

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

WRIT PETITION (L) NO.2632 OF 2018

Rajesh G. Jain	Petitioner
V/S	
State Of Maharashtra And 5 Ors.	Respondents

WITH
CHAMBER SUMMONS NO.285 OF 2018
IN
WRIT PETITION (L) NO.2632 OF 2018

M/s. Laizer Builders & Developers	Applicant
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IN THE MATTER BETWEEN	
Rajesh G. Jain	Petitioner
V/S	
State Of Maharashtra & Ors.	Respondents

WITH
CHAMBER SUMMONS (L) NO.412 OF 2018
IN
WRIT PETITION (L) NO.2632 OF 2018

Kamal Daryadas Narwani & Anr.	...Applicants
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IN THE MATTER BETWEEN	
Rajesh Jain	Petitioner
V/S	
State Of Maharashtra And 5 Ors.	Respondents

WITH
CHAMBER SUMMONS (L) NO.414 OF 2018
IN
WRIT PETITION (L) NO.2632 OF 2018

Bipin Trimbak Patil & Ors.	...Applicants
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IN THE MATTER BETWEEN	
Rajesh Jain	Petitioner
V/S	
State Of Maharashtra And 5 Ors.	Respondents

WITH
WRIT PETITION NO.1019 OF 2018

Harishchandra Mahadeo Patil And 5 Ors.Petitioners
V/S
State Of Maharashtra And 6 Ors.Respondents

WITH
CHAMBER SUMMONS NO.282 OF 2018
IN
WRIT PETITION NO.1019 OF 2018

M/s. Laizer Builders & DevelopersApplicant

IN THE MATTER BETWEEN
Shri Harishchandra Mahadeo Patil & Ors.Petitioners
V/S
State Of Maharashtra & Ors.Respondents

WITH
CHAMBER SUMMONS NO.206 OF 2018
IN
WRIT PETITION NO.1019 OF 2018

Shri Harishchandra Mahadeo Patil & Ors.Applicants

IN THE MATTER BETWEEN
Shri Harishchandra Mahadeo Patil & Ors.Petitioners
V/S
State Of Maharashtra & Ors.Respondents

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Mr Aspi Chinoy Sr. Adv a/w Anushak Davar a/w Kausar Banatwala a/w Gauri Sakhardande i/b Tushar A. Goradia for the Petitioner in WP-2632/18.
Mr Milind Sathe Sr Adv i/b Haridas Rajendra Madhukar for Respondent No.5 in Writ Petition (L) No.2632 of 2018 and Respondent No.6 in Writ Petition No.1019 of 2018.
Mr I.S.Thakur a/w Mr. Bharat Mehta i/b M/s. Global Juris Consults for the Petitioners in WP-1019/2018 and for R-6 in WP-2632/18 and for Applicants in Chamber Summons No.206 of 2018.
Mr Anoop U. Patil for Respondent-SRA.

Mr Milind More for Respondent Nos. 5 & 6 in both WPs.

Mr R.J.Mane AGP in WP-1019/18.

Ms Uma Palsuledesai AGP in WPL-2632/18.

Mr Rajiv Narulla i/b M/s. Jhangiani Narula & Associates for Applicant in Chamber Summons (L) No.412/2018.

Mr Amol Mhatre for Applicant in Chamber Summons (L) No.414/2018.

Mr.P.K.Dhakephalkar, Sr.Advocate I/b Mr. Jaydeep Deo for the Applicant in Chamber Summons No.282 and Chamber Summons No. 285 of 2018.

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**CORAM : A.A. SAYED &
SANDEEP K. SHINDE, JJ.
DATE : 31 OCTOBER 2018.**

ORDER: (Per A.A.Sayed,J.)

1 Chamber Summons No.206 of 2018 for amendment of Writ Petition No.1019 of 2018 is allowed. Chamber Summons No.282 of 2018 in Writ Petition No.1019 of 2018, Chamber Summons No.285 of 2018, Chamber Summons (L) No.412 of 2018, and Chamber Summons (L) No.414 of 2018, all in Writ Petition (L) No.2632 of 2018 are partly allowed by permitting the Applicants to intervene and make submissions.

2 The subject matter in both the Petitions is the property bearing Survey No.5, CTS Nos.677, 677/1 to 677/24 of village Mulund (West), taluka Kurla, Mumbai-400 080 (hereinafter referred to as 'the said property').

3 In Writ Petition No.1019 of 2018, the Petitioners who claim to be the owners of the said property have impugned the Notification under section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('the Slum Act' for short) dated 20 May 2017, whereby the said property came to be acquired by the State Government.

4 In Writ Petition (L) No.2632 of 2018, the Petitioner-Rajesh Jain who also claims to be the owner of the said property has also challenged the aforementioned Notification dated 20 May 2017. Apart from challenge to the said Notification, the Petitioner in this Petition has also challenged the Notification dated 3 October 1979 whereby the said property was declared as slum area under section 4(1) of the Slum Act. This Petition also challenges the Report dated 10 February 2012 of the Respondent No.3- Deputy Collector (Encroachment & Demolition), Slum Rehabilitation Authority and the Report dated 2nd December 2014 of Respondent No.4- Chief Executive Officer, Slum Rehabilitation Authority ('CEO,SRA' for short).

5 NOTIFICATION DATED 3 OCTOBER 1979:

The Notification under section 4(1) of the Slum Act dated 3 October 1979 declaring the said property as slum area is challenged after

unexplained delay of 40 years. Even otherwise, under section 4(3) of the Slum Act there is an alternate efficacious remedy provided to challenge the said Notification by filing an Appeal before the Slum Tribunal which has not been availed of. In the circumstances, we decline to entertain the challenge to the Notification under Section 4(1) dated 3rd October, 1979. At this juncture, it may be stated that there is also a Notification dated 20 August 2015 declaring the said property as Slum Rehabilitation Area under the amended provisions of section 3C of the Slum Act. This Notification has not been challenged by the Petitioners. As a matter of fact under section 3C(2) of the Slum Act, the Petitioners had the remedy of filing an Appeal to challenge the said Notification dated 20 August 2015, which the Petitioners have failed to do. Even otherwise, we may state here that there is no argument canvassed before the Court that the said property is wrongly declared as slum area or slum rehabilitation area.

6. NOTIFICATION DATED 20 MAY 2017

The principal challenge in the Petitions is to the Notification dated 20 May 2017. The impugned Notification dated 20 May 2017 of the Housing Department, Mumbai, by which the said property came to be acquired by the State Government under Section 14 of the Slum Act reads thus:

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

No.Bhusampa.2012/C.R.106/Zopani-2.- Whereas, on representation from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, it appears to the Government of Maharashtra that in order to enable the said Authority to implement the Slum Rehabilitation Scheme in relation to the Slum Rehabilitation Area mentioned in the Schedule appended hereto (hereinafter referred to as “the said Schedule”), it is necessary that the land specified in the said Schedule (hereinafter referred to as “the said land”), should be acquired;

And whereas, as required by the proviso to sub-section(1) of section 14 of Chapter V read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Mah.XXVIII of 1971) (hereinafter referred to as “the said Act”), the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, has, by his Notice No.SRA/Dy.Coll./L.A./C.R. No.111/Hearing/2013/2360, dated the 16th December 2013 served in prescribed manner and also by notice published in the daily Marathi newspaper “Maharashtra Times” and English Newspaper “Hindustan Times” dated the 23rd November 2011, and also by affixing in the conspicuous part in the premises situated in the said land, as provided in section 36 of the said Act, called upon the persons mentioned in column (6) of the said Schedule, who are the owners of the said land or any other person interested therein to show cause, within fifteen days from the date of its publication in the Newspapers, as to why the proposal to acquire the said land for implementation of the Slum Rehabilitation Scheme for the concerned protected slum dwellers should not be sent to the State Government for approval;

And Whereas, the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, after considering the objections received in this behalf for the acquisition of the said lands, and pleading on behalf of the proposed Co-operative Housing Society of the Slum dwellers, entries as to the rights in the land record, reservation in development plan and the legitimate request of the protected slum dwellers, by his representation dated the 2nd December 2014 submitted the report for the acquisition of the said land.

And whereas, as required by the first proviso to sub-section (1) of section 14 of Chapter V read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of the said Act, on representation from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, and after considering his report it appears to the State Government that in order to enable the Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme in the slum rehabilitation area mentioned in the said Schedule, the said land should be acquired;

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

District	Taluka	Village	C.T.S. No.	Approximate area of the land decided to be acquired (In	Name of the owners or other interested person of the land decided to be acquired.

(1)	(2)	(3)	(4)	Sq. Mtrs.) (5)	(6)
Mumbai Suburban District	Kurla	Mulund	<u>677</u> 677/1 to 24	1910.1	Land Owner 1. Ramchandra Hiraji Patil deceased through heirs Raghunath Ramchandra Patil deceased through heirs. I. Smt. Janki Ragunath Patil II. Shri Arun Ragunath Patil III. Shri Ashok Ragunath Patil IV. Shri Nandu Ragunath Patil V. Shri Dilipa Ragunath Patil VI. Shri Vinod Ragunath Patil 2 Shri Narendra Ragunath Patil deceased through heirs. I. Smt. Asha Narendra Patil- Wife. II. Ku. Ninu Narendra Patil- Daughter. III. Smt. Shashikant Kamalakar Keni. 3. Shri Vasant Ramchandra Patil 4. Shri Triyambak Ramchandra Patil deceased through heirs. I. Smt. Suyasha Bapuji Tari. II. Smt. Pratibha Vikas Gupte III. Shri Abhay Triyambak Patil. IV. Shri Bipin Triyambak Patil. V. Shri Charan Triyambak Patil. 5. Kamalkar Ramchandra Patil deceased through heirs. I. Smt. Prabhavati Kamalkar Patil. II. Smt. Nutan Shashikant Kini. III. Smt. Kanchan Kantilal Dev. IV. Smt. Bhilira Jagdish

					Warlikar. V. Shri Santosh Kamlakar Patil. VI. Smt. Bhavana Ashok Dev. 6. Shri Mahadev Hiraji Vaity (Patil) deceased through heirs. I. Shri Laxman Mahadev Patil. II. Smt. Bhimabai Mahadeo Kanekar. III. Shri Revati Pandurang Keni IV Smt. Sharya alias Bhairavi Arvind Prabhavalkar V. Shri Harichandra Mahadeo Patil.
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Boundaries:-

C.T.S. No.	On the East by C.T.S. No.	On the West by C.T.S. No.	On the North by C.T.S. No.	On the South by C.T.S. No.
677	676A	678A, 678B, 678C and 678D.	676B	676D
677/1 to 24	676A	678A, 678B, 678C and 678D	676B	676D

By order and in the name of the Governor of Maharashtra,
 B.G. PAWAR,
 Joint Secretary to Government.”

7 Section 14 of the Slum Act as modified by section 3D(c)(i) of Chapter

1-A would read as under:

“14. Power of State Government to acquire land.

(1) 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, it is necessary that such area, or any land within adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the Official Gazette, a notice to the effect that the State Government has decided to acquire the land in pursuance of this section:

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

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

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

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

8. We now narrate a few facts:

(i)The property card shows members of Patil family (hereinafter referred to as ‘Patils’) as the owners of the said property. By registered Deed of Conveyance dated 13 December 2005 the said property was sold by the Patils to M/s. Pankil Builders [Petitioner No.7 in Writ Petition No.1019 of 2018 and Respondent No.6 in Writ Petition (L) No.2632 of 2018]. Praveen Gada who is one of the partners of M/s. Pankil Builders has filed the above Writ Petition No.1019 of 2018 as Constituted Attorney of Petitioner Nos.1 to 6 namely, Harishchandra Mahadeo Patil, Hemant Laxman Patil, Miss Alaka Laxman Patil, Mrs. Bhimabai M. Kambekar, Mrs. Rewati P. Keni and Miss. Sharayu Mahadeo Patil. M/s.Pankil Builders was later added as Petitioner No.7 by way of amendment. By a Memorandum of Understanding (MOU) dated 7 November 2009 M/s. Pankil Builders agreed to sell the said property to Rajesh Jain [Petitioner in Writ Petition (L) No.2632 of 2018 and Respondent No. 8 in WP No. 1019 of 2018].

(ii) Much prior to M/s Pankil Builders and Rajesh Jain coming into the picture, the said property had been declared as slum area under section 4(1) of the Slum Act as the said property lacked adequate or basic amenities and was unfit for human habitation. This was on 3 October 1979 after following due procedure.

(iii) The slum dwellers formed a Society known as Panchsheel Co-operative Housing Society (proposed) [Respondent No. 7 in Writ Petition No. 1019 of 2018 and Respondent No. 5 in Writ Petition (L) No. 2632 of 2018] hereinafter referred to as 'the said Society'. The said Society decided to implement the Slum Rehabilitation Scheme on the said property under Regulation 33(10) of the DC Regulations. The said Society accordingly passed a resolution appointing M/s. Laizer Builders and Developers [the Applicant in Chamber Summons No.282 of 2018 in Writ Petition No.1019 of 2018 and Chamber Summons No.285 of 2018 in Writ Petition (L) No.2632 of 2018 for impleadment] and executed Development Agreement, Power of Attorney, individual and common Consents, and requested the Competent Authority by their Application dated 21st September, 2010 to acquire the said property under section 14(1) of the Slum Act and submitted a Slum Rehabilitation Scheme under Regulation 33(10) of DC Regulations through the said M/s. Laizer Builders and Developers.

(iv) A show cause notice dated 17 October 2011 was issued by the Additional Collector under section 14(1) of the Slum Act to the owners of the said property why the said property should not be acquired to execute the work in relation to the slum area. After following due procedure and hearing the concerned parties including M/s. Pankil Builders and Rajesh Jain, the Additional Collector submitted the impugned Report dated 10 February 2012 to the State Government stating that there was no objection to acquire the said property.

(v) The Slum Act was amended by Maharashtra Act No.XI of 2012 on 19 June 2012. By the said amendment, the Chief Executive Officer, Slum Rehabilitation Authority, was designated as the Competent Authority inter alia for the purposes of section 14(1) read with 3D(c)(i) of the Slum Act. Pursuant to the directions of the State Government, the CEO, SRA issued fresh show cause notice dated 16 December 2013 under section 14(1) of the Slum Act to the owners of the said property including M/s Pankil Builders, Rajesh Jain, Panchsheel Co-operative Housing Society, M/s. Amber Developers and others calling upon them to attend hearing alongwith all concerned documents and submit their say. After hearing the parties, the CEO, SRA submitted the impugned report dated 2 December 2014 to the State Government recommending acquisition of the said property. The report of the CEO, SRA was accepted by the

State Government and the impugned Notification dated 20 May 2017 under section 14(1) of the Slum Act came to be issued acquiring the said property.

9. We have heard learned Senior Counsel for the Petitioner in Writ Petition (L) No. 2632 of 2018, learned Counsel for the Petitioner in Writ Petition No. 1019 of 2018, learned Senior Counsel for the Respondent Society, learned Senior Counsel for the Applicant/Intervener M/s. Laizer Builders and Developers, and other learned Counsel for the Interveners/ Respondents.

10. Learned Counsel for the Petitioners submitted that the Notification dated 20 May 2017 is challenged essentially on the ground that in view of section 3B(4)(c) and (e) and section 13(1) of Chapter 1-A of the Slum Act, the Petitioners have a preferential right to redevelop their own property under the Slum Rehabilitation Scheme under Regulation 33(10) of the DC Regulations. It is submitted that the Petitioners were and are ready and willing to implement the Slum Rehabilitation Scheme and rehabilitate all eligible occupants. It is contended that since the Petitioners are willing to redevelop the said property and implement the Slum Rehabilitation Scheme, the Application dated 21 September 2010 filed by the said Society viz.- Panchsheel Co-operative Housing Society Ltd. (proposed) to acquire

the said property under section 14(1) of the Slum Act and implement the Slum Rehabilitation Scheme, ought not to have been entertained. It is contended that despite addressing several communications to that Respondent Authorities that the Petitioners are willing to implement the Slum Rehabilitation Scheme, the said communications have not been considered. It is submitted that the Respondent Authorities had not followed the provisions of the Slum Act. It is submitted that the said property is acquired at the instance of another Developer who wants to implement the slum project and the acquisition is malafide. The entire land admeasuring 1071.22 square meters could not have been acquired as admittedly there were open spaces in the said property. It is contended that despite the objections of the Petitioners to the show cause notices, their objections were not considered. Learned Senior Counsel for the Petitioners in Writ Petition (L) No. 2632 of 2018 and learned Counsel for the Petitioner in Writ Petition No of 2018 have both placed reliance on the judgment of the Division Bench of this Court in **Indian Cork Mills Private Limited vs. The State of Maharashtra, (2018) 4 Bom CR 618**, in support of their contention that the owners have a preferential right to redevelop their own property and implement the Slum Rehabilitation Scheme. It is submitted that the said decision applies on all fours to the present case.

11. Learned Senior Counsel for the Respondent Society on the other hand submitted that the said property has been declared as slum area in the year 1979 and the slum dwellers are living in absolutely unhygienic conditions since. It is submitted that the Petitioners have not challenged the Notification dated 20-08-2015 declaring the said property as slum rehabilitation area under the amended provisions of section 3C of the Slum Act. It is submitted that except addressing communications to the Respondent Authorities, no steps have been taken by the Petitioners to implement the Slum Rehabilitation Scheme. The learned Senior Counsel has alluded to section 13 of Chapter IA of the Slum Act to contend that the Petitioners ought to have come forward with a Scheme for redevelopment of the said property within a reasonable time. It is submitted that the due procedure as required under section 14 of the Slum Act has been followed and the Petitioners and all concerned were issued a show cause notice and were heard by the CEO, SRA. The learned Senior Counsel submitted that there are disputes between the Petitioners inter se as the Petitioners in both the Petitions claim to be owners of the said property. It is pointed out that there are disputes even between the partners of M/s. Pankil Builders inter se as well as other parties and therefore the Petitioners have not come forward to redevelop the said property under the Slum Rehabilitation Scheme. It is submitted that the LOI has already been issued in favour of M/s. Laizer

Builders and Developers on 27-12-2017 and the LOI has been acted upon and the Slum Rehabilitation Scheme is being implemented in the said property. It is pointed out that all the 34 eligible slum dwellers have given their respective consents in favour of Mr. Laizer Builders and Developers which constitutes 100% consents as against the requirement of 70% consents under section 33(10) read with Appendix IV of the DC Regulation and the slum dwellers have vacated the said property and are to be rehabilitated in the new rehab building which is to be constructed on the said property. It is submitted that section 14 of the Slum Act is an independent provision and is not conditional upon compliance of section 13. The learned Senior Counsel has placed reliance upon the following judgments: (1) Murlidhar Teckchand Gandhi vs. State of Maharashtra, Civil Appeal No 11077 of 2017 dated 29-08-2017 (Supreme Court), (2) Pratapsinh Shoorji Vallabhdas vs. State of Maharashtra and Ors, 2016 SCC Online 11532 (Division Bench of this Court).

12. We have considered the rival contentions.

13. In **Indian Corks Pvt. Ltd. (supra)** which follows the judgment of the Division Bench of this Court in **Anil Gulabdas Shah vs. State of Maharashtra, 2011(1) MhLJ 797**, it has been held by the Division Bench of this Court that the owners have a preferential right to undertake

redevelopment of their land under section 3B(4)(c) & (e) read with section 13(1) (as modified by section 3D of Chapter 1-A) of the Slum Act. The Circular dated 9-11-2015 issued SRA recognizes this preferential right of the owners. Thus, there can be no quarrel about the fact that the Petitioners have a preferential right to redevelop the said property. In the facts of the present case, however, in our view, the decision in **Indian Corks Pvt. Ltd. (supra)** would not assist the Petitioners for the reasons we shall presently indicate.

14. Except for addressing communications to the Respondent Authorities showing their willingness to implement the Slum Rehabilitation Scheme and objecting to the Application dated 21 September 2010 of the said Society of slum dwellers, no proposal has been submitted by the Petitioners to implement the Slum Rehabilitation Scheme in respect of the said property. The redevelopment of slum under Regulation 33(10) of the DC Regulation provides for additional FSI for 'rehabilitation' and 'free sale component' as an incentive to re-develop the slum land. For approval of a rehabilitation Scheme under the Regulation 33(10) of the DC Regulation r/w Appendix IV, there is a requirement of consents of atleast 70% of the eligible slum dwellers to join the Scheme. As per the Annexure II issued by the Competent Authority, there were 42 structures found on the said property

out of which 32 were declared as eligible slum dwellers and they are required to be rehabilitated on the said property under the Slum Rehabilitation Scheme. In the present case, there is nothing on record to show that the Petitioners have made any attempt to garner the support of 70% of the eligible slum dwellers. In contrast thereto, it is pointed out that 100% consents of eligible slum dwellers have been given to M/s Laizer Builders and Developers to implement the Slum Rehabilitation Scheme. The reason why no proposal was submitted by the Petitioners for implementation of the Slum Rehabilitation Scheme on the said property is not far to seek. Evidently, there are serious disputes as regards the ownership of the said property. This is manifest from the very fact that there are two Petitions filed by the Petitioners claiming to be owners before the Court challenging the Notification dated 20 May 2017. The Petitioners were aware of the Application dated 21 September 2010 of the Respondent Society for implementing the Slum Rehabilitation Scheme and acquisition of the said property, despite that, they did not submit their own proposal for implementing the Slum Rehabilitation Scheme.

15. The Conveyance Deed dated 13 December 2005 executed between the Patils and M/s Pankil Builder states that the said property was declared as slum and the list of hutment dwellers is also annexed to the Conveyance

Deed. The Conveyance Deed was executed on 'as is where is' basis. By a Memorandum of Understanding (MOU) dated 7 November 2009, M/s. Pankil Builders agreed to sell the said property to Shri Rajesh Jain [Petitioner in Writ Petition (L) No.2632 of 2018] on 'as is where is' basis for lumpsum of Rs.2,61,00,000/-. Paragraph 4 of the said MOU states that the illegal tenants/unauthorised occupants in connection with the said property have formed a society in the name of Panchsheel Nagar Co-operative Housing Society and that there is a declaration of the said property as slum. Thereafter disputes arose between Mr. Rajesh G. Jain and Mr. Pravin Gada of M/s. Pankil Builders and an Arbitrator came to be appointed by this Court. In the arbitration proceedings, Consent Terms were filed before the Arbitrator Justice R.J. Kochar (former Judge of this Court) and Consent Award came to be passed on 22 May 2012. The Consent Terms are signed by only some of the partners of M/s. Pankil Builders. It was not signed by two of the partners (Mr. Kamal Dayaldas Narwani and Mr. Arvind Chimanlal Shah) who apparently do not recognize the Consent Award and claim to have right in the said property and have filed the above Chamber Summons (L) No.412 of 2018 in the above Writ Petition (L) No.2632 of 2018 for their impleadment as party Respondent in the Petition (we have allowed this Chamber summons to the extent of intervention and to make submissions). The said Applicants/partners have relied upon the Admission Deed dated 11

July 2008 executed between Pravin Gada & his family members and the said Applicants/partners whereby the Applicants/partners claim to have acquired 66% share in the firm of M/s. Pankil Builders and 34% of share remains with three partners of Pravin Gada and his family. A sum of Rs.5,00,000/- was paid by the Applicants/partners under the Admission Deed. The Applicants/partners claim that they were handed over the original Deed of Conveyance dated 13 December 2005 which is still in their custody. According to the said Applicants/partners, the MOU entered into between M/s. Pankil Builders with Rajesh Jain does not contain their signatures and no written consent was obtained from them and the said MOU was completely illegal in the teeth of the said Admission Deed. By letter dated 1 December 2009, the Gada family claim to have terminated the Admission Deed and called upon the Applicants/partners to return the original Deed of Conveyance dated 13 December 2005 to them. The said Applicants/partners were made party to the arbitration proceedings however they were subsequently deleted from the arbitration proceedings. According to the Applicants/partners, the Consent Award dated 15 May 2012 was a collusive Consent Award. Pravin Gada & his family members have also filed a suit being Suit No.2863 of 2013 in the City Civil Court against the Applicants seeking a declaration that the Applicants are not partners of M/s. Pankil Builders.

16. In the Affidavit in support of the Chamber Summons No. 206 of 2018 seeking to add grounds in Writ Petition No. 1019 of 2018 (which we have allowed) it is stated that by Praveen Gada, partner of M/s Pankil Builders, that Rajesh Jain (Respondent No. 8 in the said Petition) after making payment of only Rs. 45,00,000/- out of the total amount of Rs. 1,50,00,000/- to be paid by him and after agreeing to give M/s.Pankil Builders, flats admeasuring 5000 sq ft. carpet area and 7 parking spaces, has committed breach of the Consent Terms/Award forcing M/s Pankil Builders to terminate the Consent Terms vide their legal notice dated 06-06-2013 and that Rajesh Jain was also called upon to return all original documents.

17. The aforesaid facts clearly bring out that there are serious disputes not only between M/s Pankil Builders and Rajesh Jain, but also between the partners of M/s Pankil Builders interse as regards the ownership of the said property. The property card in respect of the said property stands in the name of Patils till date. There are also other claimants to the suit property who have filed Chamber Summons before this Court including a branch of the Patils seeking impleadment which we need not go into. Suffice it to say that there is a cloud on the ownership of the said property. There are huge investments to be made in implementing a Slum Rehabilitation Scheme. In

view of the disputes as regards the ownership of the said property, it appears that none of the persons claiming to be the owner were willing to take risks. It is possibly for this reason there was no proposal forthcoming from the owners for implementation of the Slum Rehabilitation Scheme on the said property and the Petitioners were merely addressing communications that they were willing to implement the Slum Rehabilitation Scheme and objecting to the Scheme submitted by the Respondent Society. In **Pratapsinh Shoorji Vallabhdas** (supra), it has been held by the Division Bench of this Court that merely addressing communications without taking steps would not indicate sincere and genuine desire to implement the Slum Rehabilitation Scheme.

18. In the facts and circumstances of the present case, in absence of any proposal for implementing Slum Rehabilitation Scheme being submitted by the owners of the said property (apparently due to the disputes as regards the ownership of the said property), the question of consideration by SRA of any preferential right of the Petitioners for redevelopment of the said property did not arise. There was thus no impediment in consideration of the Application dated 21-09-2010 of the said Society. The said property was declared as slum as far back as in the year 1979. The slum dwellers occupying the said property have been living in unhygienic conditions since

then. The Slum Act was enacted interalia for making better provisions for improvement and clearance of slum areas in the State. In absence of any proposal from the Petitioners for implementation under Slum Rehabilitation Scheme, we do not find any fault in the Respondent State/Authorities accepting the proposal of the Respondent Society for the acquisition and redevelopment of the said property under the Slum Rehabilitation Scheme by M/s Laizer Builders and Developers on behalf of the said Society. The slum dwellers cannot be made to wait perennially for the disputes in respect of the ownership of the said property to be resolved, for implementation of the Slum Rehabilitation Scheme. As provided under section 13(1) of the Slum Act (as modified by Chapter 1-A), the Petitioners are required to come forward with the Slum Rehabilitation Scheme within a reasonable time. Though not relevant for the purposes of the present Petitions, it is required to be noted that section 13(1) of Slum Act has been amended w.e.f. 26 April 2018 and the reasonable time appearing in the said section is now specified by adding the words 'which shall not be more than one hundred and twenty days'.

19. The CEO, SRA has while recommending acquisition of the said property has observed in his Report dated 2 December 2014 to the State Government as follows:

“There is dispute about ownership of the land to be acquired. It is seen that due to this dispute, competent owner of the land has not submitted Slum Rehabilitation Scheme so far. However the property to be acquired was declared as Slum Area in the year 1979. In view of this it is essential to acquire the land for rehabilitation of the hut-holders.

In this case Slum Rehabilitation Scheme has not been submitted so far by the owners ...”

We are unable to find any fault in the Report dated 2 December 2014 of the CEO, SRA which has also been impugned in Writ Petition (L) No. 2532 of 2018 filed by the Petitioner - Rajesh Jain. Before submitting his Report dated 2 December 2014 to the State Government recommending acquisition of said property, the CEO, SRA has afforded a personal hearing to the Petitioners and other concerned persons. The hearings before the CEO, SRA took place on 2 January 2014, 3 February 2014 and 10 March 2014. Thus, the CEO, SRA has complied with the principles of natural justice as required under section 14(2) of the Slum Act. The said Report of the Chief Executive Officer, SRA, is elaborate and runs into several pages. No perversity is pointed out in the said Report of CEO, SRA. The said Report was accepted by the State Government and the impugned final Notification dated 20 May 2017 under section 14(1) of the Slum Act came to

be issued. The procedure contemplated under section 14 of the Slum Act has thus been followed and the owners of the said property would be entitled to compensation as provided under the Slum Act.

20. So far as the Report dated 10 February 2012 of the Additional Collector which has also been impugned in the said Writ Petition (L) No. 2532 of 2018, it is required to be noted that the said Report was challenged earlier by the Rajesh Jain by filing Writ Petition No.1542 of 2015, which Writ Petition came to be disposed of on the statement of the learned Counsel for the Petitioner- Rajesh Jain that the Writ Petition is rendered infructuous. We therefore decline to entertain the challenge to the Report dated 10 February 2012.

21. Section 14 of the Slum Act provides for acquisition of adjoining or surrounding area. The contention therefore that the open spaces could not have been acquired cannot be accepted. The earlier proposal of the said Society through M/s.Jai Mataji Developers was rejected by the CEO, SRA and would not impact upon the proposal of the said Society through M/s.Laizer Builders and Developers. In any event, M/s.Jai Mataji Developers have not come forward to challenge the proposal of the said Society through M/s.Laizer Builders and Developers.

22. Quite apart from the above, we find that much water has flown under the bridge. In view of sub-section (2) of section 14 of the Slum Act, the said property now vests absolutely in the State Government free for all encumbrances from the date of the Notification i.e. 20 May 2017, It is required to be noted that the Petitioners have taken their own time in filing the Petitions. Writ Petition No. 1019 of 2018 has been filed only on 23 February 2018 and Writ Petition (L) No. 2632 of 2018 has been filed only on 6 August 2018. Learned Senior Counsel for the Intervenor M/s. Laizer Builders and Developers has pointed out that after the acquisition of the said property under section 14 of the Slum Act, M/s. Laizer Builders and Developers have been issued Letter of Intent (LOI) on 27-12-2017. As per the LOI, M/s. Laizer Builders and Developer is required to rehabilitate 34 eligible slum dwellers on the said property and provide 61 PAP tenements on the said property. The SRA has also issued IOA for rehab building No. 1 on 15-01-2018 and also IOA for the sale building. The SRA has also issued commencement certificate in respect of the rehab building as well as sale building on 07-08-2018. M/s. Laizer Builders and Developers has paid 100% premium of a sum of Rs.2,78,86,500/- as directed by SRA. Annexure III has been issued in favour of M/s. Laizer Builders and Developers. All the 42 slum dwellers including the 34 eligible slum dwellers occupying the said property have vacated their respective structures and the said property is

now an entirely vacant of plot land. M/s. Laizer Builders and Developers has paid rent to the said 34 slum dwellers for 11 months in advance, 5 slum dwellers have been paid rent for further 11 to 24 months in advance considering their urgency, and they have incurred expenditure on the rent of more than Rs.65,00,000/-. M/s Laizer Builders and Developers has paid more than Rs. 1 crore towards deposit against IOA, IOA scrutiny fees, fixed deposit on Annexure III and various other expenses in addition to the land premium and the rent paid to the slum dwellers in lieu of transit accommodation. We find that in the present case, the LOI has been issued on 27-12-2017 and has already been acted upon and it is now not possible to set the clock back. The learned Senior Counsel for M/s.Laizer Builders and Developers is right in contending that the decision of the Division of this Court in **India Cork Pvt.Ltd.** (supra) would have no application in the facts of the present case where the LOI is already issued and has also been acted upon.

23. For all the aforesaid reasons, we find no merit in the Petitions. The Petitions are accordingly dismissed. There shall be no order as to costs.

(SANDEEP K. SHINDE, J.)

(A.A. SAYED, J.)