

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1360 OF 2024

1. Byramjee Jeejeebhoy Private Limited
A Private Limited Company
2. Laxmi Raj & Vinayak Buildcon LLP
A Limited Liability Partnership Firm
Registered under the Partnership Act, 2008
through its Partners
3. Pravin Kothari,
Partner of Petitioner No.2 abovenamed
Having address at :
Shop No.1, Shree Sairam CHS Ltd., Plot
No.86, Opp. Cinemax, Near Ram Mandir
Railway Station, Goregaon (West),
Mumbai – 400 104.

...Petitioners

Versus

1. State of Maharashtra
2. Apex Grievance Redressal Committee
Slum Rehabilitation Authority
3. Asthavinayak SRA CHS (Prop)
4. Hari Om Sahakari SRA CHS (Prop)
5. The Slum Rehabilitation Authority
through The Chief Executive Officer
6. Chief Executive Officer,
Slum Rehabilitation Authority
7. Deputy Collector,
Slum Rehabilitation Authority
8. M/s. Ambit Realty,
Mumbai-400098.
9. Chaitanya Sanyukta Sahakari CHS (Prop)
Kandivali, East, Mumbai -400098.

...Respondents

Dr. Milind Sathe, Senior Advocate a/w. Mr. Amogh Singh, Mr. Nirav Karia, Ms. Krutisha Pandey, Mr. Abhishek Mishra, Ms. Monika Shekhawat i/b Bhavin Bhatia, Advocates for Petitioners.

Smt. Rita Joshi, AGP for Respondent No.1-State.

Mr. Yogesh Patil i/b Mr. Vijay Patil, Advocate for Respondent No.2-AGRC.

Mr. Vaibhav Charlawar a/w. Mr. Santosh Pathak, Mr. Nimish Lotlikar, Mr. Kailash Pathak i/b M/s. Law Origin, Advocate for Respondent Nos. 3 & 4.

Mr. Chirag Thakkar, Advocate for Respondent No. 8.

Mr. Girish Godbole, Senior Advocate i/b Mr. Vishalkumar S. Kothari, Advocate for Respondent No. 9.

**CORAM : G.S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.**

Reserved on : 19th July, 2024

Pronounced on : 26th August, 2024

Judgment : (Per, Somasekhar Sundaresan, J.)

1. Rule. With the consent of the parties, taken up for final hearing and disposal.

2. This Petition is essentially a challenge to two orders dated 17th February, 2023 (collectively, “*Impugned Order*”) passed by the Apex

Grievance Redressal Committee (“**AGRC**”), which has ruled that a proposal submitted by the Petitioners to redevelop a piece of land that had been declared as a slum rehabilitation area on 13th February, 2020, cannot be processed by the Slum Rehabilitation Authority (“**SRA**”).

Factual Matrix:

3. The subject matter of this petition is the land situated at CTS No.472; 472/1 to 472/49; 479; and 484 situated in Poisar Village, Taluka-Borivali, Mumbai (“**Subject Land**”). The Subject Land, along with other neighbouring land, all of which having been encroached upon by slum dwellers, came be notified as a slum rehabilitation area under Section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“**Slum Act**”).

4. A brief overview of the facts necessary for adjudicating this petition is summarised below:-

a) Byramjee Jeejeebhoy Pvt. Ltd., Petitioner No.1 is said to be the original owner of the Subject Land.

b) Laxmi Raj and Vinayak Buildcon LLP, Petitioner No.2, is a

limited liability partnership that is said to have acquired interests in the Subject Land by executing a registered instrument dated 18th October, 2022. Petitioner No.3, Mr. Pravin Kothari is a partner of Petitioner No.2.

- c) The Petitioners are desirous of developing the Subject Land in conjunction with the proposed society Chaitanya Sanyukta Sahakari CHS (Prop) (“**Chaitanya**”), Respondent No.9, purported to have been formed by the slum dwellers occupying the Subject Land.
- d) Chaitanya is said to have 294 slum dwellers as its constituents. Two other proposed societies too, with slum dwellers as their constituents are in the fray – Asthavinayak SRA CHS (Prop) (“**Asthavinayak**”), Respondent No. 3 and Hari Om Sahakari SRA CHS (Prop) (“**Hari Om**”), Respondent No. 4.
- e) Asthavinayak and Hari Om are said to have various slum dwellers residing on multiple parcels of land (including the Subject Land), as their constituents. They appointed a developer M/s. Ambit Reality (“**Ambit**”), and filed a proposal on 2nd May, 2019 for acquisition of a larger area of land designated as a slum (including

the Subject Land), for implementation of slum schemes.

- f) On 13th February, 2020, the land in question, including the Subject Land, was declared as a slum rehabilitation area. On 21st January, 2021 and 2nd February, 2021 the SRA issued a public notice under Section 14(1) of the Slum Act to acquire the larger property at the instance of Asthavinayak and Hari Om.
- g) On 11th February, 2021 Petitioner No.1 filed its objections with the Chief Executive Officer, SRA, asserting that since the Subject Property forms part of the two parcels of the larger areas of land that had been declared as a slum rehabilitation area, Petitioner No.1 as the owner, has a preferential right to develop the Subject Land. Petitioner No.1, also asserted that the acquisition would need to be in compliance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**2013 Land Acquisition Act**”). Since a major portion of the Subject Land was under reservation, it was claimed that the Subject Land would fall outside the purview of the Slum Act. Two separate letters of the same date were issued, one for land bearing CTS Nos. 472; and 472/1 to 472/35; and another for CTS Nos. 472/36 to 472/49.

- h) The land proposed to be developed by Asthavinayak includes land bearing CTS No. 472; 472/1 to 472/35; and 479, which are part of the Subject Land. The land proposed to be developed by Hari Om includes land bearing CTS No. 472/36 to 472/49 and 484, which are the remaining part of the Subject Land. The proposal by these societies along with Ambit is to develop all the land that forms subject matter of the notification made by the SRA under Section 3C of the Slum Act on 13th February, 2020.
- i) On 2nd February, 2021 a notice under section 14(1) of the Slum Act came to be issued in respect of the aforesaid land (of which, the Subject Land forms a part) declaring that a proposal for development of the said land have been received from Asthavinayak.
- j) On 11th February, 2021, Petitioner No.1 responded to the said public notice opposing the acquisition of the land, also asserting that a major portion of the land is under reservation thereby ousting the jurisdiction of the Slum Act.
- k) On 2nd August, 2021 the SRA issued a notice to all parties, including the Petitioner No. 1, Asthavinayak and Hari Om, and

scheduled a hearing for 13th August, 2021 in respect of the Application submitted by Asthavinayak, Hari Om and Ambit.

l) Petitioner No.1 appointed an M/s. Asia Architect and submitted a proposal dated 21st October, 2021 for redevelopment of the Subject Land. Chaitanya was said to be the proposed society of slum dwellers. Consent of more than 180 slum dwellers out of a total of 294 slum dwellers occupying the Subject Land, was claimed.

m) On 14th February, 2022, the SRA appears to have received internal advice from its legal department, stating that since the Subject Land forms part of the land notified for acquisition, the Petitioner No.1 having submitted an objection on 13th August, 2021 and then having proposed to develop the Subject Land, would have a preferential right in law for redevelopment of the Subject Land.

n) On 7th April, 2022, a no-objection certificate was issued by the Tehsildar (SRA) to the Executive Engineer (SRA) to process the proposal from Petitioner No.1. On 21st April, 2022 the SRA issued a no-objection certificate and the financial status of Chaitanya and Petitioner No. 1 was taken on record.

o) Applications were filed by the two societies before the AGRC, challenging the SRA's decision to process Chaitanya's proposal. Application No.392 of 2022 by Asthavinayak and Application No.398 of 2022 by Hari Om. These societies prayed that the proposal submitted by Chaitanya be put aside on the premise that the two applicants had validly proposed to redevelop in accordance with law.

p) On 17th February, 2023, the AGRC passed the Impugned Order holding that the SRA had followed due process of law in its notification of the slum rehabilitation area, which included the Subject Land. The AGRC ruled that the proposal from Petitioner No. 1 had been received with a delay of 616 days whereas it ought to have been received within a period of 120 days. Holding that Section 13(1) of the Slum Act provides for a sacrosanct 120-day period, the AGRC held that the proposal from Asthavinayak and Hari Om ought to be allowed to proceed, rejecting the proposal from Chaitanya and the Petitioner No. 1. The AGRC directed the CEO, SRA to expedite the process of acquiring the land covered by its notification under Section 14(1).

5. This Writ Petition was filed, challenging the legal validity of

the Impugned Order. On 14th June, 2023 a Division Bench of this Court, after hearing the parties, noted that the key question that fell for consideration was whether Section 13 of the Slum Act has been correctly construed and that the AGRC's order being short on reasoning, deserved to be stayed. Such stay order has continued till date.

6. Respondents No. 3 and 4 have filed affidavits in reply dated 21st August, 2023 and Respondent No. 8 has filed affidavit in reply dated 22nd August, 2023. Essentially, the argument is that the proposal from Respondent No.1 is hopelessly delayed beyond the statutory period of 120 days that is available under Section 13(1) of the Slum Act.

Analysis and Findings:

7. Before proceeding further it would be instructive to note the provisions of Section 13 of the Slum Act:-

13. Power of Slum Rehabilitation Authority to develop Slum Rehabilitation Area.-

(1) Notwithstanding anything contained in sub-section (10) of Section 12, the Chief Executive Officer shall, after any land has been declared as the Slum Rehabilitation Area, including community economic activity area, if the owners, landholders or occupants of such land do not come forward within a reasonable time, which shall not be more

than one hundred and twenty days, required for relocation and rehabilitation of protected and other occupiers justifying with the Slum Rehabilitation Scheme for redevelopment of such land, **by order, determine to redevelop such land by entrusting into any agency or other developer for the purpose.**

(2) Where on declaration of any land as Slum Rehabilitation Area, the Chief Executive Officer is satisfied that, the land in the Slum Rehabilitation Area has been or is being developed by the Owners, landholders or occupants or developers in contravention of the plans duly approved, or any restrictions or conditions imposed under sub-section (10) of Section 12, or in contravention of any provision of any Slum Rehabilitation Scheme or any condition specified in the approval or has not been developed within the time, as specified under such conditions of approval, he may, by order, determine to develop the land declared as Slum Rehabilitation Area by entrusting it to any agency or the other developer recognized by him for the purpose.

(3) The agency or the other developer so appointed shall within a period of forty- five days of the order of the Chief Executive Officer, be required to deposit an amount of compensation payable to the outgoing landowners or occupants or developers, as the case may be, for expenditure incurred by them on payment made to any public authority, local bodies for receiving approvals for the Slum Rehabilitation Scheme and construction of rehabilitation tenements as determined by the Chief Executive Officer:

Provided that, such compensation shall not be payable by the agency appointed by the Chief Executive Officer, for any expenditure incurred towards construction to meet conditional obligations made to any third party by the landowners or occupants or previous developers, as the case may be. The Chief Executive Officer before passing such order shall obtain report from approved valuer independently appointed on his behalf and by the concerned parties to the proceeding before the Chief Executive Officer:

Provided further that, before passing such order by the Chief Executive Officer, the concerned landowner or occupant or developer, as the case may be, shall be given a reasonable opportunity of being heard and time which shall not be more than thirty days of showing

cause why the order should not be passed:

Provided also that, an appeal, if any, against the order of the Chief Executive Officer shall be filed before the Grievance Redressal Committee and order of the Grievance Redressal Committee shall be final and binding on all the parties.

[Emphasis Supplied]

8. We have heard the parties at significant length. It is apparent that the Respondents have counted the period of delay on the basis that when the clock starts ticking for computing the 120-day period from the date on which the notification of, among others, the Subject Land, declaring it to be a slum rehabilitation area was issued i.e. 13th February, 2020. It is a matter of record that the notice under Section 14(1) was issued on 21st January, 2021 and 2nd February, 2021. Immediately, on 11th February, 2021, Petitioner No.1 raised objections to both the notifications. It was only on 13th August, 2021 that the SRA conducted a hearing on the Applications submitted by Asthavinayak and Hari Om. On 21st October, 2021, Petitioner No.1 filed a firm proposal for redevelopment in its capacity as a landowner and asserted that it had consent of more than 180 slum dwellers out the total of 294 dwellers in occupation of the Subject Land.

9. Admittedly, no specific notice under Section 13 as expected in

the law was issued. In fact, even if one were to start counting the 120-day period under Section 13 from the 13th February, 2020 (purely for the sake of argument), the suspension of limitation across legislation for the period between 15th March, 2020 and 28th February, 2022 directed by the Supreme Court to deal with the Covid-19 pandemic, would lead to the computation of limitation by the AGRC to be erroneous. In fact, a further period of 90 days was directed by the Supreme Court for cases where the limitation expired during the suspension period. By 21st October, 2021 i.e. even before the suspension of limitation periods initiated by the Supreme Court was brought to an end, the Petitioner No. 1 had filed a firm proposal to develop the land.

10. It is clear from the material on record that indeed, the SRA did not form a view that the proposal from Petitioner No. 1 was a belated one. On 14th February, 2022, the SRA received the internal legal clearance of the view that Petitioner No. 1 indeed had a preferential right to develop the Subject Land, being a landowner. Even at this stage there was not a whisper of the 120-day deadline having been missed. On 7th April, 2022, the Tehsildar (SRA) indeed confirmed to the Executive Engineer (SRA) that the proposal from Petitioner No. 1 must be processed. It is in disposal of the challenge mounted by Asthavinayak

and Hari Om that the AGRC has ruled that the proposal of Petitioner No. 1 was delayed by 616 days, deserving to be ignored.

11. In any event, the declaration of the law in the import of Section 13 of the Slum Act is well covered in decisions of two Division Benches of this Court (each authored by one of us, *G.S. Kulkarni, J.*). The law is well explained in *Bishop John Rodrigues vs. State of Maharashtra Through its Principal Secretary and Others*¹ (“*Bishop John*”), which also extracts and deals with the earlier declaration in *Indian Cork Mills Private Limited vs. State of Maharashtra, through its Housing Department and Others*². The following extracts from *Bishop John* are noteworthy:

78. On a plain reading of Section 13 of the Slum Act, which is the power vested with the slum authority to develop the slum rehabilitation area, it is clear that the CEO-SRA, only after declaring the land as a Slum Rehabilitation Area and in the event if the landholders or occupants of such land do not come forward within a reasonable time, which shall not be more than 120 days, required for relocation and rehabilitation of protected and other occupiers with a slum rehabilitation scheme for redevelopment of such land, would have the jurisdiction to pass an order to determine to redevelop such land by entrusting the same to any agency or other developer for such purpose. Sub-section (1) of Section 13 read with the proviso below sub-section (2) which ordains that the CEO, SRA before passing such order is under an obligation to grant a reasonable opportunity to the

¹2024 SCC OnLine Bom 1632

²2018 SCC OnLine Bom 1214 : (2018) 4 Bom CR 618

concerned land owner or occupant of being heard, by issuing a show cause notice as to why such order should not be passed.

79. Thus, the basic requirement for the CEO-SRA to exercise jurisdiction under Section 13(1) of the Slum Act is inter alia on the premise that there is a slum rehabilitation area and that if the owners, landholders or occupants of such land do not come forward within a reasonable time which shall not be more than 120 days with a slum rehabilitation scheme for redevelopment of such slum land for relocation and rehabilitation of protected and other occupiers, the authority accordingly can pass an order to determine to redevelop such land by entrusting the same to any agency or other developer for such purpose. Thus, necessarily sub-section (1) of Section 13 per se does not contemplate any acquisition of land. It merely contemplates that on the failure of the owners, landholders or occupants of a slum rehabilitation area to come forward within a reasonable time which shall not be more than 120 days, the competent authority (CEO, SRA) can pass an order to redevelop such land by entrusting it to any agency or other developer for such purpose. The question is what would be the subjective satisfaction that the owner has not come forward to develop the land and whether such intention which was on record of the SRA could be given a go-bye by the CEO-SRA for want of a formal scheme.

84. At this stage, it may not be out of place to note the consequences which Section 13 of the Slum Act would bring about. Section 13(1) of Slum Act as noted above, provide that if the landholders or occupants of the land do not come forward within a reasonable time, which shall not be more than 120 days with a slum rehabilitation scheme to be undertaken by redevelopment of such land, in such eventuality, the CEO, SRA may determine to re-develop such land by entrusting the same to any agency or other developer for such purpose and if such an order is to be passed by the CEO, SRA, a reasonable opportunity of being heard is to be given to the concerned land owner or occupant or developer as the second proviso to Section 13(2) would provide. However, the present case is not a case where a notice under Section 13 was issued so that the time limit, as specified in Section 13(1) of 120 days for the petitioner as owner to come forward would start ticking and/or become applicable. In any event, even assuming that the petitioner did not come forward within a period of 120 days from

the declaration of the land in question as slum rehabilitation area, which was by a notification dated 31 December, 2020, the logical corollary would be an obligation on the CEO, SRA to issue a notice under Section 13 of the Slum Act, as Section 13 clearly provides that the CEO would be empowered to redevelop such land by entrusting it to any agency or other developer for such purpose. In the present case, the circumstances as borne out by the record were two fold that not only the petitioner in his capacity as owner of the land in question had expressed its readiness and willingness to develop the land as occupied by the slum dwellers and declared as a slum rehabilitation area, but also even the society had appointed respondent no. 5 as a developer and a proposal was sought to be submitted through such developer to undertake a slum rehabilitation scheme. If this be the position, it is difficult to comprehend as to how the CEO, SRA in deciding the objections under Section 14 can take recourse to Section 13(1) of the Slum Act so as to impose a time limit of 120 days, being a relevant factor for taking a decision, that the land of the petitioner needs to be acquired. In any event, once Section 14 notice (as impugned by the petitioner) itself has referred to the fact that the land is sought to be acquired at the behest of the society, in our opinion, there is no reason for invoking the provisions of Section 14 of the Slum Act by the CEO, SRA. The object and intention of Section 14 cannot merely be the intention of a slum society that the land be acquired as desired by the slum society. If such meaning is to be attributed to Section 14, the provision would be rendered draconian, bringing horrendous consequences not imagined by the legislature, and extraneous to the provision.

105. The next contention as urged on behalf of the developer is to the effect that the petitioner had waived off its rights to undertake the redevelopment of the land for the reason that the petitioner had approached the AGRC in an appeal assailing the declaration of the land as a 'slum rehabilitation area'. Such contention cannot be accepted considering the facts of the present case, in as much as the petitioner, at all material times, had made known of its intention not only to the society, but also to the SRA that the petitioner was ready and willing to undertake the redevelopment in the manner as suggested by the petitioner. Such request of the petitioner was never

rejected by the SRA. This apart, the petitioner had also assailed the decision of the SRA to declare the land in question as a slum rehabilitation area under the provisions of Section 3C(1) of the Slum Act by filing an appeal before the AGRC. This clearly indicated that the petitioner had a quarrel on the petitioner's land being declared as a slum rehabilitation area, when the petitioner asserted it to be illegal. Such position taken by the petitioner is implicit of the fact that the petitioner has accepted that the petitioner would be under an obligation to undertake rehabilitation of the slum dwellers situated on the petitioner's land as also it would be its legal obligation when called upon to do so by the SRA. The petitioner cannot have a situation that merely because he has filed an appeal before the AGRC assailing the declaration of the land as a slum rehabilitation area, he would surrender to the slum society, developer and CEO SRA his rights to develop his own land. Such arrangement of the petitioner would leave to travesty of justice.

106. On a perusal of Section 13(1) of the Slum Act as provided under Chapter- I -A, the jurisdiction with the CEO, SRA comes into play only when the land is declared as the slum rehabilitation area. As also insofar as the provisions of Section 14 as falling under Chapter- I -A are concerned, the CEO, SRA would have jurisdiction to make a representation to the State Government under Section 14(1) of the Act to enable the SRA to carry out development under the slum rehabilitation scheme, only when the area is a slum rehabilitation area. The provisions of sub-section (1) of Section 14 in that regard are explicit. In the peculiar circumstances of the present case, it was necessary for the CEO, SRA to apply his mind and to take a well considered view of the matter, in as much as the CEO, SRA could not have adopted an approach of an extraordinary haste to issue a notice under Section 14(1) of the Slum Act, by inviting objections at the behest of the society in regard to the acquisition of the land under Section 14 of the Slum Act. We observe so, bearing in mind as to what would be a situation if the petitioner succeeds in his appeal assailing the notification declaring the land as slum rehabilitation area under Section 3C(1) of the Slum Act. On such eventuality, the very basis for the SRA to contemplate an action under section 13(1) as also under Section 14(1) of the Slum Act, would fall to the ground. This apart from the fact and as noted above, the CEO had shown extraordinary zeal in the present case when not only the country but the entire world

was under the grip of the Covid-19 pandemic.

113. Apart from what has been discussed above, as rightly submitted by Dr. Sathe, the encroachers on land cannot assert rights to rehabilitate on the very land albeit the land owner agreeing to rehabilitate them on the same land. The assertion on the part of the slum dwellers being made in the present case, which is to the effect as if the slum dwellers have higher rights on the land than the owners of the land, so as to presume absolute right of rehabilitation on the very same land even under the policies of the Slum Act, is totally untenable. The right of the slums dwellers is only to a permanent alternate accommodation under the statutory scheme and the State policies. The slum dwellers cannot have an approach that they become owners of the land and assert rights to defeat the rights of the real owners of the land. In our opinion, neither such rights of any ownership of the land to the slum dwellers are recognized by the Slum Act nor can such rights be so inferred.

130. We may also observe that the position in law as recognised in Indian Cork Mills Pvt. Ltd. v. State of Maharashtra (supra), which is also recognized in the other judgments as noted by us hereinabove, as binding on this Court, is to the following effect:

i. A combined reading of the various provisions as falling under Chapter- I -A as incorporated by the Amendment Act No. 4 of 1996 clearly demonstrates a distinct and independent legislative scheme when it comes to land which has been declared as a slum rehabilitation area under Section 3C of the Slum Act.

ii. The consequence brought about by Section 13 as falling in chapter I -A, is two-fold, firstly it recognizes the pre-emptory right of the owner to redevelop the land as provided under sub-section (10) of Section 12 and secondly, without disturbing the general right to redevelop the land, it nevertheless provides that if the landholders or occupants of such area do not come forward, within a reasonable time (now 120 days by virtue of amendment by Maharashtra Act No. XXVI I I of 2018) with a scheme for redevelopment of such land, then the SRA by an order determine to redevelop the land (which is

declared as a slum rehabilitation area) by entrusting it to any agency.

iii. Sub-section (2) of Section 13 is a complete legislative recognition of what is stipulated by the provisions of Section 3B(4)(e) read with Section 12(10) and Section 13 sub-section (1) namely that for a slum rehabilitation scheme notified under Section 3B, the scheme would contemplate development of slum rehabilitation area by the landholders and occupants by themselves or through a developer and the terms and conditions of such development (sub-clause (e) of Section 3B(4)). iv. Once the land is declared as a slum rehabilitation area, the statutory scheme/provisions as contained in Chapter I -A recognizes the participation of the owners/landholders and occupants in the redevelopment of such land.

v. Once such a right is created by law (Section 3B(4)(c) and (e) and Section 13(1)) an opportunity in that terms is required to be granted to the owners, occupants and/or landholders, without which the provision as made in the statute for such rights would be meaningless.

vi. When the provision uses the word 'do not come forward within a reasonable time' (by virtue of Amending Act No. XXVI I I of 2018, now 120 days) would surely mean that the SRA is required to set down the time limit by calling upon the landholder to come forward with a scheme so as to undertake redevelopment. For this, the SRA is required to put the land owner to 'a notice', that a redevelopment scheme being not submitted by the land owners, landholders or occupants within such prescribed period would be a circumstance which would be taken against them to acquire the land.

vii. Such notice by the SRA to the owner of the land is imperative failing which, there is no reason for such persons to be aware of such time lines, considering the plain reading of section 14(1) of the Slum Act and the fact that the non-submission of the scheme would be the primary reason for the land to be acquired even when there is a complete willingness of such persons to undertake redevelopment.

viii. The word "landholder" as used in Section 13(1) would include within its meaning "the owner of the land" when the words "landholder and occupant" are used.

ix. A preferential right for redevelopment of the land under slums is vested with the owners/landholders and/or occupants in view of a

conditional power/authority created with the SRA to undertake redevelopment of the slum rehabilitation area in a twofold manner, firstly by exercising power under Section 13 (1) and (2) which is to re-develop the land by entrusting it to any agency on a failure of the landholder or the occupant in not coming forward within a reasonable time with a scheme for re-development; and when an application of Section 13(1) and (2) do not fetch any result by re-developing or carrying out development under the slum rehabilitation scheme in any slum rehabilitation area by resorting to acquisition of the land under Section 14 as applicable with modification under Chapter I -A. From the legislative scheme of the amended provisions, it is clearly inferred that the rights so conferred under such provisions on the owner/landholder/occupant cannot be usurped directly by operating the acquisition machinery, simply because such power exists on the statute book.

x. The exercise of such power within the scheme of Chapter I -A is required to be resorted to by due adherence to the provisions as contained therein, which have created and recognized the legitimate rights in the owners, landholders and occupants to undertake redevelopment.

xi. The power to acquire land is also required to be exercised in a fair manner and certainly in the context of the statutory scheme, when the object and purpose for which acquisition is to be undertaken can be achieved by other methods and for which the statute has made the requisite provision for achievement of such purpose.

xii. While considering the action of acquisition of land under the powers as conferred on the State government under Section 14 of the Slum Act in its application to Chapter I -A (being exercised in relation to the land which is notified as a slum rehabilitation area under Section 3-C), the decision to acquire cannot be read beyond the context of the applicability of the provisions of Section 3A, 3B, 3C, Section 12, Section 13 and Section 14, as falling under the said Chapter of the Slum Act. The reason being the decision to acquire the land would have a direct nexus and relation to the conferring of an opportunity on such persons to first undertake redevelopment of land as Section 3(B)(4)(c) and (e) read with Section 13(1) and (2) as also sub-section 10 of Section 12 (if so made applicable, though this sub-section stands outside Chapter I -A) would contemplate and only on a

failure to avail this opportunity by the landholders or owners or occupants to abide their obligations under the statutory provisions, resort to acquisition of land under Section 14.

xiii. The statutory consequence is clear from a plain reading of the substituted sub-section (1) of Section 14 which requires that the State Government is so satisfied on a representation being made to it by the competent authority, that a situation has arisen that it is incumbent on the authority to execute any work of improvement or re-development of any slum area or any structure in area or any such land and for the said purpose, the land should be acquired. In such a situation, the State Government may acquire the land by publishing a notice to the effect that the State Government has decided to acquire the land. However, before such power is exercised to acquire such land, the proviso to sub-section (1) to Section 14 prescribes that before such notice is published in the official gazette deciding to acquire the land, the State Government or the competent authority by notice may call upon the owner or any other person interested in such land to show cause in writing to the competent authority, as to why the land should not be acquired, and the competent authority shall forward such objection of the owner together with the report to the State Government.

xiv. The State Government considering the “report”, and the “objections” if any, is required to pass ‘such order’ as it deems fit.

xv. The proviso of Section 14 assumes significance as firstly it postulates an opportunity to the landowner or any other person interested to show cause as to why the land ought not to be acquired and once such objections are registered with the competent authority, an obligation on the competent authority to consider the objections, make a report in respect of the said objections and further forward the objections and report for consideration of the State Government to objectively take a decision and pass appropriate order. Section 14(1) read with the proviso is akin to the provisions of Section 5A of the earlier Land Acquisition Act, 1894. Thus, necessarily there is a requirement for compelling factors and/or reasons to exist on record which would unequivocally compel the State Government to exercise its power of eminent domain so as to decide to acquire the land. This necessarily would include application of mind to the entitlement of the owner of the land, occupier or landholder to redevelop the land as

recognized by section 3B(4)(c) and (e) read with section 12(10) if so made applicable, read with section 13 (1) and (2).

xvi. Considering this statutory scheme, the decision of the Competent Authority or of the State Government cannot be oblivious and/or de hors the ascertainment as to whether such specific obligations were imposed on the landholders/landowners or occupants and if so created whether they were at all discharged by such persons.

xvii. The acquisition of the land under the Slum Act is a part of the legislative scheme as postulated by the Act, namely to improve the conditions of those dwelling in slums and redevelopment of the slums areas. This being the basic object of the legislation, the intention of the legislature in providing for participation of the landlord in redevelopment of the slums as reflected in the provisions of Section 3B(4)(e) and Section 13(1) and (2) of the Act cannot be overlooked. Such participation surely has to be before the land is acquired as different consequence follow after acquisition of the land (See Section 15).

xviii. An acquisition of land overlooking and/or obliterating the effect of these provisions cannot be said to be an acquisition conforming to the legislative scheme. It cannot be that the intention of the legislature would be that the said provisions, as falling in Chapter I -A, remain only paper provisions and/or become redundant when it is a question of an acquisition for the purpose of redevelopment of a “slum rehabilitation area”.

xix. In such situation, the endeavour of the Court would be to adopt the principles of a harmonious and purposive interpretation of these provisions and make these provisions meaningful so that the acquisition of land conforms to the legislative scheme and its mandate.

xx. As seen from the provisions of Chapter I -A, it cannot be a statutory requirement that in every case or in relation to a deficit in discharge of obligations of redevelopment by the owners/landholders or occupants of the slum areas or some non-compliance under a slum clearance order, land acquisition is the ‘only and only’ recourse to be taken by the competent authority and/or the State Government, without affording a prior opportunity and compelling such persons to rectify the situation by exercising the plentiful powers which are

available for that purpose to the SRA under the Slum Act so as to bring about a redevelopment.

xxi. Considering the in-built mechanism which is available under the clear provisions of Section 3B(4)(c) and (e), Section 13(1) and (2) of the Slum Act, which empowers the SRA to develop the land by entrusting it to any agency recognized by it, de hors such statutory position, any interpretation of the compulsory acquisition provision (Section 14), oblivious to the due consideration of these specific provisions of the Act, which enable the SRA to bring about a redevelopment of the slum rehabilitation areas without acquisition of the land, would amount to defeating such specific provisions and creating unwarranted concentration of coercive and arbitrary power of acquisition with the SRA.

xxii. Section 14 which confers power on the State Government to acquire the land and the legislature having amended the same in its application to Chapter I -A, having due regard to the provisions of Section 3B, 3C which concern the 'slum rehabilitation scheme' and 'slum rehabilitation area'. The decision to acquire such land cannot be read outside the consequences which are brought about by the said provisions of the Act, as falling under chapter I -A. The rights so created inter alia on the landowners and the obligation so conferred on the SRA under the provisions as falling in Chapter I -A would have a direct relation to the decision to acquire the land. This more particularly in view of the proviso to Section 14(1) which stands undisturbed by the amendment as inserted by Chapter I -A, creating a statutory obligation on the State Government to consider the reasons as may be put forward by the owner of the land against acquisition and prepare a report and forward the same to the State Government.

xxiii. A bonafide willingness on the part of the land owner/land holders or occupant to redevelop the land and for such reason the land being not acquired is a legitimate objection which the owner of the land can raise and such objection would certainly fall within the contemplation of the proviso to Section 14(1), as required to be considered by the State Government before a decision to acquire such land is taken. Thereafter, the State Government is required to pass an order on these objections.

xxiv. Considering the scheme of the Act and more particularly

Chapter I -A, it cannot be said that the SRA was powerless to call upon the petitioner to submit a scheme and to undertake immediate redevelopment of the land after it was declared as a 'slum rehabilitation area'.

xxv. Also, an option is available to the Slum Rehabilitation Authority to invoke the provisions of Section 13(1) to redevelop the land on account of failure of the landowners/landholders/occupants to undertake redevelopment within the prescribed period as ultimately the aim and object of Section 13(1) is to bring about redevelopment for rehabilitation of the slum dwellers by the SRA itself determining to redevelop such land by appointing any agency recognized by it. The purpose for acquisition of land under Section 14 is not different which is also to execute any work of improvement or to redevelop any such slum area.

xxvi. In Anil Gulabdas Shah v. State of Maharashtra (supra), the Court was concerned with the application of the amended provisions namely Chapter- I -A of the Act where the Court held that under Section 13 of the Slum Act as falling under the amended Chapter- I -A, the SRA is obliged to offer the suit land first to the petitioner or to the occupants, to come forward for redevelopment of the same and only on their failure, the land could be handed over to a third party. Although there can be no quarrel that the power to acquire the land under the Slum Act when it is declared as slum rehabilitation area, needs to be exercised only under Section 14 of the Slum Act, however, the acquisition of the land, which is declared as a slum rehabilitation area under Section 3C(1), cannot be undertaken defeating the petitioner's rights conferred on the owner to undertake redevelopment under the provisions of Section 3B(4)(c) and (e) and section 13(1) of the Slum Act as held in Anil Gulabdas Shah v. State of Maharashtra (supra). The legal position as held in Anil Gulabdas Shah (supra) was also accepted by the SRA by issuance of a circular dated 09 November, 2015 in which in paragraph 2, the SRA had clearly notified that under Section 13 (1) in respect of slums on private lands, the owner would have a primary right and to that effect earlier circular no. 144 was modified.

xxvii The submission that merely because the society of the slum dwellers has submitted a scheme prior to the scheme submitted by the owner, the preferential right in favour of the petitioner does not

survive, is untenable. The Court held that such submission presupposes that there is a preferential right of the owner of the land to redevelop the said land. In taking decision under Section 14(1), there is a requirement of recording reasons which is an essential requirement in exercise of a quasi-judicial power by the authorities. The Court ultimately held that considering the declaration of the said land as a slum rehabilitation area vide notification issued under Section 3C(1) of the Slum Act and the consistent assertion of the petitioner therein (land owner) to undertake redevelopment, an opportunity was required to be conferred on the petitioner to undertake redevelopment in consonance with the law laid down by the Division Bench in Anil's case (supra) and the SRA's own circular dated 09 November, 2015 conferring preferential right on the land owners to undertake redevelopment as per Section 13(1) of the Act. The SRA cannot selectively act in deciding to acquire the land in question without calling upon the land owners at any point of time to undertake the development as being issued in many other cases. xxviii. Fairness in resorting to acquisition proceedings is a sine qua non and requirement of Article 14 of the Constitution.

xxix. The Court ultimately held that the petitioner therein as a owner of the land had a preferential right to undertake redevelopment of the land in view of the specific provisions as contained in Section 3B(4) (c) and (e) and Section 13(1) falling under Chapter I -A of the Slum Act. The Court was in complete agreement with the view taken by the Division Bench in the case of Anil Gulabdas Shah (supra) which stands as good law.

xxx. The authorities having failed to recognize the rights of the owner of the land, the acquisition of the land under Section 14(1) of the Slum Act is rendered illegal and void ab initio.

[Emphasis Supplied]

12. A plain reading of the foregoing would show that unless and until a clear and specific notice under Section 13 is received by the landowner, the 120-day period would not commence. In the instant

case, it is common ground that no specific notice under Section 13 had been issued. Besides, the landowner has indeed objected to the designation of the Subject Land as a slum rehabilitation area. That apart, the landowner on 21st October, 2021 had also filed an actual proposal to redevelop the land, with a proposed society of slum dwellers, namely, Chaitanya which was being processed by the SRA. The computation of the 120-day period could not even have commenced without a proper notice under Section 13 of the Slum Act. The mere intention to declare a piece of land as a slum rehabilitation area is not equivalent of a notice under Section 13. A notification under Section 3C cannot double up as a notice under Section 13 with a clear intention to redevelop the land for the protection of the preferential right of the landowner to run its course. By a proposal dated 21st October, 2021, the landowner in this case, has positively sent a proposal to redevelop his land, and this has been rightly taken forward by the SRA. It is the AGRC, dealing with applications filed by Asthavinayak and Hari Om that has led to the SRA's accurate and proper processing of such proposal being interfered with. In view of the explicit declaration of the law extracted above from ***Bishop John***, we have no hesitation in quashing and setting aside the Impugned Order of the AGRC.

13. The argument of Asthavinayak and Hari Om that there has been a deemed waiver by the Petitioner of his rights under Section 13(1) is in direct conflict with ***Bishop John***. We are also unable to accept the reliance by Asthavinayak and Hari Om on the judgment of this Court in *Deena Pramod Baldota vs. State of Maharashtra & Ors - Writ Petition (Lodging) No.19626 of 2022* (“***Deena Pramod**Bishop John*** has now placed the issue totally beyond debate.

14. We have also been presented with the argument that the Petitioner No.1 has assigned certain rights over the Subject Land in favour of Petitioners No.2 and 3 and that would disentitle him from the statutory protection under Section 13 as interpreted in ***Bishop John***. We are unable to agree inasmuch as it is an admitted position that Petitioner No.1 continues to assert ownership of the Subject Land. Besides, the Petitioners have collectively filed this Writ Petition, indicating thereby that the attendant rights are collectively being asserted by them. In any case, the Slum Act, unlike the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, does not entail any prohibition on transfer of land with all attendant rights.

15. In the light of the above discussion, we have no hesitation in quashing and setting aside the Impugned Order. In the result we pass the following order:-

- a) The Impugned Order dated 17th February, 2023 issued by the AGRC is hereby quashed and set aside.
- b) The SRA is directed to assess and process the proposal made on behalf of Petitioner No.1 along with Chaitanya, in accordance with law, and carry out the rest of the procedures under the Slum Act in terms of such proposal.

16. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

17. At this stage, learned Counsel for the Respondents prays for stay of this order. Considering the facts of the case the prayer is rejected.

[SOMASEKHAR SUNDARESAN, J.]

[G.S. KULKARNI, J.]