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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2430 OF 2024

1. **HARASIDDH CORPORATION,**
a partnership firm registered under
the provisions of the Indian Partnership
Act, 1932 and having their principal
place of business at Tulsi Villa, Poddar
Road, Santacruz (West),
Mumbai 400 054.
through its partner Mr. Mukul Patel
having his office at the above address

...PETITIONER

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
through the office of the Government
Pleader, Original Side, High Court,
Bombay
2. **CHIEF EXECUTIVE OFFICER,**
Slum Rehabilitation Authority,
Having his office at Administrative
Building, Anant Kanekar Marg,
Bandra (East), Mumbai - 400 0051
3. **EXECUTIVE ENGINEER - III,**
P/N WARD,
Slum Rehabilitation Authority, having
his office at Administrative Building,
Anant Kanekar Marg, Bandra (East),
Mumbai - 400 0051

4. **DEPUTY DIRECTOR OF LAND
RECORDS,**
Slum Rehabilitation Authority,
Having his office at Administrative
Building, Anant Kanekar Marg,
Bandra (East), Mumbai – 400 0051

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Dr. Milind Sathe, Senior Advocate, <i>with Gaurav Shrivastav, Shamima Taly & Sehyr Taly & Yash Kataria i/b. M Mahomedbhai & Co.</i>
FOR RESPONDENT NOS.2, 3 AND 4	Mr. Jagdish G. Aradwad (Reddy).
FOR RESPONDENT NO.1- STATE	Ms. Nazia Shaikh, AGP.

**CORAM : M.S. Sonak &
Kamal Khata, JJ.**

**RESERVED ON : 28th June 2024
PRONOUNCED ON : 03rd July 2024**

JUDGMENT (Per M.S. Sonak, J.):

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. The Petitioner challenges Slum Rehabilitation Authority's communication dated 3rd April 2024, refusing to accept the Petitioner's proposal for the Slum Rehabilitation Scheme under

Clause 33(10) of the Development Control and Promotions Regulations for Greater Mumbai (DCPR) “*pending compliance of Section 36A of the Maharashtra Land Revenue Code, 1966 since the land belongs to the tribal owners*”

4. Mr Sathe, learned senior advocate for the Petitioner, at the outset, submitted that the issue raised in this Petition is entirely covered by the decision of the Coordinate Bench in the case of **Jai Ganesh SRA CHS (prop.) and Anr Vs. State of Maharashtra and ors.**¹. He submitted that the decision in Jai Ganesh Society’s case (supra) relates to the one part of larger property bearing CTS No.677 A/2 and the present Petition concerns CTS No.677A/1. Therefore, he submitted that by adopting reasoning in Jai Ganesh Society’s case (supra), the rule ought to be made absolute in the present Petition.

5. Mr. Sathe submitted that the Petitioner in the present case is on a better footing than the Petitioners in Jai Ganesh Society’s case (supra) because the notification under Section 3C of the Slum Rehabilitation Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“the Slum Act”) issued in Jai Ganesh Society’s case (supra) contain a specific endorsement to the effect that the Maharashtra Restoration of Land to Scheduled Tribe Act, 1974 (“the Restoration Act, 1974”) was applicable to the land in question, and therefore, in terms of the said Act necessary permissions ought to be obtained.

6. Mr Sathe pointed out that The Coordinate Bench of this Court, by its decision, clarified that reference to the Restoration Act

¹ 2016(5) ABR 209

was a clear error and possibly what the SRA meant was a reference to Section 36A of the MLR Code. Still, the Coordinate Bench ruled that even the provisions of Section 36A of the MLR Code would not apply given the fact that the property bearing CTS No.677A/2 (part of the larger property) was declared a slum area, having no nexus with any agricultural activities. He submitted that there is no difference whatsoever between the property bearing CTS No.677A/2 (subject matter of Jai Ganesh Case) and CTS No.677A/1 (which is the subject matter of this Petition).

7. Mr Sathe submitted that the SRA had filed an affidavit in the present case, and the factual aspects pleaded by the Petitioner have not been substantially denied. He submitted that the attempted distinction of the precedent in the Jai Ganesh Society's case (supra) deserves no acceptance. He submitted that the decisions referred to in the affidavit were already considered and distinguished by the Coordinate Bench. Accordingly, Mr. Sathe submitted that the rule should be made absolute in this Petition.

8. Mr Reddy, the learned counsel appearing on behalf of the SRA, submitted that the issue of whether the SRA Scheme can be implemented on Adivasi land was raised in Jai Ganesh Society's case (supra) but was not answered. He submitted that the Jai Ganesh Society case (supra) is, therefore, not an authority for the proposition that the SRA Scheme can be implemented on Adivasi land without compliance with the provisions of Section 36A of the MLR Code.

9. Mr Reddy submitted that the SRA Scheme, if approved, would involve the transfer of occupancy of tribal land in favour of

non-tribal. He submitted that the expression “or otherwise” employed in Section 36A of the MLR Code is significant and would include the arrangements now proposed by the Petitioner. He relied on the decision of the Division Bench of this Court in the case of **Adivasi Sarvangin Vikas Samittee Vs. State of Maharashtra**² in support of his contention.

10. Mr Reddy submitted that there is a complete embargo on the transfer of occupancy of the tribals who are non-tribals without obtaining necessary permission under Section 36A of the MLR Code. He relied on the decision of this Court in the case of **Rama Narayan Mali Vs. Additional Collector, Thane and ors.**³ to support this proposition.

11. Mr Reddy submitted that the provisions of Section 36A of the MLR Code would prevail over the provisions of the Slum Act, particularly since Section 36A of the MLR Code was enacted to protect the rights of tribals against invidious discrimination and prevent the economic exploitation of illiterate and poverty-stricken tribals.

12. For all the above reasons, Mr. Reddy submitted that the rule in this Petition may be discharged.

13. The rival contentions now fall for our determination.

14. The subject matter of this Petition is the property bearing CTS No.677/A/1 (part) of village Malad (East), Taluka Borivali (“the said property”). The said property is a part of the larger

² 2013(6) Mh.L.J. 557

³ 2008 (3) Mh.L.J. 300

property bearing CTS Nos. 610/A/1C/1, 677A/1, 677A/2 and 676 (“the larger property”). The larger property is described in the plan in Exhibit-A to this Petition (Page 55). The property bearing CTS No.677A/2 is shaded in pink and described as Jai Ganesh SRA CHS. This property was the subject matter of Writ Petition No.2270 of 2014 instituted by Jai Ganesh SRA CHS. The said property, which is the subject matter of this Petition, is shaded in colour blue and described as Sahayog SRA CHS.

15. Thus, there is no dispute that the Jai Ganesh property, which was the subject matter of Writ Petition No.2270 of 2014 and the Sahayog property or the said property, which is the subject matter of the present Writ Petition, are parts of the same or common larger property. This is important because Mr Sathe has contended that there are no factual differences in the positions of the two properties, and therefore, the issue raised in this Petition stands fully covered by the decision in Jai Ganesh’s case (supra).

16. The Petitioner pleaded, and there was no denial in the return filed on behalf of the Respondents, that the said property was entirely covered by slums. Accordingly, on 11 August 2010, the Petitioner entered into an agreement with the tribal owners of the larger property for a slum redevelopment project on the larger property.

17. On 7 August 2012, the SRA made an order under Section 3C of the Slum Act notifying the Jai Ganesh property as a ‘slum rehabilitation area’. This order contained an endorsement that the Restoration Act of 1974 would apply, implying that no

redevelopment could take place until permissions were obtained under the said Act of 1974.

18. On 25 August 2014, Jai Ganesh SRA CHS filed Writ Petition No.2270 of 2014 challenging the endorsement and, consequently, the application of the Restoration Act, 1974, or Section 36/36A of the MLR Code. By a detailed judgment and order dated 28 July 2016, the Coordinate Bench, without going into the larger challenges raised in the Petition, held that the provisions of the Restoration Act, 1974, or Section 36A of the MLR Code would not apply given the peculiar facts of the case.

19. The SRA, in compliance with the judgment and order dated 28th July 2016 in Writ Petition No.2270 of 2014, issued a Letter of Intent (LOI) dated 21st May 2018 to Jai Ganesh SRA CHS. This was followed by an Intimation of Approval (IOA) dated 29th May 2018 to put up a rehab composite building on the Jai Ganesh property. A revised LOI was issued on 30th September 2019, and an IOA for the free sale building was issued on 6th December 2019. The Commencement Certificate for the free sale building was issued on 3rd January 2020.

20. Thus, it is clear that the judgment and order dated 28 July 2016 in Writ Petition No.2270 of 2014 were not challenged by the SRA or any parties. The SRA, in fact, accepted the judgment and order and complied with the directions in a fact situation identical to the present case.

21. On 12th January 2017, Ravi Raghunath Khanjode & 16 others (Tribals) and the Petitioner herein applied to the Chief Executive

Officer of SRA for issuance of Notification under Section 3C(1) of the Slum Act regarding the Sahayog property or the said property, which is the subject matter of the present Petition.

22. The SRA, after hearing the tribals, the Petitioner herein, the land owners and some objectors, passed a detailed order on 24th September 2020 declaring the said property as a 'slum rehabilitation area' under Section 3C of the Slum Act. The conclusion and the operative order made by the Chief Executive Officer of SRA in his order dated 24th September 2020 (English Translation) read as follows:-

“CONCLUSION

The present application case is regarding declaration of Slum Rehabilitation Area under Section 3(c) of Maharashtra Slum (Reformation, Clearance and Rehabilitation) Act, 1971. As per the policy of the Government, the Slum Rehabilitation Scheme is to be implemented as per Rule 33 (10) of Development Control Rules 1991 and the approved revised Greater Mumbai Development Control and Promotion Rules-2034 to raise the standard of living of the slum dwellers. In order to implement the slum rehabilitation scheme, it is mandatory to first declare the area as slum or slum rehabilitation area. No organization or land owner will be able to implement the scheme unless the slum rehabilitation area is declared. The objection mentioned in the written statement by the objector is not reasonable. If these objections are accepted, it is likely that the process of declaring the slum rehabilitation area will be stalled and the upliftment of the standard of living of the slum dwellers will be hampered, therefore CTS No. 610/ at Village Malad (East), Taluka-Borivali as per the

application of the applicants to uplift the standard of living of the slum dwellers and implement the policy of the Government. 3/1C (Part), 676, 677/A (Part), an area of 5585.19 sq.m., needs to be declared a slum rehabilitation area. Having come to the conclusion that it would be appropriate to reject the objections of all the objectors, the following orders are passed under the powers vested in Section 3 C (1) of the Maharashtra Slum (Improvement, Abolition and Redevelopment) Act, 1971.

4- ORDER :-

(1) In the case of 1) Obstructionist F.E. Dinsha Charities (Land Owner), 2) Chanda Ramesh (Ramakant) Kakdekar (Obstructionist), 3) Dharma Laxman Barke (Khanjode) and Other 12 (Obstructionist), by Village Malad (East), CTS No.610/A/1C (Part), 676, 677/A (Part) of Taluka-Borivali, the objection taken against this property under Section 3C (1) of the Maharashtra Slums (Improvement, Clearance and Redevelopment) Act, 1971. The objection raised to declaration of slum rehabilitation area is rejected.

(2) Application dated 29/06/2018 by applicant Mukul Patel, Harsiddha Corporation Builders and Engineers and application dated 12/01/2017 by Shri Ravi Raghunath Khanjode and 16 others, both of which are claimed under the application for land sought in Malad (East), CTS No.610/3/1C (Part), 676, 677/A (Part) of Taluka-Borivali, area on income 5585.19 sq. m. The Slum Rehabilitation Area is being declared under Section 3A (1) of the Maharashtra Slum (Reformation, Clearance and Rehabilitation) Act, 1971.

Place : Bandra (East), Mumbai.

*Date : sd/-
(Satish Lokhande)
Chief Executive Officer
Slum Rehabilitation Authority*

*Disp. No. SRA/SD/3C/Shri Ravi Raghunath
Khanjode/Order/2020/*

Date :- 24th September 2020”

23. After the CEO of SRA made the order dated 24th September 2020, a Notification was published in the official gazette dated 29th September 2020 declaring the said property as a ‘slum rehabilitation area’ under the provisions of Section 3C(1) of the Slum Act. This Notification is transcribed below for the convenience of reference:-

“SLUM REHABILITATION AUTHORITY

NOTIFICATION

*No. SRA/DY. COLL/T-6/3C/Shree Ravi Raghunath
Khanjode/2020/OW/2020/18144*

Whereas, the Slum Rehabilitation Authority has formed Slum Rehabilitation Scheme under the provision of section 3B (3) of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and published in Gazette on 9th April 1998;

Whereas, in view of the provision of section 3C (1) of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, the Chief Executive Officer, Slum

Rehabilitation Authority is empowered to declare any area as “Slum Rehabilitation Area”.

Therefore, in view of the said provision of section 3C (1) of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, I, undersigned is hereby declare the area shown in schedule as “Slum Rehabilitation Area”. Now the said area is open to submit scheme of slum rehabilitation as per regulation 33(10) of Development Control Regulation, 1991 of Greater Mumbai.

Schedule

<i>Sr. No.</i>	<i>Village Dahisar and C.T.S. No.</i>	<i>Area as per Property Card (Sq.mtr.)</i>	<i>Area to be declared as “Slum Rehabilitation Area” (Sq.mtr)</i>	<i>Boundaries of S. R.</i>			
				<i>East C.T.S.</i>	<i>West C.T.S.</i>	<i>South C.T.S.</i>	<i>North C.T.S.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)</i>	<i>(8)</i>
<i>1</i>	<i>610/A/1C</i>	<i>786.00</i>	<i>560.59</i>	<i>677A, 676</i>	<i>610A/1B/1</i>	<i>610A/1B/1</i>	<i>610A/1A/1/1</i>
<i>2</i>	<i>676</i>	<i>714.1</i>	<i>714.10</i>	<i>677A</i>	<i>610A/1C</i>	<i>677A</i>	<i>610A/1C</i>
<i>3</i>	<i>677/A</i>	<i>6510.5</i>	<i>4310.50</i>	<i>680, 677A Pt</i>	<i>676, 610A/1C</i>	<i>653A/1/B1, 675A</i>	<i>677A Pt</i>
	<i>Total Area</i>	<i>8010.6</i>	<i>5585.19</i>				

Slum Rehabilitation Authority

*Administrative Building,
Prof. Anant Kanekar Marg,
Bandra (E.), Mumbai 400 051.
dated 24th September 2020.*

SATISH LOKHANDE
*Chief Executive Officer,
Slum Rehabilitation Authority.*

24. Significantly, unlike in the case of the Jai Ganesh property, there was no endorsement in the SRA Notification dated 29th September 2020, which applied either the Restoration Act, 1974, or the provisions of Section 36A of the MLR Code. In Jai Ganesh's case (supra), despite the endorsement that the Restoration Act, 1974 would be made applicable, the Coordinate Bench held neither the provisions of the Restoration Act, 1974 nor the provisions of Section 36A of the MLR Code would apply, given the peculiar fact situation about the Jai Ganesh property being covered by slums.

25. After all this, the SRA, by the impugned communication dated 3rd April 2024, has proceeded to reject the Petitioner's proposal pending compliance with the provisions of Section 36A of the MLR Code since, according to the SRA, "*the land belongs to tribal owners*". As noted earlier, even the Jai Ganesh property, which is a part of the same or common larger property, was held by the tribals. The Jai Ganesh property and the Sahayog property or the said property were affected or covered with slums. Having accepted and even complied with the decision in the Jai Ganesh case (Supra), the SRA ought to have pleaded and established that there was some material factual distinction between the status of the properties in the Jai Ganesh case and the present case, based upon which the SRA could legitimately insist upon the compliance with the provisions of Section 36A of the MLR Code.

26. Mr. Pradeep Pawar, Executive Engineer of SRA, has filed an Affidavit in Reply on behalf of Respondent Nos. 2 to 4 (SRA). In this Affidavit, there is no serious challenge to any of the factual aspects pleaded by the Petitioner. The Affidavit also does not speak about any alleged difference between the position or status of the Jai

Ganesh property and the said property. The Affidavit mainly contains legal submissions, most of which were considered and rejected by the Coordinate Bench in Jai Ganesh's case (supra).

27. Even otherwise, the factual position concerning the Jai Ganesh property and the said property is virtually identical. The Petitioner is, in fact, on a better footing because Section 3C Notification, which was the subject matter of the Jai Ganesh Petition, contained an endorsement that the Restoration Act of 1974 would be applicable to the Jai Ganesh Property. The Restoration Act of 1974 was clearly inapplicable because the same applies to transfers between 1st April 1957 and 6th July 1974. After 6th July 1974, the provisions of Section 36A of the MLR Code would apply. However, the Coordinate Bench, upon appreciating the factual aspects of how the Jai Ganesh property was already covered by slums, held that even the provisions of Section 36A of the MLR Code would not apply to the Jai Ganesh property, notwithstanding the endorsement in Section 3C Notification.

28. Therefore, by following the precedent in Jai Ganesh's case (supra), the insistence on the part of SRA that the Petitioner obtains permission under Section 36A of the MLR Code cannot be sustained. The reasoning in Jai Ganesh's case (supra) would apply with full vigour to the factual position in the present case, and the SRA cannot now be permitted to apply an unequal yardstick when it comes to the said property.

29. The SRA's attempt to distinguish the judgment in Jai Ganesh's case (Supra) without even pleading, much less demonstrating any difference between the fact situation in the two

cases or in the two properties, cannot be countenanced. Admittedly, the Jai Ganesh property and the said property are parts of a common larger property. Both the properties were admittedly held by tribals. There is uncontested material on record to show that both the parts of the larger property were affected or covered with slums. In fact, this was the basis for the SRA to declare both these parts as 'slum rehabilitation areas'. This position is not at all contested in the return filed by SRA. In such circumstances, SRA is hardly justified in refusing to follow the binding precedent in the Jai Ganesh case (supra).

30. In Jai Ganesh's case (supra), the learned AGP had argued that mere endorsement in Section 3C Notification was sufficient to attract the provisions of Section 36A of the MLR Code. This contention was recorded but rejected by the Coordinate Bench in paragraph 58. In paragraphs 59 to 64, after considering the affidavit filed on behalf of the SRA, the Coordinate Bench held that the Jai Ganesh property was privately owned land and fully encroached upon by the slum dwellers. Further, the Coordinate Bench observed that in the absence of any material produced on record, either by the State Government or by the SRA and rather the SRA confirming the factual position as set out in the Petition, the provisions of Section 36A of the MLR Code, would not be attracted or applicable. The SRA, therefore, could not insist upon the application of either the Restoration Act, 1974 or Section 36A of the MLR Code.

31. The reasoning of the Coordinate Bench in paragraphs 61 to 64 is reproduced below for the convenience of reference :

“61. *A perusal of the provisions of the Slum Act reveals that it is an Act to make better provision for the improvement and clearance of slum areas in the State and their redevelopment and for the protection of occupiers from eviction and distress warrants. Chapter I of this Act contains preliminary provisions including definitions. Some of the definitions are important. The words and expressions such as "building", "land", "occupier", "owner", "eligible slum dweller", "slum area", "slum", "clearance", "slum rehabilitation scheme", "work", "SRA" and "slum rehabilitation area" are defined comprehensively, broadly and in an inclusive manner to denote as to how this Act also is a welfare measure. It seeks to achieve the policy enshrined in Articles 38, 39(b) and (c) and Article 41 of the Constitution of India. Chapters I-A, I-B, I-C and II, III, IV and V would indicate as to how the legislative mandate is carried forward. It is apparent that the SRA and the State do not urge that this Act and its provisions cannot be invoked to rehabilitate or improve the plight of the slum dwellers on the subject land. Once the Act can be invoked and applied, then, it is futile to urge in the absence of a clear embargo or prohibition that the SRA cannot carry the declaration and notifications further and to their logical end. In the absence of any statutory prohibition to process the petitioners' proposal, the SRA could not have refused to take the further steps.*

62. *Despite indicating in the notification that the Restoration Act is applicable to the land and as per rules, necessary permission should be taken, the SRA proceeded to declare the area shown in the notification as slum rehabilitation area. On this area, the slum rehabilitation scheme is proposed as per DCR, particularly Regulation 33(10).*

63. *How could all these steps be taken in relation to alleged tribal land has not been clarified at all. We do not see how the notification under the aforesaid provisions of the Slum Act came to be issued in respect of the subject lands. The Slum Act would apply to such lands and on slums thereto is not disputed before us by either SRA or the State. Merely because such an endorsement has been made in the notification, the SRA could not have thereafter withheld further permissions and approvals or the State, through its competent authority, refused to carry forward the notification to its logical end. We do not see how by merely relying on the provisions of the Restoration Act or the Land Revenue Code and that too in the absence of better and proper particulars, the slum rehabilitation scheme, as proposed, was obstructed and not allowed to go further.*

64. *In the teeth of the factual position as we have narrated above, we do not think that the communication at page 79 of the paper book can be upheld. The Annexure-II should have been issued and the objection to the extent noted above, namely that the proposals cannot be finalised as lands are owned by tribals, cannot be sustained. We are of the opinion that having allowed the petitioners to take all the steps as indicated above, it was not open for the respondents to insist on compliance with the Restoration Act or section 36 of the Code. The insistence, in the peculiar facts, is unsustainable.”*

32. The Coordinate Bench, after interpreting the legal provisions in the context of the facts involved in Jai Ganesh’s case (supra), thought it unnecessary to decide the larger questions posed by the Petitioners. Such refusal by the Coordinate Bench does not decrease the precedential value of the judgement in the Jai Ganesh

Case(Supra). This is more so because it is now established that the facts situation in Jai Ganesh's case and the present case were virtually identical. In fact, as noted earlier, the Petitioner in the present Petition is on a better footing because Section 3C Notification, in the present case, does not even contain any endorsement regarding the applicability of the Restoration Act, 1974 or the provisions of Section 36A of the MLR Code.

33. The decisions in *Adivasi Sarvangin Vikas Samittee's* case (supra) and **Raoji Baliram Urkude Vs State of Maharashtra and another**⁴ were referred and distinguished by the Coordinate Bench in Jai Ganesh's case (supra). Admittedly, this is a case where the said property was covered by slums, thereby compelling the SRA to issue a Notification under Section 3C (1) of the Slum Act. Such issues were not involved in *Adivasi Sarvangin Vikas Samittee's* case (supra), *Raoji Baliram Urkude's* case (supra) and *Rama Narayan Mali's* case (supra). Possibly, this is the reason why the Section 3C Notification dated 29th September 2020 in the present petition does not even contain any endorsement suggesting the applicability of Section 36A of the MLR Code.

34. Mr. Sathe is justified in contending that an anomalous situation would arise if unequal yardsticks were allowed to be applied with respect to two virtually identical portions of a larger property. Regarding Jai Ganesh property bearing CTS No.677A/2, the Coordinate Bench has already held, and the SRA has accepted that there could be no insistence on any permission under Section 36A of the MLR Code. Therefore, regarding the said property, i.e.

⁴ 1985 Mh.L.J. 843

the Sahayog property bearing CTS No.677A/1, which is part of the same or common larger property, there is no question of SRA insisting upon permission under Section 36A of the MLR Code. Such insistence, in the facts of the present case, would violate the equality mandate enshrined in Article 14 of the Constitution.

35. For all the above reasons, the impugned communication dated 3rd April 2024 declining approval to the Petitioner's slum redevelopment proposal for want of compliance with Section 36A of the MLR Code cannot, in the facts and circumstances of the present case, be sustained and the same is hereby set aside. The Respondents—SRA are therefore directed to consider the Petitioner's proposal for slum redevelopment without insisting upon permission under Section 36A of the MLR Code. SRA must complete this exercise within two months, i.e. on or before 4 September 2024.

36. The Rule is made absolute in the above terms. There shall be no orders for costs.

(Kamal Khata, J)

(M. S. Sonak, J)