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

WRIT PETITION NO.3094 OF 2018

Rajendra R.Vishwakarma .. Petitioner
vs
1. The State of Maharashtra }
2. The Grievance Redressal Committee
3. The Slum Rehabilitation Authority }
4. New Prabhat Co-op Hsg.Soc Ltd
5. M/s Pratima Enterprises }
6. Pradeep Datytatray Bhaigade
.. } .. Respondents

Mr.Anand H.Singh for Petitioner
Mr.L.T.Satelkar Asst.Govt,Pleader for Respt no.1 State in WP No.3094/2018

Ms.Uma Palsuledesai Asst.Govt.Pleader for State in WP No.3131/2018

Mr.A.L.Patki Asst.Govt.Pleader for State in WP No.3132/2018
Mr.Abhijit Desai for Respondent no.3-SRA
Mr.Pradeep Bhaigade Respondent no.6 appearing in person in WP No.3094/2018

Coram : G.S.KULKARNI, J

Date : 26 March 2019

<u>JUDGMENT</u>

1. The primary issue in these proceedings is profiteering and/or commercialisation from the tenements received by the slum dweller (petitioner) in a slum redevelopment scheme by illegal transfer and use purely for commercial exploitation.

2. This petition under Article 226 of the Constitution challenges an order dated 5.5.2018 passed by the Grievance Redressal Committee constituted under the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short the “Slums Act”) whereby Appeal No.322 of 2017 filed by the petitioner against the order of the Additional Collector confirming petitioners eviction from the premises in question stands dismissed.

3. The dispute in the present petition pertains to tenement no.104 in 'A' wing situated in New Prabhat Cooperative Housing Society Ltd, Andheri (East) Mumbai-400069. (for short the “said tenement”). One Pradeep Dattatraya Bhaigade respondent no.6 had filed a complaint with the competent authority complaining that the petitioner had illegally transferred the said residential premises under the slum rehabilitation scheme to Smt Pratibha Vishwanath Shetty and that the premises are being used for commercial purposes. On the above background, through the Assistant Registrar, Co-operative Department, SRA, an inspection of the tenements was undertaken, and a report came to be prepared. The report recorded that on verification of the original entries in Annexure-II

(List of eligible persons for allotment of permanent alternate accommodation) as compared with the survey report dated 21.7.2015 submitted by the Area Officer, it was revealed that the petitioner's premises are in use and possession of one Spun TV and are used for commercial purposes. It was recorded that prior permission of the competent authority was not taken for transfer of the premises. The report also revealed that Spun TV had amalgamated these premises and was in possession of the tenement nos.101,102, 103, 104 and all these tenements were used for commercial purposes.

4. As in the records of the authority tenement no.104 continued to be in the petitioner's name, the Deputy Collector (Encroachment) competent authority, issued a show cause notice dated 4.6.2015 under Section 33 of the Slums Act to the unauthorised occupants of these premises, referring to the names of the unauthorised occupants also the name of the petitioner whose name was on the record of the authority as a slum dweller. It was *inter alia* recorded that the petitioner's premises in the New Prabhat Co-operative Housing Society Ltd (Respondent no.4) (for short ' **the society**') were the premises constructed and allotted to the petitioner under a slum rehabilitation scheme. The

notice recorded that in regard to the tenement allotted to the petitioner, on inspection it was revealed that a third party one Smt Pratibha Vishwanath Shetty was found to be in possession and further that the said tenement was amalgamated with tenement no.105 and was being used for commercial/non-residential purposes. The unauthorised occupant was accordingly called upon to remain present before the competent authority on 9.6.2015 with all the documents.

5. The petitioner and the other unauthorised occupants defended the said notice and through their advocate Mr.Anand who was heard by the competent authority on all the issues. The petitioner in defending the show cause notice contended that respondent no.6-complainant had no locus to maintain a complaint against the petitioner. It was further submitted that under a tripartite agreement with the society and the developer, possession of the said tenement was handed over to one Gaurav Shetty on 28.9.2007. The competent authority also heard the representatives of the department who stated that the site report revealed that tenement nos.101,102,103 and 104 are combinedly used for non-residential purposes and that there was illegal amalgamation of the tenements and/or transfer of the said tenements by the original allottees.

The representative of the department also referred to a belated letter dated 29.6.2015 of the Chairman of the society informing that there was a hutment (10 x 15 sq.ft) belonging to one Jagannath Mishra who had transferred the said hutment in 1999 to Smt.Pratibha Vishwanath Shetty for Rs.40,000/-. The departmental representative placed material to the effect that the petitioner was illegally allotted the said tenement by the developers as could be seen from the letters of the society, contrary to the rules and official circular no.145 dated 25.10.2013, without obtaining prior permission from the authority. It was contended that transfer of the premises in the SRA building was not permissible as per the Government Resolution dated 16.5.2014 in the rehabilitation building. The competent authority after hearing the parties and referring to Section 3E and Section 33 of the Slums Act and considering the documents and the materials on record passed an order dated 25.7.2015 *inter alia* holding that the petitioner as also the other persons to whom a show cause notice was issued, as recorded in the said order, had illegally transferred the premises allotted to them and directed that as per the said provisions of section 33 of the Slum Act, they should hand over the premises to the Executive Engineer, SRA, within 10 days of the receipt of the order.

6. The petitioner challenged the said order dated 27.7.2015 passed by the competent authority in an appeal, filed before the Additional Collector as permissible under section 35 of the Slum Act. In the appeal, the petitioner *inter alia* contended that the petitioner's name appeared in Annexure II at serial no.57 as an eligible slum dweller, and accordingly, tenement no.104 was allotted to the petitioner. The petitioner contended that the tenement was not transferred to any third party and that the tenement was also not amalgamated with the other tenements or with tenement no.105. However, the petitioner did not dispute the position, that there was amalgamation of tenement nos.101,102,103 and 104 and that the fact that the premises were not used for residential purposes. On these limited grounds the petitioner prayed that the order dated 27.7.2015 passed by the competent authority be set aside.

7. The appellate authority considering the evidence on record and the documents received from the society and all other authorities made the following observations:

(i) Tenement nos.101,102,103 and 104 (petitioner's tenement) are amalgamated in which one SPUN TV has its office.

(ii) The petitioner was one of the eligible slum-dweller as his name existed in the Annexure II at serial no.57 as a residential slum dweller and was allotted tenement no.104.

(iii) Tenement no. 104 was not in occupation and possession of the petitioner and the said tenement since 2007 is in possession of Shetty Family.

(iv) The Chairman of the society Respondent no.4 by his letter dated 25.4.2013 had applied to the Slum Rehabilitation Authority inter alia stating that Mr.Shetty had purchased tenement no.104 and for that, Mr Shetty had paid an amount by cheque dated 8.3.2006 and that Mr Shetty had produced pass book entry of the said cheque payment having being received by the society.

(v) This evidence sufficiently indicates that the possession of tenement no.104 was not with the petitioner, he having transferred the tenement to a third party. The petitioner was thus liable for an eviction action under section 33 of the Slum Act.

8. The appellate authority after hearing all the parties by the said order dated 21.3.2017, rejected the appeal filed by the petitioner along with the other appeals.

9. Against the said order passed by the Appellate Authority, the petitioner approached this Court in Writ Petition (Lodging) No.996 of 2017. The said petition was disposed of by this Court by an order dated 4.10.2017 in terms of following order :

> "1) In all these matters, the petitioners have alternate and efficacious remedy available in terms of Section 35 (1A) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) by instituting appeals to the Grievance Redressal Committee.
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> 2) Mr.Anand, learned counsel for the petitioners state that such appeals will be instituted within a period of five weeks from today. This statement is accepted. On this basis, the interim protection granted by this Court is continued for a period of five weeks from today.
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> 3) If the appeals are indeed instituted, within a period of five weeks from today, the Grievance Redressal Committee shall consider and dispose of the same on merits without adverting to the issue of limitation. Further, Grievance Redressal Committee to endeavour to dispose of the appeals as expeditiously as possible and in any case within a period of three months from the date of their institution.
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> 4) It is made clear that this Court has not examined merits of the matters and therefore all contentions of all parties are left open to be determined by the Grievance Redressal Committee.
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> 5) These petitions are disposed of in the aforesaid terms.
>
> 6) All concerned to act on basis of authenticated copy of this order."

10. The petitioner consequently approached the Grievance Redressal Committee in a proceeding which was titled as "Appeal No.322 of 2017" as filed under section 35 (1A) of the Slum Act. In the appeal, the petitioner ***inter alia*** contended that the petitioner was in possession of tenement no.104 as entitled under a tri-partite agreement. The petitioner produced documents such as ration card, electricity bill to show that the petitioner was in possession of the said tenement. The petitioner further contended that there was no amalgamation of the petitioner's premises no.104 with tenement no.105. The petitioner alleged malafides against respondent no.6, who had lodged a complaint against the petitioner with the SRA authorities, complaining of an illegal transfer of the said tenement to the transferee to be used by the transferee for commercial purposes. The petitioner also relied on a notice under section 53 (1) of the MRTP Act issued on the illegal amalgamation, and contended that the said notice itself was not taken to its logical conclusion and as there was no action taken under the said notice. It was contended that the orders passed by the original authority and the appellate authority were contrary to the evidence on record. Ground (m) of the petitioner's appeal memo needs to be noted, which reads thus:

> *" The impugned order at Exhibit A-1 has been passed by the Competent Authority*

> *without considering the fact that the Appellant continuous to be in possession of the said tenement and Vishwanath Babu Shetty has never purchased the said tenement No.A-104 at any time and more soever Vishwanath Babu Shetty has filed affidavit in Writ Petition (L) No.996 of 2017 affirmed on 4.11.2017 wherein he has put on record that the Appellant is in possession of tenement No.A-104 and the amount paid is compensation for temporary alternate accommodation as he was during the said period appointed as Chairman of the Society. The copy of the affidavit is annexed herewith and marked as **Exhibit N**. The claim of amount of Rs.2,00,000/- has been paid as outstanding and rent for subsequent period for seeking temporary accommodation in March 2006 and therefore any claim that the tenement was sold to Vishwanath Shetty is false. The Appellant is not in any manner concerned with Vishwanath Shetty and he is in independent possession of the said tenement No.A-104."* *(emphasis supplied)*

11. By the impugned order, the Grievance Redressal Committee (**for short the "GRC")** dismissed the petitioner's appeal, thereby confirming the order dated 27.7.2015 passed by the Competent Authority i.e. Dy.Collector (E&R) Bandra, which was confirmed by the order passed by the Additional Collector (Appellate authority). The GRC detailing all the facts has observed about the nature of the illegality as committed by the petitioner along with other allottees of the other tenements namely to hand over the possession of tenement nos.101,102,103 and 104 to the Shetty family and permitting amalgamation and use of the premises for the business of Spun TV. The GRC considering the provisions of section 3E of the Slums Act, observed that clearly the statutory period of 10 years had not expired, when the competent authority initiated action against the petitioner and other concerned tenement holders and thus held that an

eviction on the ground of illegal transfer of the tenement by the petitioner to a third party within a period of 10 years was justified and valid. On merits of the petitioner's contentions, the GRC observed from the documents which were produced by the respondent no.5 that it was clear that the petitioner after allotment of tenement no.104 sold the same to Mr.Vishvanath Shetty and Mr.Shetty had amalgamated tenement nos.101 to 104 and gave it to a logistics company and thereafter to Spun TV, who commercially exploited the premises out of the said leasing business. It was also observed that letter dated 30.4.2013 of Mr.M.A. Surve, Co-operative Officer Grade I and Inspection Officer, Co-operative Establishment (Eastern and Western Suburbs) SRA, Mumbai, name of the petitioner along with other persons were clearly recorded of having unauthorizedly transferred and amalgamated such tenement. It was observed that the Officer had opined that necessary action against the said developer be also taken. The GRC also referred to the application dated 25.4.2013 submitted to the Chief Executive Officer of the SRA, by Mr.Vishwanath Shetty wherein Mr.Vishwanath Shetty had stated that tenement no.104 was allotted to the petitioner and he has sold tenement to Mr.Vishwanath Shetty and had paid the purchase consideration for the tenement, by cheque to one Mrs.Manju and hence, the tenement be transferred in his name. Copy of two cheques dated 8.3.2006 of the amount of Rs.1 lac each and copy of the bank pass book showing clearance of the said cheques as paid by Vishwanath Shetty for purchase of tenement no.104 in the year 2006, were also on record of the appellate authority, and the GRC. The Grievance Redressal Committee observed that the petitioner and other applicants had not approached the GRC with clean hands and that they had left no stone unturned to stall the eviction and to mislead the authorities, as also the GRC. It was observed that the petitioner had indulged in misleading the authorities right from the time of deciding the eligibility, by suppressing vital documents and that the petitioner had admittedly sold and transferred tenement no.104 to Vishwanath Shetty in the year 2006 itself and said Vishwanath Shetty attempted to get the tenement transferred in his name in the year 2013 i.e. prior to the coming of the statutory period of 10 years as provided under section 3 by making an application dated 25.4.2013 to the SRA. The Grievance Redressal Committee also observed that the Shetty family realised that there was a gross mistake of making the said transfer application prematurely, and hence did not pursue the matter any further and quietly waited for the statutory period of 10 years to elapse, and thereafter without disclosing the prior unlawful transfer as also without disclosing the order passed under Section 3 (E) of the Slums Act against them, approached to SRA afresh for transfer of the said tenement. Thus there was a fraud played by the petitioners along with others. Some of the observations of the Grievance Redressal Committee are required to be noted:

> *"16 After carefully considering all the facts and circumstances and after going through the relevant provisions of law and rules of the scheme, this Committee is of the opinion that this appellant has not made out any case for interference in the order passed by the competent authority. However, this Committee is of the further opinion that in case of tenement no.102, the case for invocation of provision of section 3 (E) has been clearly made out and established as the same third party business entity i.e. Spun TV was found to have been occupying said tenement no.102 along with tenement nos.101,103, and 104, and hence the omission of tenement no.102 from said eviction action was improper. Therefore, this Committee while rejecting this appellant's appeal No.330/2018, direct the competent authority to initiate proceeding against tenement no.102 under sub-section (2) of section 3 (E) of this Act.*
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> *17. The appellant Mr.Rajendra Vishwakarma (Appeal No.322/2017) in is written argument has prayed for withdrawal of the appeal by contending that during pendency of this appeal, the statutory period of ten years are over and he has duly sold tenement No.104 to Mr.Gautam Vishwanath Shetty by a registered sale deed and the SRA has permitted the transfer of said tenement no.104.*
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> *19. Upon perusal of documents of appellant Mr Rajendra Vishwakarma and of the Respondent no.5 this Committee is of the opinion that all the three appellants have not come with clean hands before this Committee. In fact, they have left no stone to be unturned with a view to stall the eviction action and to mislead the authorities below and this Committee too. This committee has observed that the appellants have indulged in the practice of misleading the authorities, right from the time of deciding eligibility by suppressing vital facts. <u>This appellant admittedly had unlawfully sold and transferred said tenement No.104 to Mr.Vishwanath Babu Shetty in the year 2006 itrself and Mr.Vishwanath Sahetty attempted to get said</u>*

tenement no.104 transferred in his name in the year 2013 i.e. prior to end of statutory period of ten years, by making application dated 25.4.2013 to SRA. It is evident that the Shetty family realised their grave mistake, of making said application premature, and hence did not pursue that matter any further and quietly waited to have the statutory period elapsed, and thereafter without disclosing the prior unlawful transfer as well as without disclosing the order passed under section 3 (E) against them, approached to SRA for transfer of tenement. Copy of letter of Mr.Vishwanath Babu Shetty given to CEO,SRA is bringing out said fraud played upon the SRA Authority. The appellant's denial of having transferred tenement no.104 period to end of statutory period of ten years, is thus proved to be false to the knowledge of this appellant. The record shows that to get away with the inevitable eviction action they stalled time by moving around before the authorities by appeal proceedings. For the reason recorded earlier their case of Mrs.Pratibha V.Shetty, the appellant has lost the rights in said allotted tenement no.104 after passing of order under section 3 (E) against him and therefore sale agreement entered into by him respect of said tenement no.104 during the pendency of this appeal is in breach of the order passed under section 3 (E) as such said agreement is not creating any right in favour of Gautam V.Shetty. It is immaterial that the statutory period of ten years is over during the pendency of an appeal proceeding filed against the order passed under sub-section (2) that the statutory period of ten years is over during the pendency of an appeal proceeding filed against the order passed under sub-section (2) of section 3 (E). Therefore, when the order dated 27.7.2015 under section 3 (E) is passed and subsisting, this appellant had no right to apply for transfer of tenement no.104 to any person until the cancellation or revocation of said order dated 27.7.2015. Further, once the due action of eviction under section 3 (E) is initiated and the order is passed under sub-section (2) thereof then the request for dropping the proceeding of eviction is not tenable in as much as no proceeding under section 3 (E) can be said to be pending after passing of order under sub-section (2) thereof and pendency of appeal proceeding does not mean that proceeding under section 3 (E) is pending and pendency of appeal is only keeping the implementation of eviction order in abeyance on account of provisions of section 35 (3) of this Act and not having effect of setting aside of eviction order. Even if statutory period of ten years elapses during the pendency of any appeal filed in challenge to an order passed under sub-section 3 (E) then also neither the order nor the original cause of action on the basis of which said order is passed gets vitiated on mere fact of expiry of statutory period of ten years during pendency of appeal. Looking at said legal position from other angle, it can be said that the dismissal of this appeal will not give rise to a fresh order under section 3 (E) as the effect of dismissal of appeal will be that the *order dated 27.7.2015 passed by the competent authority shall stand effective from the said date i.e. 27.7.2015 which means said order shall be treated to have been in force from 27.7.2015 itself as such the expiry of period of ten years during the pendency of this appeal will not have any effect on the position that the allottee has already lost his right in the tenement and there is no scope left for the appellant to apply for permission to transfer the tenement after passing of eviction order. Therefore, the appellant's act of transferring tenement no.104 after expiry of period of of ten years during pendency of action of removal under under section 3 (E) is itself illegal, null and valid and his said act will not have a legal effect of transferring said tenement no.104 to any person much less to Gautam Shetty."*

(emphasis supplied)

Accordingly the GRC passed the following order :

"*1. The Appeals are hereby dismissed.*
2. The Order dated 27.07.2015 passed by the Competent Authority i.e.Dy.Collector (E&R) Bandra which is impugned in all three appeals, is hereby confirmed.

3. The Competent Authority is further directed to conduct thorough enquiry in to the allegations made by the respondent no.5 regarding allotment and possession of tenement no.G-1, G-2, G-3, and G-4 of the rehab building in this scheme and to take appropriate decision preferably within four months from the date of receipt of this order after giving opportunity of hearing to all parties concerned.

4. No order as to the costs."

12. It is against the above three concurrent findings of the authorities below, the petitioner has approached this Court in the present petition.

13. Learned counsel for the petitioners in assailing the impugned order would submit that the findings as recorded by all the three authorities below are enormous and illegal in as much as the petitioner was the lawful allottee of the said tenement. The petitioner had not transferred the tenement to Vishwanath Shetty as observed by the authorities below. It is submitted that action against the petitioner under section 3E and action under section 33 as referred by the appellate authority would not be maintainable. It is further submitted that Mr.Shetty in fact, had submitted an affidavit in the writ petition filed before this Court that the premises are not transferred to him by the said petitioner. Learned counsel for the petitioner referring to the documents has reiterated the contentions and submissions as made before the authorities below.

14. Mr.Abhijit Desai learned counsel for the SRA would submit that there are concurrent findings of fact against the petitioner that the petitioner violating the provisions of section 3E of the Act had sold the said premises for commercial uses. He would submit that all the three authorities below have appreciated the evidence and reached to a conclusion, which is based on materials on record, that the petitioner had

created third party rights and interest in favour of Shri Vishwanath Shetty in regard to the tenement in question. It is further submitted that in doing so, the petitioner has profiteered from the allotment of a tenement under the slum rehabilitation scheme. It is submitted that there was clear evidence on record that Spun TV was in use and occupation of tenement nos.101, 102,103 and 104. There was only one entrance to these tenements. It is submitted that it was thus legitimate and lawful for the SRA authorities to initiate action under section 3E of the Act and the petitioner was required to be evicted. Learned counsel for the SRA has drawn my attention to the extensive orders passed by the competent authority to point out that the order passed by the competent authority was a composite order under section 3E read with section 33 of the Act and therefore, the submission as made on behalf of the petitioner that the action is initiated against the petitioner is under section 33 of the Act only, is untenable. Learned counsel for the SRA has accordingly prayed for dismissal of the petition.

15. Learned Assistant Government Pleader for the respondent no.1 has supported the findings as recorded by the authorities. Respondent no.5 appears in person who has also supported the concurrent

findings of the three authorities against the petitioner. It is submitted by him that the petitioner has merely lent his name for filing of this petition and in fact this is a proxy petition of the Shetty's defending lawful eviction.

16. I have heard learned counsel for the parties. I have also perused the documents as placed on record and order dated 25.7.2015 passed by the competent authority, order dated 21.3.2017 passed by the appellate authority and the impugned order passed by the GRC. Admittedly, there are concurrent findings of fact against the petitioner, of the petitioner having accepted an allotment of a tenement (No.104) under the slum rehabilitation scheme and thereafter having commercially dealt with the said tenements by transferring the tenement to one Vishwanath Babu Shetty in 2006, prior to the expiry of statutory period of 10 years, in gross breach of the provisions of section 3E of the Slums Act. Following is the stipulation as provided under section 3E of the Slum Act which reads thus:

"3E. Restrictions on transfer of tenements:

(1) The tenements allotted to the persons under the Slum Rehabilitation Scheme <u>shall not be transferred by the allottee thereof by way of sale, gift, exchange, lease or otherwise for a period of first ten years commencing from the date of allotment of the tenement. After the expiry of the said period of ten years, the allottee may,</u>

with the permission of the Slum Rehabilitation Authority, transfer such tenement in accordance with the prescribed procedure.

(2) If the tenement is transferred by the allottee in contravention of the provisions of sub-section (1) the Competent Authority shall, by order, direct the eviction of the person in possession of such tenement in such manner and within such time as may be specified in the order, and for the purpose of eviction, the Competent Authority may use or caused to be used such force as may be necessary."

Provided that before issuing any order under this sub-section, the Competent Authority shall give a reasonable opportunity to such person to show cause why he should not be evicted there from."

(Emphasis supplied)

17. A perusal of the record would indicate that this is a classic case of a brazen and illegal dealings in slum tenements by the petitioner and some other persons as revealed in the inquiry as initiated by he authority. The allotment of the tenements under a slum scheme is in the nature of allotment of a public largesse, being conferred on the eligible slum dwellers, for the purpose of satisfying their housing needs, being achieved under the Slums Act and the rules. It needs to be noted that illegality in the present case has perpetuated to such an extent that one Vishwanath Shetty and his family members acquired all the tenements nos. 101,102,103 and 104 from the original allottees and thereafter further transferred the premises to one Spun TV being used for commercial purposes. The fact of illegal transfer of the said tenement by the petitioner in favour of Mr.Shetty stands emphatically revealed from a

grave mistake Mr. Shetty committed of informing the society some time in 2006 whereby he informs of a consideration paid by him to the petitioner for transfer of the said tenement, which was revealed from the records of the society. It is further revealed that right from the inception, from the allotment of tenement, the petitioner had never been in possession and it was Vishwanath Babu Shetty who was in possession but, later on created third party rights in favour of Spun TV. It is clearly revealed from the inquiry report, that in the records of the society, the petitioner in fact was never in possession, though his name appeared on the electricity bill etc. Mr.Shetty had also blatantly approached the SRA authorities in the year 2013 (which is before the expiry of period of 10 years as contemplated by section 3E of the slum Act prohibiting transfer) seeking transfer of the tenement in his name. It is further surprising to note that immediately after the expiry of 10 years that is in the year 2017, the petitioner prayed for withdrawal of the appeal by contending, that during the pendency of the appeal, the statutory period of 10 years are over and he has transferred tenement no.104 to one Gautam Vishwanath Shetty by a registered sale deed. An application by Mr.Shetty to the SRA to transfer the tenement in his name and thereafter the petitioner saying that he has transferred the tenement to Mr.Gautam Shetty which is after completion of 10 years cannot be a coincidence. In my opinion, the GRC has correctly observed that this modus operandi of an illegal transfer prior to completion of 10 years which the petitioner in fact stood compounded by such application being made. It also certainly cannot be a coincidence that the petitioner would transfer the tenement to no one but to the son of Vishwanath Shetty.

18. Apart from the illegal transfer of the tenement, what is more glaring is use of the premises by a third party namely Spun TV by amalgamating all these tenements allotted to different allottees. This has clearly defeated the purpose/object of allotment to the beneficiaries/alloteees/slum dwellers.

19. The abuse of the beneficial provisions of the Slum Act is apparently gross in this case. It is a matter of common knowledge that lands which are occupied by the slum dwellers are redeveloped under the Slums Act and the beneficial rules under the planning laws. These lands are many times belonging to the Government and/or public bodies like the Municipal Corporation. These authorities fail to safeguard public lands from encroachment and impliedly permit encroachment by slum dwellers

who put up their huts/shanties. These slum dwellers are permitted to remain on such lands for number of years. Amenities like water and electricity are also provided to them. Having squattered on such land for number of years the slum dwellers then become eligible for a protection under the government policy and become entitled for a "permanent alternate accommodation", when the slum land would be re-developed, at the hands of a developer. The development is also at the instance of a society formed by the slum dwellers. The government whose land is encroached becomes alien to the whole concept of re-development being undertaken by a private developer at the instance of the slum dwellers. The developer constructs a multi storeyed building under a scheme known as the slum re-development scheme wherein the slum dwellers who become entitled for a permanent alternate tenement are allotted tenements. It is thus clear that the object under the Slums Act and the slum scheme is to rehabilitate the bonafide and genuine slum dwellers by providing a permanent shelter over their head. In this context, Section 3E of the Slums Act is a salutary provision, so that commercialization in dealing with the slum tenements is not indulged by the slum dwellers. This is precisely what is violated by the petitioner.

20. The concurrent findings as recorded in all the three orders passed by the authorities below, on the above aspects in no manner can be said to be perverse and/or without any basis and/or illegal. In my opinion the GRC was right in observing that the petitioner has left no stone unturned to misguide and mislead the authorities, right from the inception. The authorities in the present case, acted diligently in issuing of the show cause notice dated 4.6.2015 and for almost three years have pursued the proceedings under the Slum Act, to evict the petitioner and/or illegal occupants of the said tenements.

21. It is further surprising to note as to how records are created by the petitioner using the orders of this Court. This is clear from ground (m) raised before the Grievance Redressal Committee as noted above. The petitioner has gone to the extent of procuring an affidavit from Mr.Shetty placing it in the record in the earlier round of litigation before this Court, knowing well that the proceedings were not maintainable, in view of an alternate remedy of an appeal being provided before the Grievance Redressal Committee. The petitioner sought to make out a case before this Court by annexing this affidavit of Mr.Shetty to say that Mr.Shetty has

not purchased the premises from the petitioner. After the petition was disposed of by this Court on the ground that an alternative remedy was available to the petitioner of an appeal before the GRC, the petitioner then contends before the GRC that this affidavit of Mr.Shetty was on the record of the High Court and to this effect raises ground (m) as noted above. This is not only a patent abuse of the process of this court but also clearly an attempt on the part of the petitioner to use the High Court proceedings to mislead the GRC to accept a submission that Mr.Vishwanath Shetty's affidavit was on the record of the High Court disowning such a transfer, an impression was created, as if the affidavit is accepted by the High Court and conferred a sanctity to it. The petitioner thus using the said affidavit before the GRC clearly attempted to contend that Mr.Vishwanath Shetty's affidavit was part of the record of the High Court and thus projected as if the said affidavit was sub-silentio accepted by this Court. In my opinion, this is sufficient indication of how the petitioner has conducted himself and have abused the process of the Court. Thus this is a clear attempt on the part of the petitioner also to mislead this Court apart from not approaching this Court with clean hands. This Court cannot be oblivious to this gross conduct of the petitioner in seeking equitable and discretionary relief in these proceedings. Thus, I see no merit in the contentions as urged on behalf of the petitioner that the petitioner is in lawful occupation and possession of the premises.

22. In so far as the contentions as urged on behalf of the petitioner, that there is no order passed against the petitioner under section 3E of the Slum Act, in my opinion the contention is patently misconceived. The provisions of section 3E of the Slum Act clearly provide that if the tenement is transferred by an allottee in contravention of the provisions of sub-section (1) of Section 3E of the Act, the competent authority shall direct eviction of the person in possession, of such tenement in such manner and in such time as specified in the order and for the purpose of eviction as may be necessary. However, as per the proviso to this section before such action is taken, a reasonable opportunity of issuing a show cause notice, as to why such a person should not be evicted is required to be followed. A perusal of the order dated 27.7.2015 passed by the competent authority clearly indicates that it is an order passed under section 3E read with section 33 of the Act. It would be incorrect and wholly unfounded on the part of the petitioner to contend that there is no order passed against the petitioner under section 3E of the Act. One cannot be oblivious that the competent authority had

issued the show cause notice under Section 33 against those (Shetty's) who were in unauthorised occupation. Shetty's also contested the eviction proceedings. Section 33 of the Act provides for a power of eviction to be exercised by the competent authority and reads thus:

> ***"33. Power of eviction to be exercised only by the competent Authority:***
>
> *Where the Competent Authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any order or direction issued or given by the Authority, the Authority shall, by order direct the eviction of the occupants from the building in such manner and within such time as may be specified in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary.*
>
> *Provided that, before making any order under this section the Competent Authority shall give a reasonable opportunity to the occupants of the building to show cause why they should not be evicted there from."*

23. This apart considering the provisions of section 3E and section 33 of the Act, in my opinion, there was no embargo on the competent authority to initiate an action under section 3E which itself is a self-inclusive provision empowering eviction after issuance of a show cause notice. The end result and the consequence of sections 3E and 33 of the Act is that both these provisions result into eviction and thus, it cannot be said that mere reference of the provision by the competent authority or the authorities below, to section 33 would in any manner vitiate the proceedings initiated by the SRA under section 3E of the Act as rightly

observed by the GRC. This more particularly when the Shetty's who are third parties are in unauthorised occupation of the tenements in question qua the Shetty's the eviction action necessarily fell under the provisions of Section 33 of the Slums Act and qua the petitioner as rightly observed by the authority by virtue of the undisputed occupation and possession of Mr.Shetty of the tenement, there was a breach of Section 3E of the Act by the petitioner. Thus there was nothing wrong much illegal for the authorities to take an eviction under Section 33 of the Slums Act.

24. In any event such an argument on behalf of the petitioner is totally misplaced, mischievous and unfounded, inasmuch as the petitioner had failed to show that there was any prejudice caused to the petitioner by simplicitor referring to the provisions of section 33 of the Act and when the petitioner cannot run away from the fact that in the facts of the present case, the consequence and/or the end result under section 3E and section 33 of the Act would lead to an eviction for the illegality as established under the said provisions, not merely qua the petitioner alone but also against those in illegal occupation of the tenements. The contention of the petitioner is to create an unwarranted hair splitting on these provisions. In my clear opinion the authorities below have effectively

handled this jugglery of the petitioner.

25. In fact, it clearly appears and as rightly contended by the respondent no.6 who appears in person that it is not the petitioner who is pursuing this petition but the illegal occupants of these tenements who are pursuing these proceedings. Apparently these are proxy proceedings.

26. Considering the over-all facts of the case, in my considered opinion, this is a case of gross illegality at the hands of such allottees of public largesse, who have received slum tenements free of costs, and who have indulged in profiteering by dealing in such tenements. The authorities being diligent and vigilant an action as per law was initiated and pursued against the petitioner and those in illegal occupation of the premises in question. The petitioner left no stone unturned to resist the eviction action by all possible means. If the GRC was to accept the contentions of the petitioner, it would have certainly resulted into a premium on the illegality of the petitioner in indulging into such illegal transfer of a slum tenement. The very object and purpose of such allotment under the slum redevelopment scheme, would have frustrated, by the petitioner profiteering from such allotment. GRC has rightly rejected the appeal as filed by the petitioner.

27. The petition is therefore hopelessly misconceived. It is accordingly rejected. However, with costs of Rs.25,000/- to be deposited with the Maharashtra State Legal Services Authority Mumbai (MSLSA) within two weeks from today, failing which lawful procedure to recover the cost be adopted by the MSLSA.

28. At this stage, Mr.Singh, learned Counsel for the petitioner seeks stay of the order considering the gross facts of the case. It is opposed by Mr.Desai, learned Counsel for the authorities. The request made by Mr.Singh cannot be accepted. The authorities are free to take eviction action in regard to the premises in question in this petition, if the same are not vacated within fifteen days of the copy of this order being available.

{G.S.KULKARNI, J}