

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

WRIT PETITION NO.3838 OF 2021

- | | | |
|----|---------------------------------------|--------------------|
| 1] | Allan Sebastian D'Souza, |] |
| | Age : about 60 years |] |
| | |] |
| 2] | Edward Sebastian D'Souza, |] |
| | Age : about 50 years |] |
| | |] |
| | Both resident of Edward D'Souza House |] |
| | Kanjur Village, Kanjur Marg, (East), |] |
| | Mumbai – 400042 |].... Petitioners. |

Versus

- | | | |
|----|------------------------------------|---|
| 1] | Maharashtra Slum Areas |] |
| | (Improvement, Clearance and |] |
| | Redevelopment) Tribunal |] |
| | Having its office at Grahnirman |] |
| | Bhavan, Bandra East, Mumbai-400051 |] |
| | |] |
| 2] | Dy. Collector (Enc/Rem) & |] |
| | Competent Authority No.8, |] |
| | Slum Rehabilitation Authority, |] |
| | Anant Kanekar Marg, |] |
| | Bandra (E), Mumbai-400051 |] |
| | |] |
| 3] | Jai Maharashtra Co-op. Hsg. Soc. |] |
| | (Proposed), having address at |] |

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| | Edward D'Souza Chawl No.1 & 2, |] |
| | Indira Nagar, Kanjur Village Road, |] |
| | Kanjur Marg, (E), Mumbai-400052 |] |
| | |] |
| 4] | Archana Ashok Borkar, |] |
| | Age : 23 years, Occ. Service |] |
| | |] |
| 5] | Shankar Sambhaji Kumbhar, |] |
| | Age : 64 years, Occ. Retired |] |
| | |] |
| 6] | Ramdas Mahadev Mahadik |] |
| | Age : 54 years, Occ. Service |] |
| | |] |
| 7] | Smita Jivan Desai, |] |
| | Age : 62 years, Occ. Housewife. |] |
| | |] |
| 8] | Kamlakar Yeshwant Jadhav, |] |
| | Age : 65 years, Occ. Retired |] |
| | |] |
| 9] | Appa Krishna Pawar, |] |
| | Age : 57 years, Occ. Service |] |
| | |] |
| 10] | Shashikant Purshottam Rumde, |] |
| | Age : 45 years, Occ. Service. |] |
| | |] |
| 11] | Ranjan Ramesh Kurtarkar, |] |
| | Age : 57 years, Occ. Housewife |] |
| | |] |
| 12] | Jyoti Jaganath Kadam, |] |
| | Age : 56 years, Occ. Housewife |] |
| | |] |

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| 13] | Madhuri M. Shirke, |] |
| | Age : 45 years, Occ. Housewife |] |
| | |] |
| 14] | Yogesh Sonsukar |] |
| | Age : 32 years, Occ. Service |] |
| | |] |
| 15] | Prabhakar Shivaji Patil, |] |
| | Age : 35 years, Occ. Service |] |
| | |] |
| 16] | Vijay Purhottam Rumde |] |
| | Age : 65 years, Occ. Retired. |] |
| | |] |
| 17] | Dilip Shankar Mahadik |] |
| | Age : 60 years, Occ. Retired |] |
| | |] |
| 18] | Smita Harishchandra Shinde |] |
| | Age : 63 years, Occ. Housewife |] |
| | |] |
| 19] | Ashok Baburao Date, |] |
| | Age : 58 years, Occ. Service |] |
| | |] |
| 20] | Prakash Gokuk Kalgutkar |] |
| | Age : 57 years, Occ. Retired. |] |
| | |] |
| 21] | Ramdas Nivrutti Gaikar |] |
| | Age : 52 years, Occ. Service |] |
| | |] |
| 22] | Rajeshshree Rajendra Haldankar, |] |
| | Age : 48 years, Occ. Service. |] |
| | |] |

23]	Ketan Ramesh Khot	]
	Age : 30 years, Occ. Service	]
		]
24]	Sadanand Anna Rane	]
	Age 60 years, Occ. Retired	]
		]
25]	Krutika Krishna Pawar	]
	Age : 40 years, Occ. Housewife	]
		]
26]	Ganesh Dilip Mahadik	]
	Age : 31 years, Occ. Service	]
		]
27]	Kisan Sitaram Matekar,	]
	Age : 56 years, Occ. Service	]
		]
28]	Krishna Ramakant Shivalkar	]
	Age : 36 years, Occ. Service	]
		]
29]	Laxman Keshav Mahadik	]
	Age : 62 years, Occ. Retired	]
		]
30]	Rajeshsheel Ragunath Shirke	]
	Age : 54 years, Occ. Housewife	]
		]
	Respondent Nos. 4 to 30 having their	]
	Respective addresses at	]
	Edward D'Souza Chawl No.1 & 2,	]
	Indira Nagar, Kanjur Village Road,	]
	Kanjur Marg, (E), Mumbai-400052	]..... Respondents.

Mr. Ashish Kamat, Senior Advocate a/w Mr. Mohit Khanna, Ms. Leena Mirasee i/by M/s. Shah & Sanghavi for Petitioners.

Mr. L. T. Satelkar, AGP for State-Respondent No.1

Mr. Aseem Naphade a/w Mr. Saurabh Utangale i/by Mr. A. P. Singh for Respondent Nos. 3 to 30.

CORAM : ARIF S. DOCTOR, J.

Reserved on : 17th APRIL 2023

Pronounced on : 09th JUNE 2023

JUDGMENT :

1. The Petitioners are impugning an order dated 15th November 2021 (“the Impugned Order”) passed by Respondent No.1 i.e. the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal. By the impugned order Respondent No.1 has dismissed the Petitioners’ Application seeking condonation of delay in filing an Appeal under the provisions of Section 4(3) read with Section 45 (1A) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“the Slums Act”). The Petitioners had in the said Appeal challenged the declaration of land bearing CTS No.1056A (part), admeasuring approximately 250 sq.mtrs of Village Kanjur, Taluka Kurla, Mumbai Suburban District, situated at Village Kanjur, Kanjur East, Mumbai

400 042 ("the said land") as a slum.

2. The brief facts as set out in the Petition are as follows:-

- i. The said land belonged to the Petitioners' father one Mr. Sebastian John D'Souza who is stated to have bequeathed the same to the Petitioners by his last Will and Testament. It is thus that the Petitioners claim to be the owners of the said land.
- ii. The said Sebastian D'Souza had constructed some chawls on land bearing CTS No.1056/A Part/ 1009 Part which were assessed by the Municipal Corporation of Greater Mumbai ("the MCGM"). All the basic amenities had also been provided to the said chawls; i.e. water connection, electricity with separate meters, street lights, sufficient spaces around the structures, drainage system and water closets etc. The said chawls were not on the said land but only a small portion of an open passage admeasuring 29.28 square meters leading to the rooms in the chawls fell within the said land.
- iii. The Petitioners had in the year 2004 filed an eviction Suit (being RAE & R

Suit No.127/542 of 2004) against one Kamalram Dhobi who was an occupier of one of the structures in the said chawl. Kamalram Dhobi in his Written Statement dated 27th July 2006 had annexed a copy of the Notification dated 13th October 1995 ("the said Notification") by which the said land had been declared as a slum under Section 4(1) of the Slums Act. It is the Petitioners' case that it was only in the year 2006 when the said Written Statement was filed in the eviction Suit that the Petitioners became aware of the said Notification.

- iv. The Petitioners thereafter made an application dated 28th July 2006 to the Department of Archives, Government of Maharashtra for a certified copy of the said Notification. The certified copy of the said Notification was received by the Petitioners on 3rd August 2006. From the certified copy the said Notification, the Petitioners became aware for the first time that the said Notification had been published in the Official Gazette on 2nd November 1995.

- v. It was in these circumstances that the Petitioners on 29th August 2006

filed an Appeal under Section 4(3) of the Slums Act along with an Application for Condonation of Delay. Respondent No.1 had thereafter by an order dated 29th June 2012 allowed the Application for Condonation of Delay and by a subsequent order dated 9th April 2013 also allowed the said Appeal. The declaration of the said land as a slum was therefore set aside.

- vi. Respondent Nos. 3 to 30 ("the contesting Respondents") being the occupants of the said land filed a Writ Petition impugning the order dated 29th June 2012 as also the order dated 9th April 2013. The main ground of challenge in the Writ Petition was that the said orders were passed by Respondent No.1 without giving the contesting Respondents an opportunity of being heard. The said Writ Petition came to be allowed by an order dated 4th December 2014 and Respondent No.1 was directed to decide the Application for Condonation of Delay afresh after hearing the contesting Respondents. The Petitioners thereafter impleaded the contesting Respondents who filed their respective Affidavits to oppose the

Application for Condonation of Delay as also the said Appeal.

- vii Respondent No. 1 after hearing the contesting Respondents was pleased to pass the Impugned Order and dismiss the Petitioners Application for Condonation of Delay. Thus and as a consequence thereof the Petitioners were denied the opportunity to challenge the declaration of the said land as a slum.
- viii It was in the backdrop of the aforesaid facts that the present Writ Petition has been filed.

Submissions of Mr. Kamat, on behalf of the Petitioners.

3. At the very outset, Mr. Kamat, Learned Senior Counsel pointed out that Respondent No.1 had initially heard and thereafter allowed both the Application for Condonation of Delay as also the Appeal on merits. Learned Senior Counsel then invited my attention to the order dated 29th June, 2012 by which Respondent No.1 had initially condoned the delay in filing of the Appeal and pointed out therefrom that the same specifically recorded that

Respondent No. 2 had accepted the Petitioners contention that no notice had been served upon the Petitioners nor had the Petitioner been granted an opportunity of being heard before the said land was declared as a slum. He submitted that it was in this factual scenario that Respondent No. 1 had initially condoned the delay after recording as follows viz.

“5 The Ld. Adv. for the appellant has submitted that in absence of notice and an opportunity of being heard to the appellant as well as their predecessor in title were having no knowledge about the declaration of the slum, and that, the same could only gained when the tenant in the aforesaid suit for eviction, has raised objection before the Court on 27-7-2006. This particular contention has not been controverted by the Respondent, and thus, it has remained unchallenged. Under such circumstances, the reasons stated by the appellant for condonation of delay appear probable. Even otherwise the appellants could not be benefitted by keeping quite after declaring their property as a slum area. Moreover, the appeal is required to be decided on merits by condoning the delay as held in the case of Collector, Land Acquisition, Anantnag V/s. Katiji, reported in AIR 1987 Supreme Court 1353. Thus, considering the sufficiency of cause, as shown by the appellants, for delay in preferring the appeal, the delay is required to be condoned. Accordingly, the point No.1 is answered in affirmative. The prejudice which the Respondent has suffered is required to

be compensated in terms of costs."

From the above, Learned Senior Counsel pointed out that Respondent No.1 had condoned the delay after recording a subjective satisfaction that the Petitioners had neither been given notice nor were heard before the said land was declared as a slum. He took pains to point out that the said order had not been set aside on merits but had been set aside only on the ground that the contesting Respondents who claimed to be necessary parties had not been heard.

4. Learned Senior Counsel then pointed out that when the matter was remanded back for a fresh hearing, the contesting Respondents did not produce any material whatsoever to either displace the finding that the Petitioners and/or Sebastian John Dsouza, were not served with notice as contemplated under Rule 3 of the Slum Rules or were not granted an opportunity of being heard. He submitted that the contesting Respondents had admittedly not brought any additional material on record to controvert the finding recorded in the order dated 29th June 2012. He therefore submitted that there was no

dispute that (i) the record and proceedings pertaining to the said Notification had not been produced either before this Court or in the proceedings before Respondent No.1 (ii) that the Respondents had equally accepted that there was no material on record to establish that Respondent No. 2 had complied with the requirements of Rule 3 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Other Manner of Publication of Declaration) Rules, 1971 (“the Slum Rules”) and; (iii) that there was no dispute to the fact that the Petitioners had learnt of the said Notification only on 27th July 2006. He submitted that in view of these undisputed facts, per-se the Petitioners had an excellent case not only for condonation of delay but also on merits.

5. Learned Senior Counsel then submitted that the Petitioners had filed the Appeal on 29th August 2006, which was just over a month from the date on which the Petitioners became aware of the said Notification. He pointed out that the Petitioners had therefore acted promptly after becoming aware of the said Notification and there was no delay or laches on the part of the Petitioners. He

reiterated that the orders condoning the delay and setting aside the impugned Notification were admittedly not reversed on merits, but only on the ground of natural justice since the contesting Respondents had not been heard.

6. Learned Senior Counsel then reiterated that on remand the contesting Respondents had not produced any material whatsoever to establish that the Petitioners and/or the said Sebastian John D'Souza were served with notice as provided for in Rule 3 of the Slum Rules and/or were aware of the said Notification. He also pointed out the entire record in relation to the issuance of said Notification and its publication in accordance with Rule 3 of the Slum Rules was never placed before Respondent No.1 or for that matter before this Court. He therefore submitted that there was nothing whatsoever on record to either demonstrate that Rule 3 of the Slum Rules had been complied with or that the Petitioners were aware of the said Notification prior to year 2006. He pointed out that Respondent No. 2 had not disputed the fact that no notice had been served upon the Petitioners in compliance with Rule 3 of the Slum Rules or

that the Petitioners were not aware of the said Notification prior to July 2006.

7. Learned Senior Counsel therefore submitted that for the aforesaid reasons the Petitioners had made out an overwhelming case not only for condonation of delay but also for setting aside the said Notification on merits. He submitted that it was a well settled principle of law that Courts ought to take a liberal and pragmatic approach when considering Applications for condonation of delay. He submitted that this was more so when a party seeking condonation had made out a strong case on merits. In support of his contention, that Courts should *inter alia* adopt a liberal, pragmatic and justice-oriented approach and not a rigid and pedantic approach when considering applications for condonation of delay, he placed reliance upon the following Judgments viz.

- i *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy*¹
- ii *Imam Mirasaheb Nadaf vs. State of Maharashtra and Ors.*²
- iii *Akhtar Hasan Rizvi vs. Harish R. Bhatt & Ors.*³

1 (2013) 12 SCC 649

2 2005 (1) Mh. L. J. 726

3 2018 (6) Mh. L. J. 494

8. Learned Senior Counsel then submitted that even on merits the Petitioners had a very strong case. He submitted that the order dated 9th April 2013 by which Respondent No. 1 had initially set aside the said Notification had been passed after hearing the Petitioners and Respondent No. 2 on merits. He pointed out that Respondent No.2 was the only relevant Party who could defend/support the said Notification and demonstrate due compliance of Rule 3 of the Slum Rules. He reiterated that the said Notification had been set aside since Respondent No.2 had failed to produce any material on record to show that a subjective satisfaction was arrived at before declaring the said land as a slum under Section 4 of the Slums Act. Similarly, he also pointed out that Respondent No.2 had also failed to show due compliance with Rule 3 of the Slum Rules and had infact accepted that the Petitioners had not been served notice as provided for in Rule 3 of the Slum Rules.

9. Learned Senior Counsel then submitted that post remand, the position on merits had not changed in the slightest. He submitted that the Respondents had

not been able to produce the files in relation to the issuance of the said Notification nor any proof of publication thereof in even one of the modes prescribed in Rule 3 of the Slum Rules. He therefore pointed out that there was nothing on record to establish that the said Notification had been published in the manner mandated in Rule 3 of the said Slum Rules. He submitted that publication of a Notification issued under Section 4 was mandatory in the manner prescribed in Rule 3 of the Slum Rules. He pointed out that Section 4 itself made clear that due publicity was required to be given to such declaration and therefore in addition to publication in the Official Gazette it was mandatory for the Competent Authority to publish such Notification in each of the modes prescribed in Rule 3 so as to enable each and every interested person aware of the said declaration. In support of his contention that non-compliance with the mandatory requirement of Rule 3 of the Slum Rules, *ipso facto*, constitutes sufficient cause for condonation of delay in filing an Appeal under Section 4(3) of the Slum Act, he placed reliance upon the following Judgments viz.

- i *State of Orissa vs. Sridhar Kumar Mallik & ors*⁴
- ii *Satish B Kadhe & Ors. vs. Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Tribunal*⁵

10. Learned Senior Counsel then submitted that it was well settled that where a statute prescribed the manner of doing a particular act, the said act must necessarily be done in the prescribed manner alone. In support of this contention, he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of *Babu Verghese & Ors vs. Bar Council of Kerala & ors*⁶

11. Learned Senior Counsel then pointed out that in the Affidavits dated 27th February 2015 and 9th April 2018 filed by the contesting Respondents, in the proceedings before Respondent No.1 apart from making vague and unsubstantiated averments alleging the Petitioners' knowledge of the said Notification, had not been able to produce any documents evidencing service of the notice as contemplated by Rule 3(c) of the Slum Rules.

4 (1985) 3 SCC 697

5 1997 (1) Mh. L.J. 107

6 (1999) 3 SCC 422

12. Learned Senior Counsel therefore submitted that the Petitioners had a strong case on merits, and that was a factor which was also required to be taken into consideration when deciding an Application for Condonation of Delay. Basis this, he submitted that the Impugned Order was required to be set aside.

Submissions of Mr. Assem Naphade, on behalf of Respondent Nos. 3 to 30 (Contesting Respondents) :-

13. *Per contra* Mr. Naphade, submitted that Section 4 of the Slums Act did not contemplate any notice to be given to the landowner prior to declaration of land as a 'slum'. Mr. Naphade submitted that Rule 3 of the Slum Rules did not make it mandatory to serve notice upon a landowner and invited my attention to Rule 3(c) and pointed out therefrom that the same clearly provided that a notice was to be served '*as far as practicable*'. Basis this he submitted that the notice contemplated 3 (c) to the owner of the said land was merely directory in nature and not mandatory. He then submitted that even assuming without admitting that no notice was given to the Petitioners under Rule 3(c) the same

would not vitiate or invalidate the said Notification, since issuance of the said Notification was an official act to which the presumption under Section 114 of the Indian Evidence Act, 1872 ("Evidence Act") would apply. In support of his contention he invited my attention to the Illustration (e) of Section 114 of the Evidence Act and submitted that there was a presumption in law that all official acts have been regularly performed. He thus submitted that when a statutory authority makes an order, it must be presumed that it has followed the prescribed procedure in doing so. In support of his contention, he placed reliance upon the following judgments viz.

- i *Gopal Narain V/s. State of Uttar Pradesh & Anr.*⁷
- ii *Harpal Singh and ors. V/s. The Union Territory of Chandigarh*⁸
- iii *Pratap Singh Bahadur V/s. Manmohan Deo and ors.*⁹

Learned Counsel submitted that the issuance of the said Notification dated 13th October 1995 was an official act and thus the presumption under illustration

7 AIR 1964 SC 370

8 AIR 1978 P&H 68

9 MANU/SC/0202/1966

(e) of Section 114 of the Evidence Act would necessarily apply which meant that Rule 3 had duly been complied with. He submitted that the Petitioners apart from making a bare assertion had not produced any evidence to rebut this presumption.

14. Learned Counsel then submitted that the fact that the relevant records were unavailable was thus of no consequence given the presumption in law under Illustration (e) of Section 114. He therefore submitted that basis the presumption under Section 114 of the Evidence Act, Rule 3 of the Slum Rules i.e., publication, putting up on notice board etc. stood duly proved and/or deemed to have been complied with.

15. Learned Counsel then submitted that there is always a presumption that Government action was fair and taken in the public interest. He submitted that a heavy burden lay upon a party to show otherwise. In support of this contention, Learned Counsel sought to place reliance upon the judgment in the

case of *Villianur Iyarkkai Padukappu Maiyam V/s. Union of India and Anr.*¹⁰.

He therefore submitted that in the present case, the general presumption that the Notification dated 13th October 1995 was issued under Section 4 of the Slum Act, was fair and was issued in the public interest would squarely apply.

16. Learned Counsel submitted that the jurisdiction of the High Court under Article 227 of the Constitution was not akin to Appellate jurisdiction, and an order passed by a statutory body could be set aside under Article 227 only if the view taken is that there has been a flagrant error of the law or procedure committed. He, therefore, submitted that the view taken in the Impugned Order was neither a flagrant error of law or procedure and that the view taken by Respondent No.1 in the Impugned Order was a proper and plausible view. He thus submitted that the Impugned Order had been properly passed and the Petition accordingly ought to be dismissed.

Submissions of Mr. Kamat in Rejoinder.–

17. Mr. Kamat first pointed out that the presumption under Section 114 was

¹⁰ (2009) 7 SCC 561

discretionary and second that the same was not one which was available to the contesting Respondents but would be available if at all to only Respondent No.2 and not to a party who seeks to make private benefit out of a patently ultra vires and illegal act. He pointed out that Respondent No. 2 had itself not raised the contention under Section 114 of the Evidence Act and had in fact, accepted that neither notice nor opportunity of hearing had been given to the Petitioners. He therefore submitted that the question of the presumption under Section 114 of the Evidence Act being applicable in the facts of the present case did not arise.

18. He then without prejudice submitted that the contention in respect of the presumption under Section 114 of the Evidence Act, could not be urged at this stage since the same was never raised by the contesting Respondents before Respondent No.1. He submitted that it was a well settled principle of law that the validity of an order had to be tested based only on the reasons stated in the said order and not on the basis of reasons and/or justification which was to be found outside the said order. Learned Senior Counsel, therefore, submitted that

the contesting Respondents could not now be permitted to raise any a contention for the first time in the present Writ Petition which had not been raised earlier. He submitted that the order must therefore necessarily be tested on the basis of what was recorded therein and not on the basis of reasons which are now sought to be supplemented into the said order. In support of his contention, he placed reliance upon the following judgments:-

- i ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & ors***¹¹
- ii ***Mohd. Akram Ansari vs. Chief Election Officer and Ors.***¹²

19. Learned Senior Counsel then submitted that if the contentions of the contesting Respondents were to be accepted it would effectively mean that all Governmental actions in the absence of the relevant record would go unchecked and be incapable of being judicially reviewed. He therefore submitted that there was no merit in the submissions advanced on behalf of the contesting Respondents and reiterated that the impugned order deserved to be

11 (1978) 1 SCC 405

12 (2008) 2 SCC 95

set aside and the Petitioners' Appeal ought to be heard on merits.

Reasons and Findings. –

20. The short point which really falls for consideration in the present Writ Petition is whether publication of a Notification issued under Section 4 of the Slums Act in the Official Gazette is adequate compliance with Section 4 of the Slums Act and the Rules framed thereunder. The answer to this question is an emphatic no.

21. Section 4 of the Slums Act provides that the Competent Authority on being satisfied that an area is required to be declared as slum for one or more of the reasons set out in Section 4 of the Slums Act, the Competent Authority may, (i) by Notification in the Official Gazette so declare such area to be a slum area; and (ii) that such declaration shall also be published in such other manner (as will give due publicity to the declaration in the area) as maybe prescribed. The “other manner” of publication prescribed are to be found in Rule 3 of the Slum Rules which provide thus, viz.

"3. Other manner of Publication of Declaration under section 4(1):-

(a) The declaration referred to in sub-section (1) of section 4 shall also be published in one local newspaper as the Competent Authority may, for ensuring due publicity to the declaration in the area in respect of which the declaration is made, decide.

(b) A copy of such declaration shall be pasted on the Notice Board in the office of the Competent Authority and shall also be displayed in a conspicuous place in such area. A substance of the declaration shall also be proclaimed by beat of drum in the area.

(c) The Competent Authority shall as far as practicable serve a notice on every owner or occupier or both of the property in such area stating the effect of the declaration and specifying the time within which any aggrieved person may appeal to the Tribunal under sub-section (3) of section 4 of the Act.

A plain reading of Rule 3 makes clear that each of the above modes of publication are distinct and separate from each other. Rule 3 also makes clear that in due compliance thereof the Competent Authority is required to publish the said Notification by exercising each of the modes set out in Rule 3 and not any one or more of the modes set out. Therefore, the Competent Authority when declaring an area as a slum is mandatorily required to do each of the following,

viz.

- a. Publish the declaration in one local newspaper having wide circulation in the relevant area.
- b. Paste a copy of the declaration on the notice board in the office of the Competent Authority.
- c. Display a copy of the said declaration in a conspicuous place in the area declared as a slum.
- d. Make a proclamation of the substance of the said declaration in the area declared as a slum by beat of a drum.
- e. Serve notice upon every owner and occupier of the property in the area declared as a slum (i) stating the effect of the declaration and (ii) specifying the time within which an aggrieved person may Appeal to the Tribunal under Section 4(3) of the Slums Act.

It is only in cases where, for some compelling reason that it is not *practicable* to serve individual notice upon every owner and occupier of the

said land under Section 3(c) that service of such notice shall be dispensed with. This would however require the Competent Authority to have compelling reasons for not personally serving every owner and occupier of the said area. These reasons must be recorded and available (a) for good order and (b) in the event that want of such notice is called into question by any owner and occupier of the said area. The mandatory modes of publication prescribed in Rule 3 read with Section 4 of the Slums Act is not without good reason as the effect of a declaration of land as a slum has widespread ramifications which would affect the right, title and interest of both the owners and occupiers of such land.

22. In the facts of the present case the presumption under Section 114 of the Evidence Act as also the reliance upon the judgments in the case of *Gopal Narain V/s. State of UP*, *Harpal Singh V/s. The Union Territory and Pratap Singh Bahadur V/s. Manmohan Deo*, will be of no avail since (I) the presumption under Section 114 of the Evidence Act is a rebuttable and

discretionary presumption in nature; (ii) Respondent No.2, who is the Competent Authority under the Slums Act, has neither disputed the fact that the notice under Rule 3 of the Slum Rules was not served upon the Petitioners nor has disputed the fact that the service of notice upon a land owner was mandatory and (iii) Respondent No.1 had infact after hearing both the Application for Condonation of Delay as also the Appeal, allowed the same on merits. Another crucial factor when considering the contesting Respondents' contention of applicability of the presumption under Section 114 of the Evidence Act is that, this contention had not been taken by any of the Respondents in the proceedings before Respondent No.1 nor does the same find any mention in the Impugned Order. Thus in the facts of the present case, even assuming that the presumption under Illustration (e) of Section 114 of the Evidence Act was available, there exists sufficient material to rebut the said presumption.

23. Additionally it is crucial to note that Respondent No.2 has in the

present Writ Petition neither filed an Affidavit, nor taken a stand that is contrary to the one taken before Respondent No.1. Thus there is no effective opposition by Respondent No.2 to the present Writ Petition. The only opposition comes from the contesting Respondents whose rights are clearly at variance with that of the Petitioners. There is no doubt that the declaration of the said land as a slum alters the character of the said land. Consequently, the Petitioners' right, title and interest as owners of the said land would also be gravely prejudiced. Thus, it is in the interest of justice, equity and good conscience that the Petitioners must necessarily be given an opportunity to contest the declaration of the said land as a slum. No prejudice can possibly be caused to the contesting Respondents if the delay is condoned, and the Petitioners Appeal is heard on merits. The Respondents shall have an opportunity to appear and contest the said Appeal if they so desire.

24. Hence the following order :-

- i. The Impugned Order is quashed and set aside.
- ii. Respondent No. 1 is directed to hear Appeal No. 30 of 2012 and decide the same on merits and in accordance with law without being influenced by the observations made in this order.
- iii. The Respondents Nos. 3 to 30 may appear and contest the Appeal on merits if they so desire.
- iv. The present Writ Petition is disposed of in terms of above order.

(ARIF S. DOCTOR, J.)