", wherever it occurs the words "Special Tribunal" shall be substituted;

(B) in the marginal note, for the word "Tribunal" the words "Special Tribunal" shall be substituted;

(xi) throughout section 45, including in the marginal note, for the words "the Tribunal", wherever they occur, the words "the Special Tribunal" shall be substituted;

(xii) for section 47, the following section shall be substituted, namely:-

"47. Cesser of corresponding laws.- Where any area is declared to be a slum rehabilitation area then as from the date of such declaration, the provisions of any municipal law or other law, corresponding to the provisions of this chapter, for slum development in relation to such slum rehabilitation area, in force immediately before the said date shall, save as otherwise provided in this chapter, cease to be in force in such slum rehabilitation area, but so long only as the said declaration remains in force."

19 Hence in so far as Section 3A is concerned, it provides for the appointment of an authority to be called the SRA for such area or areas as may be specified in the notification. The powers, duties and functions of the SRA have been mentioned. The said powers, duties and functions

are inter-alia following :-

- “(a) to survey and review existing position regarding slum areas;
- (b) to formulate scheme for rehabilitation of slum areas;
- (c) to get the Slum Rehabilitation Scheme implemented;
- (d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slum.”

20 In so far as Section 3B is concerned, it provides for preparation of a general Slum Rehabilitation Scheme. The said Section provides for the scheme to be published in the Official Gazette initially as a provisional Slum Rehabilitation Scheme for the areas covered by Section 3A. The said provision also postulates the information to the general public, inviting objections and suggestions. It is after considering the objections and suggestions by the Chief Executive Officer of the SRA and after carrying out such modifications as deemed fit or necessary, the final scheme is to be published in the Official Gazette as the Slum Rehabilitation Scheme. Sub-Section (4) of Section 3B provides that the Slum Rehabilitation so notified under sub-section (3) shall, generally lay down the parameters for declaration of any area as the slum rehabilitation area and indicate the manner in which rehabilitation of the area declared as the Slum Rehabilitation Area shall be carried out. The

said Slum Rehabilitation Scheme is to provide inter-alia for the following matters :-

- “(a) the parameters or guidelines for declaration of an area as the slum rehabilitation area;
- (b) basic and essential parameters of development of slum rehabilitation area under the Slum Rehabilitation Scheme;
- (c) provision for obligatory participation of the landholders and occupants of the area declared as the slum rehabilitation area under the Slum Rehabilitation Scheme in the implementation of the Scheme;
- (d) provision relating to transit accommodation pending development of the slum rehabilitation area and allotment of tenements on development to the occupants of such area, free of cost.
- (e) scheme for development of the slum rehabilitation areas under the Slum Rehabilitation Scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the option available to the Slum Rehabilitation Authority for taking up such development in the event of non-participation of the landholders or occupants;
- (f) provision regarding sanction of Floor Space Index and transfer of development rights; if any, to be made available to the developer for development of the slum rehabilitation area under the Slum Rehabilitation Scheme;
- (g) provision regarding non-transferable nature of tenements for a certain period, etc.”

21 In so far as Section 3C is concerned, it provides for

declaration of Slum Rehabilitation Area. The said declaration can be issued as soon as may be, after the publication of the Slum Rehabilitation Scheme after the Chief Executive Officer is satisfied that circumstances in respect of any area, justifying its declaration as slum rehabilitation area under the said scheme exists, may by an order published in the Official Gazette declare such area to be “the slum rehabilitation area”.

22 In so far as Section 3D is concerned, it postulates that on publication of the Slum Rehabilitation Scheme under sub-section (1) of Section 3B, the provisions of other Chapters of the Act shall apply to any area declared as a slum rehabilitation area, subject to the modifications as set out in the respective Sections. The said Section also provides that Chapter II and III stand omitted in respect of the Slum Rehabilitation Area. Hence in so far as the Slum Rehabilitation Scheme is concerned, some of the Chapters/provisions of the Slum Act are required to be omitted and some are required to be substituted or modified as the case may be. Against a Slum Clearance Order issued under Section 3D an Appeal is provided to the Special Tribunal.

23 As indicated above, Section 4 which confers power on the Competent Authority to declare any area as slum area if the requisites for the same as mentioned in Section 4 are satisfied is placed in Chapter II of

the Slum Act. The said Chapter II also contains Section 4A under which a deeming fiction is given to the declaration of any slum improvement area to be a declaration made under Section 4 of the Slum Act. In so far as Chapter III is concerned, the said chapter contains the provisions as regards the power of the Competent Authority to carry out the improvement works which are mentioned in Section 5A which is placed in the said chapter. The said chapter III inter-alia contains the provisions to regulate the manner in which the slum improvement work can be carried out. In so far as Chapter IV is concerned, the said chapter contains the provisions which provide for slum clearance and redevelopment. In so far as Chapter V is concerned, it relates to the powers of acquisition which are vested in the State Government under Section 14 of the Slum Act. Under the said provision, the State Government has power to acquire land if 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 by the State Government. The said chapter also contains the provisions for determination of compensation, the apportionment of compensation and the determination of compensation by the Competent Authority. Then

comes Chapter VI which inter-alia contains the provisions which restrict action to be taken or any suit or proceeding to be initiated without the permission of the Competent Authority. Thereafter in Chapter VII miscellaneous provisions in respect of powers for eviction vested in the Competent Authority and the Appeal provisions as also the manner in which service of notice, order or direction is to be effected as also the bar of jurisdiction as also the provisions relating to the Tribunal etc.

24 As indicated above, in the earlier part of this judgment, the Slum Act was amended pursuant to the report of the study group, which recommended the constitution of an independent authority to oversee the implementation of the slum redevelopment projects. It is with the said object that the provisions as contained in Chapter I-A have been framed.

25 Having run through the gamut of the provisions as contained in the Slum Act, it would now be necessary to consider whether a pre-decisional hearing is required to be granted prior to declaring any area as a Slum Rehabilitation Area. Before proceeding to deal with the said issue, it would be relevant to refer to the judgment of a Learned Single Judge of this Court in ***Jagannath Hanumant Sonawane's*** case (*supra*). In the said judgment, a contention was raised that the power under Section 3C vested in the CEO, SRA is legislative in nature

and therefore the principles of natural justice are not required to be followed. The Learned Single Judge has concluded the said issue as follows :-

“I am inclined to hold that the power exercised by the CEO, SRA, in making an order for declaration of Slum, even if it were a legislative function, would partake the character of a non-legislative function inasmuch as the declaration of Slum Rehabilitation Area applies only to certain specified property/properties as opposed to all properties in general in Greater Mumbai.”

Hence as can be seen from the above extract of the said judgment, the Learned Single Judge on the basis of the judgments of the Apex Court which were cited in the said case on behalf of the Respondents, came to a conclusion that even if the power of the SRA to declare any area as a Slum Rehabilitation Area were a legislative function, the same would partake the character of non-legislative function. The following judgments of the Apex Court were cited before the Learned Single on behalf of the Respondent No.3 in the said case in support of the contention that the power exercised by the CEO, SRA is legislative in nature.

- 1) *Tulsipur Sugar Co. Ltd. Vs. Notified Area committee, Tulsipur* reported in (1980) 2 SCC 295.
- 2) *Union of India Vs. Cynamide India Ltd.* reported in (1987) 2 SCC 720.

3) **Shri. Sitaram Sugar Company Limited Vs. Union of India** reported in **(1990) 3 SCC 223**.

26 The Learned Single Judge it seems was persuaded to take the view that the said power partakes the character of a non-legislative function for the following reasons :-

i) That the possibility of arbitrariness or extraneous considerations weighing with the CEO, SRA in the matter of declaring any area as a Slum Rehabilitation Area cannot be ruled out.

ii) That an Appeal being provided under Section 3C is a pointer to the fact that the said power was not legislative in nature as otherwise there would be no question of a Tribunal sitting in judgment over the decision of the CEO, SRA.

iii) That by Circular dated 16th October 2010 for declaration of Slum Rehabilitation Area, which Circular provides that the owner has to be given a hearing.

iv) The contention urged on behalf of the SRA, that it does not support the contention of it being a legislative power as urged by the Learned Senior Counsel appearing on behalf of the Respondent No.3.

After holding as above, namely that the power vested in the CEO, SRA partakes the character of a non-legislative function, the Learned Single Judge has proceeded to consider whether the principles of natural justice are required to be followed and to what extent. The Learned Judge has concluded that though hearing is required to be granted, the said hearing cannot be restricted to the land owner and would have to be extended in case of a registered lease of say 99 or 999 years to the persons whose names appear on the property card as in the said circumstance the lessee for all practical purpose is the owner of the property. The Learned Single Judge has lastly observed that the hearing has to be given to all the persons whose names appear in the property card. Hence the opportunity of hearing has been restricted by the Learned Single Judge to the persons whose names appear in the property card. In the said case the Learned Single Judge held that the power of issuing a declaration under Section 3C even if it were a legislative function the same partakes the character of a non-legislative function.

27 As indicated above, Section 3B confers power on the State Government or the Slum Rehabilitation Authority (SRA) to prepare a general Slum Rehabilitation Scheme for the areas specified in sub-section (1) of Section 3A. The said Slum Rehabilitation Scheme is to be published in the Official Gazette as a provisional Slum Rehabilitation Scheme

inviting objections and suggestions from the members of the public within the time frame stipulated therein, it is after considering such objections and suggestions that the scheme is to be finalized after carrying out such corrections and modifications as deemed fit or necessary. After the scheme is finalized it is to be published in the Official Gazette as a Slum Rehabilitation Scheme for the area or areas specified therein. The preparation of the scheme and its finalization is therefore akin to the preparation and finalization of a Development Plan under the Maharashtra Regional and Town Planning Act, 1966. There can be no dispute about the fact that a Development Plan has statutory force. Applying the same analogy, it would have to be held that a final Slum Rehabilitation Scheme would have statutory force. There is no dispute about the fact that such a scheme has been promulgated for the city of Pune and has come into force on 15.11.2005. The guidelines for declaring an area to be the Slum Rehabilitation Area have been mentioned in the said scheme.

28 In so far Section 3C is concerned, it confers power on the CEO, SRA to declare any area as a Slum Rehabilitation Area under the Slum Rehabilitation Scheme, on being satisfied that circumstances exist justifying such declaration, the same is done by the CEO, SRA by issuing an order. The said Section itself provides for an Appeal, as under Section

3C(2) any person aggrieved by the Slum Rehabilitation Area Declaration Order may within four weeks of the publication of such order prefer an appeal to the Special Tribunal. In so far as Section 3D is concerned, a Slum Clearance Order can be issued by the CEO under the said provision in respect of an area which is declared as a Slum Rehabilitation Area under Section 3C. The said power is to be exercised for removal of the structures. As indicated above even against such an order an aggrieved person can file an Appeal to the Special Tribunal.

29 Hence, firstly under Section 3B we have a provisional Slum Rehabilitation Scheme which is published and after following the process of inviting objections and suggestions it is finalized and is published in the Official Gazette. Hence before finalization of the Slum Rehabilitation Scheme there is an opportunity made available to a person to submit his objections and suggestions. After publication of such a Slum Rehabilitation Scheme, the CEO, SRA can declare any area as a Slum Rehabilitation Area under the said scheme by an order passed under Section 3C. Any person aggrieved by the said order can challenge the same before a Slum Tribunal. Hence, in so far as the Slum Rehabilitation Declaration Order is concerned, an Appeal is provided to any person aggrieved by the same. The said provision therefore provides a post decisional hearing to an aggrieved party. The legislature as can be seen

from the said provision has advisedly provided a post decisional hearing as a pre-decisional opportunity has already been granted in so far as the Slum Rehabilitation Scheme under Section 3B(1) of the Slum Act is concerned. Hence though the Slum Rehabilitation Area Declaration Order may be made applicable to a particular area or land, the said area or land is covered by the general Slum Rehabilitation Scheme and since it is only after such declaration that the provisions of the Slum Act become applicable to the area declared as a Slum Rehabilitation Area, therefore the power exercised by the CEO, SRA, of declaring any area or land as a Slum Rehabilitation Area is essentially a legislative function. The distinction which was sought to be made by the Apex Court in the case of ***Cynamide India Ltd's case (supra)*** between legislative and non-legislative function was based on the two provisions of the Essential Commodities Act and Drugs (Prices Control) Order, 1979. In ***Shri. Sitaram Sugar Company Limited's case (supra)***, the Apex Court sought to make a distinction on the basis whether the act is of general application, in which case the Apex Court held that it would be a legislative activity. In my view, the distinction drawn in the aforesaid judgments between what is a legislative function and what is a non-legislative function would have no application in the context of the statutory scheme contained in Sections 3B and 3C. Having regard to the statutory scheme as encompassed in

Section 3B and 3C, it is not possible to reach such a conclusion. It would therefore have to be held that in declaring any area under the scheme as a Slum Rehabilitation Area, the CEO, SRA is essentially carrying out a legislative function, the fact that an Appeal is provided against such a declaration or order would not detract from the fact that the function is essentially legislative in character. The legislature in fact by providing an Appeal has provided a safeguard against any arbitrary exercise of power by the CEO, SRA.

30 In the said context a useful reference could be made to the judgment of the Apex Court in ***Tulsipur Sugar Co. Ltd's*** case (*supra*). The said case concerned the extension of the limits of the Town area under the U. P. Town Areas Act, 1914 in exercise of the power conferred by Section 3 thereof. The Apex Court held that the power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is brought within the limits of the Town Area is dependent upon such declaration. The relevant paragraphs of the said judgments are reproduced hereinunder :-

“The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is

dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with the nature of functions of a non-judicial authority, Prof. S. A. De Smith in *Judicial Review of Administrative Action* (3rd Edn.) observed at p. 163:

“However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides.”

Reference could also be made to the judgment of the Apex Court in ***Sundarjas Kanyalal Bhatija***'s case (*supra*). The said case also concerned the formation of a Municipal Corporation by issuance of a notification under Section 3(3) of the Bombay Provincial Municipal Corporation Act, 1949 known as the Kalyan Municipal Corporation by merging the areas of Kalyan, Ambernath, Dombivali and Ulhasnagar. The residents of Ulhasnagar who are mostly Sindhis uprooted from Sindh in Pakistan on partition who had formed a federation challenged the draft notification by a Writ Petition in the High Court. The Government in the said Writ Petition assured the Court that representatives of the federation would be heard, upon which the Petition was withdrawn. The State Government considered the objections and decided to delete Ulhasnagar from the area of the new Municipal Corporation to be established. The residents of the Ambernath Municipal Area challenged the notification on the ground of discrimination i.e. violation of Article 14. The federation of

Sindhis supported the State Government. Before the Division Bench, the judgment of the Division Bench in the matter of *Village Panchayat Chikalthane Vs. State of Maharashtra* holding that the power under Section 3 was legislative in nature was acted. The Division Bench of this Court held that the exclusion of Ulhasnagar from the said notification was arbitrary and against the purpose of the Slum Act.

The Division Bench however instead of quashing the notification directed the State Government to publish a draft notification for reconsideration of the matter. It gave liberty to the Writ Petitioners and interveners to submit their representations and observed that this is a fit case where reasonable opportunity of being heard should be given to the parties. The matter was carried to the Apex Court by the persons who were impleaded as interveners. The Apex Court held that the State Government after following the gamut of process had notified the area of the Municipal Corporation under Section 3(2) that decision had become final. The Court cannot sit in judgment over the said decision. It cannot lay down norms for exercise of the power. The Government whilst exercising powers under Section 3 is not subject to the rules of natural justice. The Apex Court further held that the rules of natural justice are not applicable to legislative action, plenary or subordinate. Paragraphs 27 and 28 of the said report are material and are reproduced hereinunder :-

“27 Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case the government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even “its juster will for theirs”.”

28 Equally, the rule issued by the High Court to hear the parties is untenable. The government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the government to hear the parties who are not entitled to be heard under law.”

The principles that flow out of the judgments (supra) is that the power becomes legislative in character when the application of the provisions of the Act is dependent upon such declaration. In the instant case only after the declaration is issued under Section 3C that Section 3D

of the Slum Act becomes applicable and thereafter the other provisions contained in the said Slum Act subject to amendments/modifications as mentioned in Section 3D.

The Learned Single Judge in ***Jagannath Hanumant Sonawane's*** case (*supra*) has also held that the pre-decisional hearing would have to be provided to a “owner” or a long term lessee. It is required to be noted that under Section 3C(2) an Appeal against a Slum Rehabilitation Declaration Order can be preferred by “any person”. Hence when an Appeal can be preferred by any person under the statute, there is no need to read into the statute a pre-decisional hearing restricted to a particular class i.e. the owner or a long term lessee. Hence having regard to the statutory scheme of Section 3B(1) and 3C(1) and (2) no pre-decisional hearing is contemplated and the finding recorded by the Learned Judge in ***Jagannath Hanumant Sonawane's*** case (*supra*) is therefore recorded without noticing the said statutory scheme as encompassed in the said two provisions.

Though this Court has reached a conclusion that no pre-decisional hearing prior to issuance of a declaration of a Slum Rehabilitation Area under Section 3C is necessary, however even assuming that the judgment of the Learned Single Judge in ***Jagannath***

Hanumant Sonawane's case (*supra*) is to be applied, the Respondent Nos.1 to 9 do not qualify as they do not fall within the persons who are required to be given hearing namely, owner or a long term lessee. The Respondent Nos.1 to 9 are neither of the two. The Respondent Nos.1 to 9 claim to be tenants whose suits are pending in the Rent Court. In my view therefore on either count the Respondent Nos.1 to 9 are not entitled to a pre-decisional hearing.

31 It is now necessary to deal with the contention urged on behalf of the Respondent Nos.1 to 9 by the Learned Senior Counsel Shri. A. Y. Sakhare that unless the land or area is notified under Section 4(1), it cannot be declared as a Slum Rehabilitation Area. As indicated above, the declaration of a land as a Slum Rehabilitation Area is issued under Section 3C which is in Chapter I-A. The Slum Clearance Order is issued under Section 3D read with Section 12(2). The said Section 3D is also part of Chapter I-A. In so far as the Slum Clearance Order under Section 3D is concerned, the said Section itself provides that certain Chapters of the Slum Act are not applicable and that certain provisions of the Slum Act are applicable with modifications which are stated therein. In so far as Section 4(1) is concerned, it is in Chapter II which has no application in so far as Sections 3C and 3D are concerned. The logical corollary to the same would be that there is no necessity of the land or area being first

notified under Section 4 of the Slum Act as a Slum Area.

32 In the said context the Scheme as contained in Chapter I-A also assumes significance, as indicated hereinabove, the provisional slum rehabilitation scheme is prepared under Section 3B after inviting objections and suggestions and it is finalized thereafter. The said provisional scheme is therefore in the nature of a preliminary notification which can be said to be analogous to Section 4 of the Land Acquisition Act, 1894. After finalization of the Provisional Slum Rehabilitation Scheme, it becomes applicable to the area or areas mentioned in Section 3A. It is after the Slum Rehabilitation Scheme is finalized under Section 3B that the CEO, SRA, is vested with the power to declare any area as a Slum Rehabilitation Area under the scheme. Hence having regard to the statutory scheme in Chapter I-A, the need for the land or area to be declared as a slum area under Section 4 does not arise.

33 In the said context, a useful reference can be made to the Division Bench judgments of this Court in ***Amba Chawl Wadi Rahiwasi Seva Sangh's*** case (*supra*), ***Om-Sai Darshan Co-operative Housing Society's*** case (*supra*) and ***Sayed Anwar Gaffar's*** case (*supra*) on which reliance is placed by the Learned Senior Counsel appearing on behalf of the SRA.

34 In ***Amba Chawl Wadi Rahiwasi Seva Sangh***'s case (supra), the issue that had arisen was whether the issuance of a notification under Section 4 of the Slum Act was a pre-requisite for an area to be considered a Slum Rehabilitation Area for the purposes of implementation of a Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations 1991. In so far regulation 33(10) is concerned, a 'slum' means that area which is either censused or one which is declared and notified under the Slum Act. It also provides that the slum shall also mean areas pavement stretches notified as the Slum Rehabilitation Areas. In the said case, Sections 33 and 38 of the Slum Act were invoked to evict the slum dwellers who were impeding the implementation of the Slum Rehabilitation Scheme under Regulation 33(10). A contention was raised on their behalf that unless there was a notification under Section 4 of the Slum Act declaring the said area to be a slum area the provisions of Sections 33 and 38 of the Slum Act could not be invoked. The said contention was negated on the ground that the slums which were taken up for implementation of the Slum Rehabilitation Scheme have been censused prior to the year 1995. The Division Bench held that a reading of the said Regulation 33(10) would indicate that if a slum is censused it need not be declared and notified under the Slum Act. The Division Bench concluded that the submission made by the Learned Counsel that

only those areas which have been declared and notified as slums under the Slum Act of 1971 or any previous legislation would qualify as a slum is fallacious and therefore, cannot be accepted. Hence a Division Bench of this Court has held that in so far as implementation of a Slum Rehabilitation Scheme under Regulation 33(10) is concerned, there is no requirement that the land has to be notified as a slum under Section 4(1) of the Slum Act.

35 In ***Om-Sai Darshan Co-operative Housing Society's*** case (*supra*), the issue was also as regards a Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations, 1991. In the said case, a similar contention as urged in ***Amba Chawl Wadi Rahiwasi Seva Sangh's*** case (*supra*) was sought to be urged, albeit with a difference that there has to be a declaration under Section 3C(1) of the Slum Act for an area to be declared as a Slum Rehabilitation Area. The Division Bench held that a plain reading of Annexure II to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of a land, it is not necessary to have a declaration of the Slum Rehabilitation Area in the exercise of the powers under Section 3C(1) of the Slum Act.

The Division Bench in ***Sayed Anwar Gaffar's*** case (*supra*), by

relying upon paragraphs 19 and 20 of the judgment of the Division Bench of this Court in ***Om-Sai Darshan Co-operative Housing Society's*** case (*supra*) reiterated the proposition that for the purposes of a Slum Rehabilitation Scheme under Regulation 33(10) a declaration under Section 3C(1) of the Slum Act was not necessary. The relevant paragraph of the said judgment in ***Sayed Anwar Gaffar's*** case (*supra*) is paragraph 8 which is reproduced hereinunder for the sake of ready reference :-

“8 Therefore, for the reasons indicated by the Division Bench, it will not be possible to agree with Mr. Rajyadhyaksha that if there is a declaration under section 3B, then, the Authorities cannot resort to Section 3D without first going through the mechanism stipulated by section 3C. The Self-same arguments canvassed must, therefore, be rejected.”

36 Hence the said judgments are indicative of the fact that the Regulation 33(10) and Section 3B are independent provisions for implementation of the Slum Rehabilitation Scheme and are not contingent upon a declaration issued under Section 3C(1) and Section 4(1) respectively of the Slum Act. The said judgments therefore support the case of the Petitioners that the area or land is not required to be notified under Section 4(1) or 3C(1) as the case may be for it to be declared as a Slum Rehabilitation Area.

37 The contention of the Learned Senior Counsel for the

Respondents that since Section 12 in its application to Section 3D refers to “slum area”, the said reference would therefore necessarily be in the context of the necessity of notification being issued declaring the said area as a slum area. In my view, the use of the words 'slum area' in the said Section 12 in so far as in its application to Section 3D is concerned is in a generic sense and has no connection to the land or area being notified under Section 4(1). Since the act concerns the slums and various facets of their development that the said word is used. In any event, acceptance of the contention of the Learned Senior Counsel would militate against the scheme as encompassed in Chapter I-A and would have the absurd result of notification being required to be issued under Section 4(1) after the rehabilitation scheme is finalized under Section 3B by following the gamut of process prescribed for the same, that could never have been the intention of the legislature.

38 The Learned President of the Tribunal as can be seen from the impugned judgment and order of the Tribunal has relied upon Section 36 of the Slum Act to come to a conclusion that any notice/order etc. has to be issued to the aggrieved parties. In my view, the Learned President has misconstrued Section 36 of the Slum Act. The said Section 36 is a provision which one can find in various acts which provide the manner in which a notice under the concerned Act is to be issued and

served. A plain reading of the said provision would indicate that the said provision i.e. Section 36 only provides the manner in which notices/orders etc. under the Slum Act are to be issued. The said provision cannot be construed to mean that every notice/order etc. is required to be served on the party concerned when the particular provision of the Slum Act does not contemplate any such service of notice etc. In my view, therefore, the finding of the Learned President of the Tribunal is based on a misconstruction of Section 36 of the Slum Act. As indicated above, in the instant case, Section 3C only postulates a post-decisional hearing under Section 3C(2) which can take place in the event the person aggrieved files an appeal.

39 Now coming to the contention urged on behalf of the Respondent Nos.1 to 9 that in declaring the area of 1045.50 sq.mtrs. on which the structures are situated amounts to a colourable exercise of power by the CEO, SRA. In the said context, a reference to the Special Rules and Regulations for Slum Rehabilitation Scheme framed thereunder would have to be made. The relevant clause is clause (D) of the said Special Rules and Regulations and is reproduced hereinunder for the sake of ready reference :-

“D) Definition of Slum and Rehabilitation Area :

Where the CEO (SRA) is 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 of its neighbourhood, by person of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise, or the buildings in any area, used or intended to be used for human habitation area, in any respect unfit for human habitation, by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, 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, is defined as Slum. This shall form the basic parameter for declaration of the rehabilitation area.

Further that any such area, encumbered or unencumbered; that the CEO (SRA) may require for implementation of SRS proposal, shall be declared as rehabilitation area.”

(emphasis supplied)

A reading of the said clause therefore discloses the basic parameters for declaration of a Slum Rehabilitation Area under Section 3C. The said clause further provides that any such area, encumbered or unencumbered that the CEO, SRA may require for implementation of Slum Rehabilitation Scheme proposal shall be declared as a Rehabilitation Area. Hence the last three lines of clause (D) are an exception to the earlier part of clause (D). By virtue of the last part even an unencumbered area which is required for implementation of the Slum Rehabilitation Scheme proposal can be declared as a Slum Rehabilitation Area. In the instant case, there is no dispute about the fact that the structures of the Respondent Nos.1 to

9 are situated on the said plot of land admeasuring 1045.50 sq.mtrs. The said land is also adjacent to the land admeasuring 4123 sq.mtrs. on which the 76 structures of the slum dwellers were located. It therefore cannot be said that the said land is totally unencumbered. However the fact remains that a power has been conferred on the CEO, SRA for declaring any encumbered area a Slum Rehabilitation Area if according to him the same is required for the implementation of the Slum Rehabilitation Scheme proposal. In my view, therefore, the allegation of there being a colourable exercise of power in declaring the said area of 1045.50 sq.mtrs. as Slum Rehabilitation Area is without any substance. The CEO, SRA was well within his rights to declare the said area of 1045.50 Sq.mtrs. as a Slum Rehabilitation Area having regard to clause (D) which lays down the parameters for the same.

In my view, the judgment of the Division Bench of this Court in ***Reserve Bank Employees Snehdhara Co-op. Housing Society Ltd's*** case (*supra*) would not further the case of the Petitioner in so far as the allegation of colourable exercise of power is concerned. The said case concerned the acquisition of land covered by the slum area under Section 14 of the Slum Act. The Division Bench in the facts of the said case wherein the land admeasuring 4780 sq.mtrs. was sought to be acquired wherein the area covered by the 42 structures was only 839.6 sq.mtrs.,

held that the acquisition of the larger area was not bonafide as several vital considerations like the extent of the slum area, in comparison to the total area of the property, pendency of the civil disputes between the Petitioner and the Respondent No.8 builder, reported compliances of environmental improvement works claimed to have been carried out by the Petitioner and the recommendations of the Collector and so on, have been ignored. In the instant case, as indicated above, the CEO, SRA was within his authority to declare any area which is encumbered or even unencumbered as a Slum Rehabilitation Area, if he is satisfied that the same is required for the purposes of Slum Rehabilitation Scheme. In the instant case, there is no dispute that the structures of the Respondent Nos.1 to 9 are situated on the land admeasuring 1045.50 sq.mtrs. The power of the CEO, SRA as conferred by the regulations, coupled with the fact that the structures of the Respondent Nos.1 to 9 are situated on the said area of 1045.50 sq.mtrs. The facts in the instant case can be clearly distinguished from the facts in the case before the Division Bench.

40 It was also contended on behalf of the Respondent Nos.1 to 9 by the Learned Senior Counsel that the exercise of power is malafide so as to oust the Respondent Nos.1 to 9 and to favour the land owner i.e. the Petitioner in the companion Writ Petitions. It was sought to be contended that the adjacent area of 7212.50 sq.mtrs. has also been

added as one of the sons of the Petitioner is a sitting MLA and the other son is a Municipal Corporator. In the said context, it is required to be noted that the Slum Clearance Area Declaration Order under Section 3C has been issued on 24.05.2006. The Slum Clearance Order under Section 3D read with Section 12(1) has been issued on 01.09.2009. It is required to be noted that the son of the owner has become an MLA in the year 2014, whereas the other son of the Petitioner has become a Corporator in the year 2012. Hence when the said Slum Clearance Declaration Order was issued and the order under Section 3D was passed, the sons of the Petitioner were not holding any political office. Therefore it is far fetched to attribute the inclusion of the area of 1045.50 sq.mtrs. as also the additional areas of 7212.50 sq.mtrs. to the factum of the Petitioner's sons playing a role in the same. It is required to be noted that the Respondent Nos.1 to 9 are being offered permanent alternate accommodation which is ready for occupation. However, the Respondent Nos.1 to 8 have not chosen to accept the same, the Respondent No.9 has accepted the same but is continuing with his challenge. Hence the contention of malafides is therefore without any substance.

41 Now coming to the last contention which was urged by the Learned Senior Counsel appearing on behalf of the Respondent Nos.1 to 9, namely that in the event, this Court is of the view that the principles of

natural justice were not required to be followed in so far as the declaration of the Slum Rehabilitation Area is concerned, then this Court remand the matter back to the Slum Tribunal for consideration of the aspect as to whether the parameters laid down in clause (D) are complied with in so far as the area 1045.50 sq.mtrs. is concerned. In my view, there is no warrant for any such remand as the same would result in an exercise in futility. As indicated above, clause (D) itself incorporates an exception whereby even an unencumbered area can be declared as a Slum Rehabilitation Area if the CEO, SRA deems it appropriate to do so if the same is required for the implementation of the Slum Rehabilitation Scheme. In the instant case, there is no dispute about the fact that the structures of the Respondent Nos.1 to 9 are situated on the area admeasuring 1045.50 sq.mtrs. and in so far as the adjoining area admeasuring 7212.50 sq.mtrs. is concerned, the Respondent Nos.1 to 9 have no truck with the said additional area. Hence, they cannot have any grievance about the same. In so far as the area of 1045.50 sq.mtrs. is concerned, the same can be said to fulfill the parameters as laid down in clause (D) of the said guidelines for declaration of the Slum Rehabilitation Area. In the reply / affidavit filed in the Appeals it has been stated that a survey was carried out and the actual conditions existing on site were reported and thereafter the said declaration was

issued. However implicit in the said declaration is the subjective satisfaction reached by the CEO, SRA, that the said land admeasuring 1045.50 sq.mtrs. is required for the implementation of the Slum Rehabilitation Scheme. It appears that the Slum Rehabilitation Scheme was in the process of being implemented and in fact about 76 slum dwellers who were on the land admeasuring 4123 sq.mtrs. have already been rehabilitated in the rehab building which is already constructed. The implementation of the said scheme has not proceeded further as the Respondents have not vacated their structures and accepted the permanent alternate accommodation which is ready for their occupation since long. It seems that even out of the Respondent Nos.1 to 9, one of the Respondents i.e. Respondent No.9 Suresh Tejbahadur Thakur has accepted the permanent alternate accommodation in the rehab building but is continuing his challenge to the Slum Clearance Declaration as well as the Slum Clearance Order. In my view, therefore, the said request of the Learned Counsel cannot be acceded to.

42 For the reasons afore-stated, the impugned order dated 12.03.2015 passed by the Slum Tribunal in so far as it sets aside the Slum Rehabilitation Area Declaration Order under Section 3C as also the Slum Clearance Order under Section 3D to the extent of 1045.50 sq.mtrs. is required to be quashed and set aside and is accordingly quashed and set

aside. Resultantly the Slum Area Declaration and the Slum Clearance Order would apply to the entire area of 5168.50 sq.mtrs. The above Writ Petitions are accordingly allowed. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

[R.M.SAVANT, J]

After Pronouncement of Judgment

At this stage, the Learned Counsel for the Respondent Nos.1 to 9 seeks stay of the operation of the instant judgment for a period of twelve weeks so as to enable the said Respondents to approach the Apex Court. In the facts and circumstances of the case, the operation of the instant judgment is stayed for a period of twelve weeks from date.

[R.M.SAVANT, J]