

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

**WRIT PETITION NO. 2589 OF 2010
WITH
CHAMBER SUMMONS (L) NO. 56 OF 2019 (NOT ON BOARD)**

Narayan Rajaram Amre & Ors.

...Petitioners

vs

State of Maharashtra & Ors.

...Respondents

Mr.Karl Tamboly with Asha Nair I/b. Diamondwala & Co. for Petitioners.
Mrs.Uma Palsuledesai, AGP for Respondent Nos.1 and 2.
Mr.Mihir Suhas Raje for Respondent No.3.

CORAM : S.C.GUPTE, J.

DATE : 29 MARCH 2019

P.C. :

This writ petition challenges an order passed by Maharashtra Slum Areas (I.C. & R.) Tribunal, Mumbai (Slum Tribunal'). The impugned order has been passed by the Slum Tribunal in an appeal under Section 4(3) of Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 ('Slum Act'). This appeal had challenged a notification issued by Competent Authority under the Slum Act under Section 4(1) of that Act declaring the suit property as a slum area. The declaration was made by publication in an official Gazette as far back as on 2 November 1978. The appeal was filed by Respondent No.3 sometime in August 2008.

2 The case of Respondent No.3 in her appeal was that she was the owner of the property, bearing Final Plot No.559 of TPS IV, Mahim Division, Senapati Bapat Marg, Dadar, Mumbai, falling under G/North

ward of Municipal Corporation of Greater Mumbai admeasuring 4037 square metres ('suit property'). The suit property, prior to its purchase by Respondent No.3, was declared as a slum vide order No.DC/CA/Dholkwalachawl/78 dated 21 October 1978 by issuing a Gazette notification under Section 4(1) of the Slum Act. In 1983, the property was proposed to be reserved for recreation ground under a draft development plan for the city of Mumbai. In 1992, when the final development plan was approved, the reservation came to be confirmed. In or about December 1993, the suit property was purportedly purchased by a firm known as "Roshan Estates". Respondent No.3 claims to have purchased this property from this firm sometime in January 1996. Around that time, there was a scheme proposed for redevelopment of the suit property under the Slum Act. Annexure-II was purportedly issued by the competent authority under the Slum Act certifying 241 protected structures forming part of the suit property out of 292 structures then existing in the property. After her purchase of the suit property, Respondent No.3 submitted a proposal for slum development on a combined piece or parcel of land comprising of the suit property and a part of its adjoining plot, bearing Final Plot No.569. Respondent No.3 paid LOI scrutiny fee and prosecuted her proposal before the competent authority. The competent authority refused to sanction the joint proposal in respect of the suit property and Final Plot No.569 in favour of Respondent No.3. (Around the same time, a separate proposal was filed by occupants of Final Plot No.569 for slum redevelopment through a society formed by them.) The competent authority's order was challenged by Respondent No.3 in a writ petition, being Writ Petition No.2849 of 2006. By its order dated 28 November 2006, a Division Bench of this court rejected that writ petition. The

Division Bench held that there was no reason why the slum dwellers of Final Plot No.569 should not be allowed to proceed with their own SRA scheme. The court, after taking into account the concept of an SRA scheme, which was for rehabilitation of slum dwellers, held that it was immaterial which developer executed the scheme or put up the construction; the court was not concerned with proxy battles played before the court by builders proposing to execute SRA schemes. The Division Bench order was carried by Respondent No.3 before the Supreme Court in a special leave petition, being SLP (Civil) No.3166/2017. After leave under Article 136, the SLP was converted into a civil appeal. By its order dated 19 December 2008, the Supreme Court agreed with the judgment of the Division Bench *albeit* for different reasons and dismissed the civil appeal. It appears that just before the civil appeal was dismissed, sometime in or about August 2008, Respondent No.3 filed the present appeal before the Slum Tribunal seeking to challenge the declaration of the suit property as a slum under Section 4(1) of the Slum Act. The delay of about 30 years was condoned by the Slum Tribunal. (It is the case of the Petitioners in the present petition that there was no notice to the Petitioners when the condonation application was made and the order of the Slum Tribunal condoning the delay was passed.) The Petitioners were subsequently impleaded to the appeal by an order passed by the Slum Tribunal on 25 August 2009. The competent authority, for its part, filed a reply to the appeal, taking up a position that the entire procedure under the Slum Act was duly followed before issuing the Gazette notification of 21 October 1978 under Section 4(1) of the Slum Act declaring the suit property as a slum. The Petitioners likewise filed their reply opposing the appeal *inter alia* on the ground that there was no explanation for condonation of delay. Vide its impugned order dated 11

March 2010, the Slum Tribunal allowed the appeal and set aside the declaration of slum area contained in the notification of 21 October 1978.

3 Mr.Tamboly, learned Counsel appearing for the Petitioners, submits that Respondent No.3 had not only accepted the declaration of slum area under Section 4(1) of the Slum Act but even acted on it by preferring an application for redevelopment of the suit property under that Act. Learned Counsel submits that its application and proceedings arising therefrom were carried by Respondent No.3 right upto the Supreme Court and just as the Supreme Court was about to dispose of her civil appeal, filed the subject appeal before the Slum Tribunal. In fact, learned Counsel submits, at that juncture, Respondent No.3 was simultaneously prosecuting her entitlement to propose and execute a slum rehabilitation scheme under the Slum Act involving the suit property and also challenging its declaration as a slum area. Relying on the judgment of Supreme Court in the case of **State of Punjab vs. Krishan Niwas**¹, learned Counsel submits that this course was not open to Respondent No.3 and her appeal under Section 4(2) of the Act should not have been entertained by the Slum Tribunal. Learned Counsel submits that there was absolutely no justification or cause shown by Respondent No.3 for the inordinate delay of over 30 years in approaching the Slum Tribunal in appeal. Learned Counsel also faults the impugned order on merits.

4 Mr.Raje, learned Counsel for Respondent No.3, supports the impugned order. Learned Counsel submits that the scheme originally submitted by Respondent No.3 for redevelopment under the Slum Act was

1 (1997) 9 SCC 31

not in particular a scheme with respect to the suit property but a scheme for redevelopment of the adjoining plot, namely, part of Final Plot No.569 along with the suit property. Learned Counsel submits that the suit property has been occupied by about 292 slum occupants/dwellers, who are likely to benefit from the redevelopment now proposed by Respondent No.3 under DCR 33(7). Learned Counsel submits that majority of occupants/slum dwellers are in support of the scheme. Learned Counsel submits that the Petitioners are merely a small group of motivated occupants/slum dwellers who have been put up by a rival developer. Learned Counsel supports the impugned order both on condonation of delay and merits.

5 The record of the case unmistakably shows that Respondent No.3 had not only accepted the declaration of the suit property as a slum area, but even acted on such declaration and purported to take advantage of it. It is no answer to say that the redevelopment scheme proposed by Respondent No.3 did not only pertain to the suit property but involved even an adjoining area, namely, part of Final Plot No.569. Whether with or without the adjoining area, what was proposed was a slum rehabilitation scheme involving the suit property; this scheme was proposed under the Slum Act, that is to say, on the basis of declaration of the suit property as a slum area under Section 4A of the Slum Act; this scheme was proposed as far back as in 1997 and proceedings therefrom were carried right upto the Supreme Court and prosecuted till the final order in the civil appeal as of 2008. Having thus accepted the impugned order and acted on it by seeking to take benefit of it, Respondent No.3 could not have gone back on such acceptance and questioned the declaration after finding that she was

unsuccessful in her design of redeveloping the property under the Slum Act. As the Slum Tribunal itself has observed in its impugned order, it was immaterial from the point of view of the appeal whether the redevelopment scheme was under DCR 33(10) or DCR 33(7). The case of **State of Punjab vs. Krishan Niwas** referred to by Mr. Tamboly clearly supports the Petitioner's case on this point.

6 The question of limitation and its condonation by the Slum Tribunal is intricately connected with what is stated above. The appeal was not carried before the Slum Tribunal at any time earlier only because Respondent No.3 had accepted and proposed to act on the order impugned before the Slum Tribunal. If one has regard to the delay condonation application of Respondent No.3, it is palpably clear that it does not even make any pretence of offering a justification. All that it says is that the delay in filing the subject appeal was due to subsequent developments and *“beyond my control and unavoidable circumstances”* stated in detail in paras 7 and 15 of the appeal memo. Para 7 of the appeal memo talks about the original proposal of Respondent No.3 for joint redevelopment of the suit property with four chawls forming part of adjoining Final Plot No.569, whereas para 15 talks about subsequent developments beyond her control which purportedly include the response of the competent authority and of courts in her challenge to the action of the competent authority. It simply states that as a result of these developments, which were beyond her control, she was unable to file the present appeal but that the delay was not deliberate. These, as is evident, are not acceptable justifications for condoning the delay. The order of the Slum Tribunal condoning the delay (order dated 12 February 2009 passed on Misc.Application No.21/2008)

clearly shows non-application of mind.

7 Coming now to the merits of the impugned order, the justification of the Slum Tribunal in interfering with the declaration made under Section 4(1) is clearly misplaced. The reasons discussed by the Slum Tribunal are the following :

(a) Respondent No.3, at one stage, intended to redevelop the property under DCR 33(10), i.e. under a slum scheme, but her proposal was not accepted; under changed circumstances, she now proposes to develop the property under DCR 33(7) at the suggestion of MHADA authorities;

(b) The property was a cessed property;

(c) The opposition of residents, who are occupants of chawl, was on an apprehension that they would be deprived of the prospect of redevelopment of the property and of betterment of their habitat, but, as submitted by Respondent No.3, there was no possibility of redevelopment of the property under a slum rehabilitation scheme in foreseeable future; redevelopment instead under DCR 33(7) would be bigger and better in all respects than under the slum scheme;

(d) examination of record revealed that there was no application, complaint or representation on the record from residents of the suit property requesting the competent

authority to declare it as a slum area on the ground that they were suffering from lack of basic amenities; there was no material or papers on record to explain how proceedings for slum declaration were put in motion in the case; there was no record to show that the property was visited by any officer or surveyor of the competent authority under intimation to owners, interested persons or residents for inspection or survey regarding basic amenities, where the presence or absence or extent of availability of basic amenities could have been pointed out to, or ascertained by, the competent authority.

8 None of these considerations applied by the Slum Tribunal should have guided exercise of its appellate power in the facts of the case. The prospect of redevelopment either under DCR 33(10) or DCR 33(7), on the Tribunal's own showing (para 10 of the impugned order), was not relevant or germane for deciding the controversy. Even the contention based on the property being a cessed property was not accepted by the Tribunal. The Tribunal noted that no express legal provision either supporting or repudiating the proposition, namely, no cessed property could be declared as a slum area, was pointed out by either side. (It is pertinent to note that on the date when this appeal was entertained, amendment to Section 4(b) of the Slum Act explaining that expression “buildings” shall not include cessed buildings in the island City of Mumbai was not on the statute book.) The Tribunal appears to have made a vague observation that “it appears that at least notionally the status of the property as a cessed property and the legal consequences flowing

therefrom conflict with the action of its subsequent characterisation as a slum”, whatever that means. The fact that there was no application, complaint or representation on record from residents requesting the competent authority to declare the suit property as a slum area, is also neither here nor there. The power and authority of the competent authority to declare a property as a slum area is exercised not only on the application of residents but even on owners' application or *suo motu*, for that matter. Absence of any record in that behalf, even assuming the same to be correct (it being impossible at a point of time nearly 30 years after the declaration to find out if absence of material on record can be attributed to its original absence, or the condition of the record after such long duration), is not really determinative of illegality or invalidity of the declaration. That applies to even the alleged absence of papers concerning visits by the competent authority or its officers/surveyors under intimation to owners or interested persons or residents. It was nobody's case, and certainly not the case of the owners or the residents, that there was no inspection of the property with a view to assess the various indices, which justify declaration of any property as a slum area under Section 4(1) of the Slum Act. These indices concern dilapidation, overcrowding, faulty arrangement or design of buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to health, safety or convenience of public of that locality. The record does indicate that there were details of various tenements concerning facilities of sanitation, light, road, etc. There was even a summary sheet of what these details indicated, clearly suggesting that there was indeed assessment of these germane or relevant matters on the part of the competent authority before the declaration was made under

Section 4(1). The observations of the Slum Tribunal concerning service of preliminary show cause notice of proposed declaration on the then owners of the property are also not justified. That was never the complaint of the owners or of the residents. A person, who came on the scene more than 15 years after the declaration was made, cannot be heard to say that there was no preliminary show cause notice before the declaration. In fact, the competent authority in its reply has specifically referred to issuance of preliminary notices to all interested persons on 19 September 1978 and displaying of a copy of the notice for general public at a conspicuous place in the area on 23 September 1978 under panchanama by Office Revenue Inspector of the competent authority. The competent authority has taken a categorical stand in its affidavit in reply that most of the interested persons had admitted before the competent authority that adequate basic amenities had not been provided and there was scope for executing work of improvement in the area. In the premises, the order of the Slum Tribunal cannot be sustained even on merits.

9 According to Respondent No.3, majority of slum dwellers are supporting her. There is neither any case stated on affidavit in this behalf nor is there any material produced in support of any such case. On the other hand, there has been a chamber summons in this petition by thirty one slum dwellers supporting the Petitioners. Anyway, it does not matter one way or the other. Legality of a judicial or quasi-judicial order can never be tested by a rule of majority.

10 In the premises, the petition is allowed by making Rule absolute and quashing and setting aside the impugned order of the Slum

Tribunal dated 11 March 2010. No order as to costs.

11 In view of the disposal of the petition, all miscellaneous applications in it, including Chamber Summons (Lodging) No.56 of 2019, shall stand disposed of.

12 At the request of learned Counsel for Respondent No.3, the competent authority is directed not to take any coercive steps or act on this order to the detriment of Respondent No.3 for a period of four weeks from today. Needless to add, even Respondent No.3 must maintain status quo insofar as the suit property is concerned and cannot act on the impugned order set aside herein.

(S.C. GUPTE, J.)