

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7630 OF 2025

Ritesh Trikamdas Patel and others ... Petitioners
Vs.
Apex Grievance Redressal Committee and others ... Respondents

Mr. Girish Godbole, Senior Advocate i/b. Mr. Omkar Khaiyam Shaikh for Petitioners.

Mr. K. Nhavkar i/b. Mr. Vishwanath Patil for Respondent No.1 (AGRC).

Mr. Ravleen Sabharwal a/w. Ms. Aarushi Yadav a/w. Mr. Mandar B. Waidande for Respondent No.2-SRA.

Mr. Mayur Khandeparkar a/w. Mr. Vikram Garewal, Mr. Kiran Mohite and Ms. Deepika Mule i/b. Mr. Kiran Mohite for Respondent No.3.

Mr. Chirag Balsara a/w. Mr. Rajesh Yadav for Respondent No.4.

CORAM : MANISH PITALE, J.

DATE : JUNE 27, 2025

ORDER :

. This petition arises out of proceedings initiated against the petitioners under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as the 'Slum Areas Act') for eviction of the petitioners from the structures in their possession, in the backdrop of slum rehabilitation scheme being implemented. The impugned order dated 20.05.2025 passed by the respondent No.1 - Apex Grievance Redressal Committee (AGRC) dismisses appeals filed by the petitioners, thereby confirming order dated 22.08.2024 passed by Tahsildar (Special Cell) / Slum Rehabilitation Authority (SRA). The said order of the Tahsildar directs the petitioners to handover possession to the respondent No.3 - developer, who is undertaking the project of slum rehabilitation, concerning respondent No.4 - society.

2. In the present case, during implementation of the slum rehabilitation scheme under the provisions of the Slum Areas Act, there were total 689 slum-dwellers of whom 645 have been declared eligible and 641 persons have already vacated the premises. The construction of building No.1 under the slum rehabilitation scheme / project is ongoing and respondent No.3 has received Intimation of Approval (IoA) dated 06.06.2022 for composite building No.2 and it is for the purpose of completing construction and implementing the said scheme that the respondent No.3 is pursuing the proceedings for eviction of the petitioners.

3. Since the jurisdiction of the authorities while considering such an application under Sections 33 and 38 of the Slum Areas Act is limited, the petitioners have raised a specific ground of jurisdiction of the Tahsildar in entertaining such an application under the provisions of the Slum Areas Act, to claim that the proceeding itself is without jurisdiction. It is on this limited ground that the present petition has been argued and the learned counsel for the rival parties have been heard in that context. No other issue going into the merits of the matter, was even pressed on behalf of the petitioners.

4. Mr. Godbole, learned senior counsel appearing for the petitioners submitted that the Tahsildar, SRA i.e. the original authority, which passed the impugned order dated 22.08.2024, was lacking inherent jurisdiction to entertain the application filed under Sections 33 and 38 of the Slum Areas Act. It was submitted that, therefore, the entire proceedings stood vitiated and on this ground alone, the writ petition deserves to be allowed.

5. In this context, the learned senior counsel referred to various provisions of the Slum Areas Act, as also the Development Control and Promotion Regulations for Greater Mumbai, 2034 (hereinafter referred

to as 'DCPR 2034') framed under the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). It was submitted that although in the present case, a notification under Section 4(1) of the Slum Areas Act was issued, declaring the area in question as a 'slum area', for the SRA and the Chief Executive Officer (CEO) of SRA to assume jurisdiction, a specific declaration under Section 3C of the Slum Areas Act was a *sine qua non*. It was submitted that the CEO, SRA and consequently, its delegate, in this case Tahsildar, SRA, would have jurisdiction to entertain the proceeding initiated under Sections 33 and 38 of the Slum Areas Act, only if Section 3D thereof was applicable. Much emphasis was placed on the fact that Section 3D(e)(i-a) substitutes original Sections 33 and 38 of the Slum Areas Act with new Sections 33 and 38. Under the substituted provisions, the CEO, SRA replaces the competent authority under the Slum Areas Act for exercising power of eviction and to issue orders of demolition.

6. In this context, by inviting attention of this Court to the opening words of Section 3D of the Slum Areas Act, it was contended that unless there was a publication of the slum rehabilitation scheme to an area declared as a slum rehabilitation area under Section 3C thereof, the substituted Sections 33 and 38 would not apply. It was emphasized that in the present case, although there was a declaration of slum area under Section 4(1) of the Slum Areas Act, there was no specific declaration issued under Section 3C thereof, due to which, Section 3D thereof remained inapplicable, thereby demonstrating that only the competent authority could exercise jurisdiction, while the CEO, SRA or its delegate would have no jurisdiction in the matter. In the present case, the Tahsildar, SRA, as the delegate of the CEO, SRA, entertained the proceeding under Sections 33 and 38 of the Slum Areas Act, completely without jurisdiction and on this ground, the impugned orders deserve to be set aside. In order to buttress the said argument, the learned senior

counsel appearing for the petitioners referred to various other provisions including Section 3A and Section 3B of the Slum Areas Act, further indicating the legislative scheme upon introduction of Chapter I-A in the said Act.

7. He further submitted that the respondents are not justified in relying upon deeming fiction as regards slum area under Regulation 33(10) of the DCPR 2034. He submitted that although there cannot be a quarrel with the proposition of law laid down by this Court in the judgements relied upon by the respondents as also the recent judgement of the Supreme Court in the case of *Mansoor Ali Farida Irshad Ali and others Vs. Tahsildar-I, Special Cell and others*, **2025 SCC OnLine SC 445**, the same cannot apply to the facts of the present case. It was emphasized that the said deeming fiction was relevant for cases where censused slums were the subject matter of the controversy. But since applicability of Section 3D of the Slum Areas Act is contingent upon declaration under Section 3C thereof, such a mandatory statutory requirement cannot be bypassed on the basis of a deeming fiction contained in a subordinate legislation in the form of DCPR 2034 framed under the MRTP Act. In this regard, reference was made to Section 3A(4), which specifies that the slum rehabilitation scheme published under sub-section (3) thereof, is deemed to be the development control regulations under the provisions of the MRTP Act and that they would prevail over the development control regulations that may be published under the MRTP Act. On this basis, it was submitted that if the contentions of the respondents are accepted, it would amount to a legal fiction creating another legal fiction, which is wholly impermissible. In this context, reliance was placed on judgements of the Supreme Court in the cases of *Industrial Supplies Private Limited Vs. Union of India*, **(1980) 4 SCC 341**; *K. Prabhakaran Vs. P. Jayarajan*, **(2005) 1 SCC 341** and *State of Punjab Vs. Davinder Singh*, **(2025) 1 SCC 1**.

8. It was further submitted on behalf of the petitioners that without prejudice to the aforesaid contention, the CEO, SRA could not have delegated its authority to the Tahsildar on the basis of notifications and orders, for the simple reason that as per the provisions of the Slum Areas Act, a competent authority cannot be an officer junior in rank to the deputy collector. At best, such a delegation could have been made in favour of an officer at least of the rank of deputy collector.

9. It was also submitted that since the facts of the present case show that only the competent authority could have entertained proceedings under unamended Sections 33 and 38 of the Slum Areas Act due to inapplicability of Section 3D thereof, an additional tier of appeal available to the petitioners was lost. In this connection, reliance was placed on Section 35 of the Slum Areas Act, which provides that any person aggrieved by an order of the competent authority may appeal to the appellate authority, being an officer not below the rank of additional collector and under sub-section (1-A)(a) thereof, an appeal against the order of appellate authority can be filed before the Grievance Redressal Committee. But, under Sections 33 and 38, amended as per Section 3D of the Slums Areas Act, against the order of the CEO or its delegate, only one appeal is provided under Section 35(1-A)(b) to the respondent AGRC. On this ground also, the petitioners suffered prejudice, and therefore, the present petition deserves to be allowed and the impugned orders passed by the Tahsildar, SRA and AGRC deserve to be set aside.

10. On the other hand, Mr. Khandeparkar, learned counsel appearing for respondent No.3 submitted that the contentions raised on behalf of the petitioners are unsustainable, for the reason that on the one hand, they are seeking to benefit under the slum rehabilitation scheme approved by the CEO, SRA and on the other hand, they are challenging the very jurisdiction of the said authority to entertain the proceeding

under Sections 33 and 38 of the Slum Areas Act. In this context, attention of this Court was invited to paragraph 17 of the writ petition wherein the petitioners have categorically stated that they are not opposed to the project i.e. the slum rehabilitation project under the very scheme approved by the CEO, SRA. It was submitted that the petitioners cannot be allowed to blow hot and cold at the same time.

11. It was submitted that on a proper understanding of the provisions of the Slum Areas Act and the operation of DCPR 2034, particularly Regulation 33(10) thereof, it becomes clear that declaration under Section 3C of the Slum Areas Act is not required for applying Chapter I-A and I-B thereof. It cannot be contended that unless such a declaration under Section 3C of the Slum Areas Act is issued, Section 3D thereof would not come into operation. By relying upon judgements of this Court in the cases of *Abdul Aziz and others Vs. Apex Grievance Redressal Committee and others*, **2024 SCC OnLine Bom.744** and *Om Sai Darshan CHSL (proposed) Vs. State of Maharashtra*, **2007 (1) Bom.C.R. 476**, it was submitted that when a declaration under Section 4 of the Slum Areas Act has been admittedly issued and slum rehabilitation scheme has been approved by the CEO, SRA, it is deemed to be a slum rehabilitation area and in that context, the deeming fiction under Regulation 33(10) of the DCPR 2034 comes into operation, thereby foisting jurisdiction on the CEO, SRA. Amended Sections 33 and 38 of the Slum Areas Act under Section 3D thereof become applicable and hence it cannot be contended that the Tahsildar, SRA, in the present case, passed the impugned order without jurisdiction. As regards deeming fiction, reliance was also placed on the aforesaid judgement of the Supreme Court in the case of **Mansoor Ali Farida Irshad Ali and others Vs. Tahsildar-I, Special Cell and others** (*supra*), wherein the Supreme Court held in the context of even censused slums that no specific declaration under Section 3C of the Slum Areas

Act was necessary.

12. It was further submitted that in the present case, the Letter of Intent (LoI) was issued by the CEO, SRA as per Section 12(10) of the Slum Areas Act substituted under Section 3D(H) thereof. It is undisputed that in the present case, LoIs dated 14.12.2012, 23.03.2022 and 02.04.2024 were issued by the CEO, SRA and in the face of the specific stand of the petitioners that they are not opposed to such slum rehabilitation scheme, leading to issuance of such LoIs, they cannot be permitted to turn around and challenge the very jurisdiction of CEO, SRA to take further action in the matter, including entertaining proceedings under Sections 33 and 38 of the Slum Areas Act.

13. It was further submitted that Regulation 33(10) of the DCPR 2034 provides an elaborate methodology for ascertaining eligibility of slum-dwellers and other such actions in respect of such slum rehabilitation schemes under Chapter I-B of the Slum Areas Act. On this basis, it was submitted that the petitioners cannot claim that deeming fiction under Regulation 33(10) of the DCPR 2034 is foreign to the scheme with which this Court is concerned in the present case or that, if the contentions of the respondents are accepted, it would lead to a deeming fiction creating another deeming fiction.

14. As regards the alleged loss of one tier of appeal under Section 35 of the Slum Areas Act, it was submitted that the said contention was based on a misunderstanding of the provisions of the Act. It was submitted that the said appeals from the competent authority to the appellate authority and to the grievance redressal committee are concerned with the stage of ascertaining eligibility of a slum-dweller. Since the modified substituted Sections 33 and 38 of the Slum Areas Act clearly apply to the facts of the present case, the appeal available to the petitioners under Section 35(1A)(b) thereof was correctly availed by

them. Hence, the question of prejudice does not arise. It was submitted that even otherwise, the Supreme Court in the case of *Balwantrai Chimanlal Trivedi Vs. M. N. Nagrashna*, **AIR 1960 SC 1292** held that the Court is not bound to interfere in a situation where jurisdiction of the original Court is questioned but the matter is considered by a higher tribunal, which undoubtedly has jurisdiction. It was held in the said case that in such a scenario, there being no failure of justice, the Court need not interfere only on the said ground. On this basis, it was submitted that the aforesaid contention also deserves to be rejected.

15. On the question of delegation, it was submitted that Section 3S of the Slum Areas Act specifically provides that the CEO, SRA can delegate powers conferred under the Slum Areas Act to any of the officers of the SRA and in turn permit further delegation to the subordinate. It was brought to the notice of this Court that the Tahsildar, SRA has, in the impugned order dated 22.08.2024, specifically referred to the orders, whereby power and authority was delegated. On this basis, it was submitted that even on the aspect of delegation, there was no substance in the contentions raised on behalf of the petitioners. On this basis, it was submitted that since the objections regarding jurisdiction raised on behalf of the petitioners are without any merit, the petition deserves to be dismissed. It was emphasized that 641 slum-dwellers out of total 689 have already vacated the premises and the proper execution of the slum rehabilitation scheme is held at ransom by the petitioners, which ought not to be permitted.

16. Mr. Chirag Balsara, learned counsel appearing for respondent No.4 supported the stand taken on behalf of respondent No.3.

17. The rival submissions have to be considered in the context of the provisions of the Slum Areas Act and DCPR 2034 framed under the MRTTP Act. This is not the first occasion on which the interplay between

the provisions has come up for consideration before this Court. By amendment, Chapters I-A, I-B and I-C were added to the Slum Areas Act with the object of establishing a dedicated body in the form of SRA to ensure proper and speedy implementation of slum rehabilitation schemes. The introduction of the said Chapters by way of amendment has created a situation wherein some of the provisions of the Slum Areas Act under Chapters I-A, I-B and I-C have been substituted and applied with the intention of speeding up redevelopment of slum areas.

18. The Development Control Regulations have also addressed the said need of urgent implementation of slum rehabilitation schemes and in that context, Regulation 33(10) of the DCPR 2034 assumes significance.

19. This Court, as far back as in the year 2007, had an occasion to consider the interplay between the provisions of the Slum Areas Act added by way of amendment and Regulation 33(10) of the Development Control Regulations. In the case of **Om Sai Darshan Co-operative Housing Society and another Vs. State of Maharashtra and others** (*supra*), one of the questions framed for consideration was as to whether issuance of notification under Section 3-C(1) of the Slum Areas Act was a condition precedent for sanction of a slum redevelopment scheme governed by Regulation 33(10) of the Development Control Regulations. After analyzing the true purport of the relevant provisions, a Division Bench of this Court held as follows:-

“19. In the present case we are dealing with the scheme of slum redevelopment which is governed by Regulation 33(10). A General Scheme under Section 3B of the Slum Act can be framed either by the State Government or by SRA with the prior approval of the State Government. However, the scheme under Clause 33(10) is to be approved in individual cases by the SRA. Clause (II) of Annexure to the said Regulation provides that for the purpose of Regulation 33(10), a slum means that area which is either censused or one which is

declared and notified under the Slum Act. It provides that the slum shall also mean areas pavement stretches hereafter notified as slum rehabilitation areas. The clause provides that if any area fulfills conditions laid down in Section 4 of the Slum Act to qualify as a slum area and has been either censused or declared and notified as slum, it shall be deemed to be and treated as Slum Rehabilitation Areas. The said clause also provides that censused means those slums located on lands belonging to Government, any undertaking of Government, or to Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980, or 1985 or prior to 1st January 1995. Thus for the purpose of scheme under Regulation 33(10), the following areas are Slum Rehabilitation Areas; (a) any area which fulfills the conditions laid down in Section 4 of the Slum Act which is declared and notified as such and (b) slum rehabilitation area declared as such by the Slum Rehabilitation Authority fulfilling the conditions laid down in Section 4 of the Slum Act to qualify as slum area and/or required for implementation of any slum rehabilitation project. Regulation 33(10) contemplates that there can be redevelopment of slums including pavements. The slums are defined by Clause II. The slums mean either censused slums or slums declared and notified as such under the Slum Act. Clause II also defines the word censused which means slums located on lands belonging to Government, any undertaking of the Government or Mumbai Municipal Corporation and incorporated in records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January 1985.

20. On plain reading of the Annexure to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of land, it is not necessary to have a declaration of the particular parcel of land as a slum rehabilitation area in exercise of power under Section 3C(1) of the Slum Act. The Slum Rehabilitation Scheme can be sanctioned in respect of a slum as defined in clause of Annexure to Regulation 33(10). Under the said Annexure there can be a scheme for a viable stretch of pavement also. The learned Single Judge deciding Ramkali's case was not concerned with a scheme under D.C.Regulation No. 33(10). The proposition laid down by him will have to be read as one confined to the situation before him. Question No. 1 is therefore answered in the negative. The question No. 2 has been also answered in the foregoing paragraphs.”

20. The above-quoted portion of the judgement shows that the Division Bench of this Court emphatically held that a declaration under Section 3-C(1) of the Slum Areas Act was not necessary for sanctioning a scheme of slum rehabilitation governed by Regulation 33(10) of the Development Control Regulations.

21. In the case of **Abdul Aziz and others Vs. Apex Grievance Redressal Committee and others** (*supra*), another Division Bench of this Court, in the context of a similar challenge raised to the orders passed by the competent authority of the SRA and the AGRC, after referring to the said statutory provisions, held that a careful reading of Regulation 33(10) of the DCPR 2034 and the provisions of Chapters I-A and I-B of the Slum Areas Act shows that there is no question of a separate declaration under Sections 4(1) or 3C if there is a censused slum. It is to be noted that in the present case, there is admittedly a declaration of slum area under Section 4(1) of the Slum Areas Act. In paragraph 86 of the said judgement, reliance was placed on the aforementioned earlier judgement of this Court in the case of **Om Sai Darshan Co-operative Housing Society and another Vs. State of Maharashtra and others** (*supra*), observing that a declaration under Section 4 or 3C of the Slum Areas Act is not a pre-requisite when the slum rehabilitation scheme is being implemented under DCPR 33(10). It was held that the said issue was no more *res integra*.

22. The Supreme Court in the case of **Mansoor Ali Farida Irshad Ali and others Vs. Tahsildar-I, Special Cell and others** (*supra*) confirmed the said position of law by holding as follows:-

“16. The appellants have also raised a point that no notification has been issued under the Slum Act declaring it to be a slum area. This contention is totally misconceived because the project in the present case relates to a ‘censused slum’ and it is included in the definition of slums under Regulation 33(10) of DCR for the purpose of redevelopment. As per Regulation

33(10)(II)(i) of DCR, slums for the purpose of redevelopment are defined as follows:

“...slums shall mean those censused, or declared and notified, in the past or hereafter under the Slum Act. Slums shall also mean areas/pavement stretches hereafter notified as Slum Rehabilitation Areas.”

‘Censused Slums’ are defined under Regulation 33(10)(II)(viii) of DCR as ‘those slums located on lands belonging to Government, any undertaking of Government, or Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January, 1995’. In the present case, MHADA has submitted before us as well as before the High Court and AGRC that it is their property but it is not as MHADA layout and it has granted a No Objection Certificate to SRA for the redevelopment of the land under Regulation 33(10) of DCR because the site is a slum which had been declared as ‘censused slum’ way back in the year 1981. Reading of the above regulations also makes it clear that if a slum is a ‘censused slum’ then it is already included in the definition of slums for the purpose of redevelopment under Regulation 33(10) of DCR and no separate notification is required under the Slum Act. In other words, a censused slum is also a slum as per Regulation 33(10) DCR and a separate notification under section 4 of the Slum Act is not required. MHADA has also never declared this slum as a part of its layout. It may be a MHADA property technically but over the years it has grown as a slum and therefore, for purely practical reasons, it needed to be developed by SRA under Regulation 33(10) of DCR and not as a MHADA layout under Regulation 33(5) of DCR. In fact, as discussed earlier, a No Objection Certificate to SRA for the development of the said property has already been granted by the MHADA.

At the risk of repetition, we would like to note that clearly there is no force in the appellants’ arguments that it is a MHADA layout and had to be redeveloped under Regulation 33(5) of DCR rather than Regulation 33(10) of DCR. In our view, this redevelopment, which is being carried out under the Slum Act and Regulation 33(10) of DCR, does not suffer from any legal infirmity.”

23. In the face of the aforesaid position of law, the petitioners have taken a stand that the deeming fiction contemplated under Regulation 33(10) of the DCPR 2034 would not apply for the reason that the

substituted / modified Sections 33 and 38 of the Slum Areas Act come into picture only when there is a specific declaration under Section 3C of the said Act. Much reliance has been placed on the opening words of Section 3D of the Slum Areas Act, contending that the deeming fiction under Regulation 33(10) of DCPR 2034 cannot be read into Section 3D read with Section 3C of the Slum Areas Act.

24. In order to properly analyze the said contention, it would be necessary to consider as to in what manner, the slum rehabilitation scheme is being implemented in the present case. There is no dispute about the fact that it is the SRA that has prepared the slum rehabilitation scheme under Section 3B of the Slum Areas Act in the present case. The procedure of determining eligibility of the slum-dwellers under the said scheme was undertaken as per Chapter I-B of the Slum Areas Act. The entire exercise has been conducted under the aegis of the SRA with full application of Chapters I-A, I-B and I-C to the slum area so declared under Section 4 in the present case. As Sections 33 and 38 of the Slum Areas Act have been substituted under Section 3D, wherein the Chief Executive Officer of the SRA performs the central role, Section 12(10) of the Slum Areas Act is also substituted under Section 3D(H). It is the case of the contesting respondents that the LoI has been issued in favour of the respondent No.3 developer under the substituted Section 12(10) of the Slum Areas Act. To counter the said contention raised on behalf of the respondent No.3, the petitioners claimed that the LoI has been issued under Section 3A(3) of the Slum Areas Act, and therefore, it cannot be claimed that if the substituted Section 12(10) applies, substituted Sections 33 and 38 must apply in the facts of the present case.

25. The aforesaid submissions have been made on behalf of the petitioners to wriggle out of the effect of Section 3D of the Slum Areas Act in order to claim that since substituted Sections 33 and 38 of the

Slum Areas Act do not apply, the Tahsildar, as the delegate of the CEO of SRA, could not have entertained the proceedings initiated for their eviction and it was only the competent authority, as per original Sections 33 and 38 of the Slum Areas Act, which could have exercised jurisdiction. The deeming fiction is refuted in the face of the language of Section 3D of the Slum Areas Act. This Court is of the opinion that, considering the facts of the present case, wherein the entire slum rehabilitation scheme and actions thereunder have been taken by the SRA under Chapters I-A, I-B and I-C of the Slum Areas Act read with Regulation 33(10) of DCPR 2034 and the specific statement made on behalf of the petitioners in paragraph 17 that they are not opposed to the slum rehabilitation scheme, they cannot be permitted to turn around and have the liberty to pick and choose provisions of the Slum Areas Act to suit their convenience. As noted hereinabove, the very eligibility of the slum-dwellers has been determined under Chapter I-B of the Slum Areas Act. The petitioners have conceded to taking benefit of the slum rehabilitation scheme being implemented by the SRA, and therefore, it cannot lie in their mouth to contend that CEO, SRA or its delegate would have no role to play while considering the question of their eviction for speedy implementation of the slum rehabilitation scheme.

26. The above-referred judgements of the Division Benches of this Court and the judgement of the Supreme Court unequivocally hold that, declarations under Sections 3-C and 4 of the Slum Areas Act are not a *sine qua non* for implementation of slum rehabilitation scheme and activation of authorities thereunder. It is in this context that Regulation 33(10) of the DCPR 2034 specifically lays down the road map for ensuring speedy implementation of such slum rehabilitation scheme so that the whole object of introducing Chapters I-A, I-B and I-C by amendment in the Slum Areas Act is duly achieved. Once the slum rehabilitation scheme of the SRA kicks in, Regulation 33(10) of the

DCPR 2034 cannot be kept out of the procedure and machinery of implementation. Hence, it cannot be said that the deeming fiction contemplated under Regulation 33(10) of the DCPR 2034 would not apply in the facts of the present case. Regulation 33(10)II of the DCPR 2034 is significant and the relevant clauses thereof read as follows:-

“33(10) Redevelopment for Rehabilitation of Slum Dwellers:

I ...

II Definition of Slum, Pavement and Structure of hut:

(i) Slums shall mean those censused, or declared and notified, in the past or hereafter under the Slum Act. Slum shall also mean area / pavement stretches hereafter notified or deemed to be and treated as Slum Rehabilitation Areas.

(ii) If any area fulfills the condition laid down in section 4 of the Slum Act, to qualify as slum area and has been censused or declared and notified shall be deemed to be and treated as Slum Rehabilitation Areas.

(iii) Slum Rehabilitation areas shall also mean any area declared as such by the SRA though preferably fulfilling conditions laid down in section 4 of the Slum Act, to qualify as slum area and / or required for implementation of any slum rehabilitation project. Any area where a project under Slum Rehabilitation Scheme (SRS) has been approved by CEO, SRA shall be a deemed slum rehabilitation area.

(iv) Any area required or proposed for the purpose of construction of temporary or permanent transit camps and so approved by the SRA shall also be deemed to be and treated as Slum Rehabilitation Areas, and projects approved in such areas by the SRA shall be deemed to be Slum Rehabilitation Projects.”

27. The above-quoted portion shows that the moment the CEO of SRA approves a slum rehabilitation scheme in an area, it is deemed to be a slum rehabilitation area. In the present case, it is not disputed that the CEO, SRA has approved the slum rehabilitation scheme under which the petitioners are seeking to take benefit. There is substance in the contention raised on behalf of the contesting respondents that the petitioners cannot be permitted to blow hot and cold at the same time

and raise a plea with regard to jurisdiction of the delegate of the CEO, SRA to entertain the eviction proceeding initiated against them. The contention raised on behalf of the petitioners is not supported by the provisions of the Slum Areas Act read with DCPR 2034 and the position of law laid down by this Court and now the Supreme Court about declaration under Section 3C or even under Section 4 of the Slum Areas Act, not being a mandatory condition for execution of the slum rehabilitation schemes.

28. It is also relevant to note that the SRA being the authority, implementing the slum rehabilitation scheme that covers the petitioners also, has wide ranging powers under Section 3A(3) of the Slum Areas Act. The same reads as follows:-

“3A. Slum Rehabilitation Authority for implementing Slum Rehabilitation Scheme

- (1) ...
- (2) ...
- (3) The powers, duties and functions of the Slum Rehabilitation Authority shall be,-
 - (a) to survey and review existing position regarding slum areas;
 - (b) to formulate schemes for rehabilitation of slum areas;
 - (c) to get the Slum Rehabilitation Scheme implemented;
 - (d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slums.”

29. Such wide-ranging powers have been reserved for the slum rehabilitation authority as the whole purpose of setting up the authority and introducing Chapters I-A, I-B and I-C in the Slum Areas Act was to speed up the implementation of such slum rehabilitation schemes, which were found to be lagging under the unamended provisions for implementation of such schemes. Section 3A(3)(d) specifies that the

SRA has power to do all such other acts and things as may be necessary for achieving the object of rehabilitation of slums. While exercising power under the said provision, the SRA has been issuing notifications from time to time, to achieve the said object of speedy rehabilitation of slums. In that context, notification dated 23.05.2022 of SRA assumes significance. The relevant portion of the said notification reads as follows:-

“ There are several slums in Mumbai City and Suburban Area existing on private lands as well as on lands owned by Public Authorities. The Competent Authority has declared several such slums as Slum Area u/s. 4 of the Slum Act excluding the lands falling u/s 3Z-6 of Slum Act. Moreover, the land owning Authority and Competent Authority have censused the slum structures and protected structures have been issued Photo passes.

By virtue of amendment dated 26.04.2018 to Section 3C of the Slum Act all lands whether or not previously declared as slum area needs to be declared as Slum Rehabilitation Area u/s 3C of the Slum Act.

Since, after due process of law, the land occupied by the slum dwellers are declared as ‘Slum’ u/s 4 of the Slum Act by the Competent Authority or as censused Slum, so for speedy implementation of Slum Rehabilitation Schemes and to save the time this Authority has taken a policy decision to declare all public as well as private lands on which the slum was existing as on 01.01.2011 or prior thereto and which has been declared as Slum u/s 4 of the Slum Act or censused slum as ‘Slum Rehabilitation Area’. Hereinafter all such slum occupied lands on 01.01.2011 or prior thereto excluding the lands falling u/s 3Z-6 of the Slum Act shall be deemed to be “Slum Rehabilitation Area’ u/s 3C of the Slum Act for the purpose of implementation of Slum Rehabilitation Schemes.”

30. The above-quoted portion of the notification shows the concern of SRA for speedy implementation of slum rehabilitation schemes and for saving time. The notification specifically states that all slum occupied lands, that have been declared as slum under Section 4 of the Slum Areas Act or as censused slums, shall be deemed to be slum rehabilitation area under Section 3-C of the Slum Act for the purpose of

implementation of slum rehabilitation schemes. This further demonstrates why the contention raised on behalf of the petitioners cannot be accepted. The SRA, being the competent authority, has issued such a notification with the specific intention of speedy implementation of the slum rehabilitation schemes and accordingly, such a policy decision has been taken under the said notification dated 23.05.2022, which is nothing but exercise of power under Section 3A(3)(d) of the Slum Areas Act. Hence, the contention raised on behalf of the petitioners that in the facts of the present case, the delegate of CEO, SRA could not have entertained the proceeding for eviction, is found to be without any substance. Accepting the said submission would lead to an incongruous situation as the slum rehabilitation scheme would stand implemented by the SRA, but further steps in the matter, including eviction of the petitioners would have to be undertaken before the 'competent authority', being the person, appointed under Section 3 of the Slum Areas Act without any reference to the provisions of Chapter I-A thereof. Such an incongruity cannot be accepted, and therefore, the contention raised on behalf of the petitioners is rejected.

31. In view of the above, the contention of the petitioners that this is a situation where a deeming fiction is creating another fiction, cannot be accepted.

32. Even otherwise, the petitioners have not been able to demonstrate as to what prejudice they have suffered, as they were granted full opportunity before the Tahsildar as delegate of CEO, SRA and the AGRC to raise their grievances. Reliance placed on behalf of the contesting respondents on judgement of the Supreme Court in the case of **Balwantrao Chimanlal Trivedi Vs. M. N. Nagrashna** (*supra*) is justified, for the reason that the Supreme Court, in the said judgement, has considered the aspect of there being no failure of justice. It has been

held that when the Court finds that there is no failure of justice, it need not interfere even when a question of jurisdiction of the original court or tribunal is raised, in a case where the matter is considered by a higher tribunal, which undoubtedly has jurisdiction and the challenge before the Court is from the decision of the higher tribunal. In the present case, there is no dispute about the fact that ultimately, the AGRC is the appellate authority, which has indeed considered and decided the appeals of the petitioners on merits, and hence, the said judgement comes in the way of the petitioners.

33. As regards the contention that the petitioners stood deprived of one tier of appeal, which would have been available to them under Section 35(1) and (1A)(a) of the Slum Areas Act, this Court finds that the aforesaid aspect would be relevant for determining the question of eligibility and it would not be concerned with the action under Section 33 of the Slum Areas Act. In any case, as noted hereinabove, the eligibility of the slum-dwellers was determined under Chapter I-B introduced by way of amendment.

34. On the question of the Tahsildar not having power to entertain the proceeding under Section 33 of the Slum Areas Act, the impugned order of the Tahsildar itself refers to the notifications and orders under which the CEO, SRA has delegated the powers to the Tahsildar. Section 3S of the Slum Areas Act specifies that the SRA or the CEO, SRA can delegate power to any officer of the SRA and further permit re-delegation to a subordinate by a general or special order. There is no dispute about the fact that such powers were exercised and the Tahsildar, who passed the impugned order in the present case, was delegated powers as per Section 3S of the Slum Areas Act. There is also no substance in the contention raised on behalf of the petitioners that delegation, if at all, could have been only to an officer of the rank of

Deputy Collector and not Tahsildar. This Court finds that when the entire slum rehabilitation scheme in the facts of the present case is being implemented by the SRA under Chapters I-A, I-B and I-C of the Slum Areas Act, it has sufficient powers of delegation under Section 3S thereof, and there is no question of delegation of authority to the Tahsildar being questioned by the petitioners in such a manner. Once Chapters I-A, I-B and I-C, added by way of amendment in the Slum Areas Act, on facts, are found to apply in full force to the petitioners, including substituted provisions as contemplated under Section 3D thereof, the petitioners cannot raise such objections with regard to the delegation of authority to the Tahsildar and on that basis, question his authority to entertain the eviction proceedings under Section 33 of the Slum Areas Act.

35. It is also an undisputed fact that in the present case, 645 slum-dwellers have been declared eligible of whom 641 have already vacated the premises. Some persons like the petitioners herein are holding on to possession, which is creating unnecessary hurdles in speedy implementation of the slum rehabilitation scheme. The petitioners cannot be permitted to hold such a vast majority of slum-dwellers to ransom by raising such pleas of hyper-technical nature while challenging the impugned orders. This Court finds, as a matter of fact, that the petitioners have not suffered any prejudice while the impugned orders were passed by the Tahsildar and the AGRC.

36. It is a settled position of law that while considering such a challenge to orders passed under Sections 33 and 38 of the Slum Areas Act, the scope of interference is extremely narrow. This has been laid down by this Court in the case of *Andrade Motors Vs. Additional Collector (Eng./Rem) and Competent Authority and others*, **2009 SCC OnLine Bom.358** and reiterated in a number of judgements and orders

passed thereafter. In fact, being aware about the narrow scope in such matters, the contentions raised on behalf of the petitioners were limited to the aforesaid aspect of jurisdiction of the Tahsildar to entertain the proceedings under Sections 33 and 38 of the Slum Areas Act.

37. In the light of the above discussion and having held that the petitioners have failed to make out a case in their favour on the only ground argued on their behalf, this Court finds no reason to show any indulgence to the petitioners while exercising writ jurisdiction in the present case.

38. In view of the above, the petition is dismissed.

39. Pending applications, if any, also stand disposed of.

(MANISH PITALE, J.)

Minal Parab