
(2011) 08 BOM CK 0138

In the Bombay High Court

Case No : Appeal (Lodging) No. 286 of 2011 in Writ Petition No. 2371 of 2009

Indira SRA Co-Operative Housing Society

APPELLANT

Vs

Shivkripa Builders and Developers and Others

RESPONDENT

Date of Decision : 22-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 13(2), 3

Citation : (2012) 1 BomCR 95 : (2011) 113 BOMLR 3292 : (2012) 1 MhLj 107

Hon'ble Judges : Ranjit More, J;Ranjana Desai, J

Bench : Division Bench

Advocate : S. U. Kamdar, Zuben Behramkamdin. and Bharucha and Partners in app L No. 286 of 2011, N. H. Serwai, N. Variava., Prakash and Co. in app L No. 286 of 2011 and G.D. Utangale, for Respondent Nos. 3 and 4 in app L No. 300 of 2011, for the appearing parties; Anand Grover, Firdaus Moosa ., Prakash Mahadik, in both appeals, Samir Vaidya, in App (L) No. 286 of 2011, D. A. Nalawade, for Respondent Nos. 3 and 4 in App (L) No. 286 of 2011, Ravi Kadam, General, B. V. Phadnis Milind More, AGP for State and V. S. Gharpure, for Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit More, J.

1 Respondent No. 1-Shivkripa Builders & Developers, a partnership firm in both the above appeals is the Petitioner in Writ Petition No. 2371 of 2009. The Appellants in Appeal Nos. 286 of 2011 and 300 of 2011 are Respondent No. 4 and Respondent No. 8 respectively in the aforesaid writ petition. The Appellants in the both the appeals are challenging a common order dated 15th April, 2011 passed by a learned Single Judge of this Court in Writ Petition No. 2371 of 2009 whereby the writ petition was allowed in terms of prayer Clause (a), thereby setting aside the order impugned in the writ petition. For the sake of brevity and convenience hereinafter the parties are referred to by their respective

nomenclature in Writ Petition No. 2371 of 2009.

2 The brief facts giving rise to the present appeals are as follows:

Plot Nos. 88 to 104 at Worli Scheme 58, admeasuring approximately about 42,955.22 sq. mtrs. is owned by MCGM and is occupied by slum dwellers. The slum dwellers since they had no basic amenities, formed a Co-operative Housing Society i.e. Respondent No. 4 and decided to redevelop the slum under DCR No. 33(10). Respondent No. 4-Society had agreed to appoint Petitioner as a Developer for implementation of the Slum Scheme and accordingly an agreement was entered into on 4th January, 1994. Consequently, joint proposal was submitted to the Slum Rehabilitation Authority (for short "SRA") for approval of the Slum Scheme. On 18th November, 1997, the SRA principally approved Respondent No. 4's scheme and letter of intent was issued on 31st December, 1999 in favour of Respondent No. 4 and the Petitioner.

Respondent No. 7 objected to the sanctioning of the Slum Scheme on the ground that they are the owners of Plots bearing Nos. 91 to 95 and 100 to 104 in the year 2000. Thereafter, the SRA called upon the Petitioner to submit a revised plan for about 30,000 sq. mtrs. area after excluding disputed area admeasuring approximately about 12,000 sq. mtrs of Respondent No. 7. A Division Bench of this Court by an order dated 21st November, 2000 passed in Writ Petition No. 6277 of 2000 restrained the Petitioner from carrying out any development of Plot Nos. 91 to 95 and 100 to 104 which were claimed by Respondent No. 7.

The Petitioner thereafter entered into second Development Agreement with Respondent No. 4 on 31st October, 2001 and thereby agreed to complete the project within reasonable time of five years on the receipt of commencement certificate of rehab proposed building or buildings and all the present occupants vacating the suit property and handing over vacant possession to the Developer after obtaining approval of regular building plan and I.O.A. from the SRA. It is the specific case of Respondent No. 4 that the Petitioner, despite the above agreement, neither started construction activities nor took any steps to implement the Slum Scheme or to submit the revised plan to the SRA on the "undisputed area". Respondent No. 4 in view of the complaints, passed resolution on 20th March, 2005 and thereby removed the Petitioner as the Developer. Respondent No. 4 in another Annual General Body Meeting dated 13th August, 2007 appointed Respondent No. 8 as Developer for implementation of the Slum Scheme and a fresh Development Agreement was also entered into on 14th September, 2007. Respondent No. 4 also made an application to the SRA for permission to appoint new developer. On 14th October, 2009, the SRA passed an order thereby the Petitioner was removed as the Developer and appointment of Respondent No. 8

The Petitioner thereafter filed above Writ Petition No. 2371 of 2009 in this Court, and as stated above, this Court by the impugned order, set-aside the order of the SRA removing Petitioner and appointing Respondent No. 8 as a Developer. This

order as stated above is challenged by Respondent No. 4 and Respondent No. 8 by filing separate appeals.

3. Mr. Kamdar, learned senior counsel appearing on behalf of Respondent No. 4 at the outset took strong objection to the exercise of the jurisdiction by the learned Single Judge under Article 226 of the Constitution of India despite availability of alternative efficacious remedy to the Petitioner. He submitted that the order impugned in the above petition was passed by Respondent No. 2-SRA whereby the Petitioner's removal and Respondent No. 8's appointment as a Developer to redevelop the slum was approved. Mr. Kamdar submitted that in view of the decision of Full Bench of this Court in Tulsiwadi Navnirman Coop. Housing Society Ltd. and Another Vs. State of Maharashtra and Others, , the Petitioners had alternative efficacious remedy to approach the High Power Committee and the Petitioners could not have filed the writ petition directly challenging Respondent No. 2-SRA's order, nor the learned Single Judge could have entertained the Petitioners' challenge in exercise of jurisdiction under Article 226 of the Constitution of India. In the above circumstances, we called upon learned Counsel for the respective parties to advance their arguments on this limited question of maintainability of writ petition under Article 226 of the Constitution of India before learned Single Judge, and we by this order, propose to decide the issue of maintainability of the writ petition under Article 226 of the Constitution of India before the learned Single Judge.

4. Mr. Grover, learned senior counsel firstly submitted that Respondent Nos. 4 & 8 are precluded from raising the issue of maintainability of the writ petition at appellate stage, as these Respondents had raised the said objection in their affidavit in reply filed in the writ petition, however, same was not advanced before the learned Single Judge, and therefore, they are deemed to have given up the said issue before the learned Single Judge. Secondly, Mr. Grover, submitted that a proper reading of the judgment of the Full Bench in Tulsiwadi's case (supra) will make it clear that the same does not contemplate an appeal before the High Power Committee against an order passed by SRA while exercising quasi judicial power u/s 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (hereinafter referred to as "Slum Act" for short), and therefore, the question of referring the dispute before the High Power Committee in pursuance of the judgment of the Full Bench in Tulsiwadi's case (supra) does not arise. Lastly, it was submitted by Mr. Grover that the judgment of the Full Bench in Tulsiwadi's case (supra) is impliedly overruled by the Apex Court in the case of The Secretary Sh.A.P.D. Jain Pathshala and Ors. v. Shivaji Bhagwat More and Ors. delivered on 4th July, 2011 in Civil Appeal No. 4988 of 2011. Relying upon this judgment, the counsel submitted that the High Court under Article 226 of the Constitution of India does not have powers to direct the creation of a quasi judicial forum nor can the State Government exercise any executive function for the purpose of creating quasi judicial body. Mr. Grover also relied upon judgments of Apex Court in C.N. Rudramurthy Vs. K. Barkathulla Khan and Others, , S. Shanmugavel Nadar Vs.

State of Tamil Nadu and Another, , Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, , Amanullah Vs. State of U.P., , Kedar Shashikant Deshpande Vs. Bhore Municipal Council and Others etc. etc., , North Delhi Power Limited v. Government of National Capital Territory of Delhi and Ors. reported in (2010) 6 SCC 278 and The Secretary Sh.A.P.D. Jain Pathshala's case (supra).

5. Mr. Kamdar, learned senior counsel in rejoinder to Mr. Grover's reply invited our attention to paragraph 84 of the impugned order and submitted that the issue of alternative efficacious remedy was raised before the learned Single Judge as is evident from the contents of that paragraph. He submitted that, otherwise also, the issue of maintainability is a question of law. Mr. Kamdar submitted that a proper reading of the judgment of the Full Bench in Tulsiwadi's case (supra) makes it clear that the dispute between the Petitioner and Respondent No. 4 could have been resolved by the High Power Committee. Regarding Mr. Grover's argument that the ratio in Tulsiwadi's case (supra) is impliedly overruled by the Apex Court in The Secretary Sh.A.P.D. Jain Pathshala's case (supra), Mr. Kamdar submitted that the decision in Tulsiwadi's case (supra) as well as subsequent decision of the Full Bench in the Writ Petition No. 3068 of 2009 challenging the Government Resolution of the State Government appointing the High Power Committee was challenged in the Supreme Court by way of special leave petitions. Both the special leave petitions have been dismissed by the Apex Court thereby confirming the decision of the Full Bench in Tulsiwadi's case. He submitted that even assuming that the ratio of Tulsiwadi's judgment is overruled in The Secretary Sh.A.P.D. Jain Pathshala's case (supra), the conclusion arrived at in Tulsiwadi's case (supra) pertaining to constitution of the High Power Committee cannot be set-aside in collateral proceedings. That conclusion still binds the Petitioner as well as Respondents, and therefore, it is not only open to the Petitioner to approach the High Power Committee, but, they are obliged to exhaust that remedy. Mr. Kamdar relied upon the decision of the Full Bench in Tulsiwadi's case (supra), decision of the Supreme Court in the case of A.R. Antulay Vs. R.S. Nayak and Another, , judgment of Calcutta High Court in Lakshmi Kanta Kahar v. State of West Bengal reported in 2001 CalLT 1 324 and decision of Apex Court in Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, .

6. Mr. Serwai, learned Counsel for Respondent No. 8 supports the arguments of Mr. Kamdar. He submitted that the Petitioner had adequate alternative and efficacious remedy to redress its grievance, in the form of High Power Committee, and therefore, it could not have directly approached this Court by way of petition under Article 226 of the Constitution of India. He submitted that the judgment of the Apex Court in The Secretary Sh.A.P.D. Jain Pathshala's case (supra) stands on different footing. He submitted that in view of Tulsiwadi's case (supra), the parties aggrieved by the decision of the SRA will have to approach firstly to the High Power Committee and, in case, the person is aggrieved by the decision of the High Power Committee, remedy u/s 226 of the Constitution of

India is always there. Mr. Serwai submitted that the jurisdiction under Article 226 of the Constitution of India is not to be exercised lightly. He submitted that the judgment of the Apex Court in *The Secretary Sh.A.P.D. Jain Pathshala's case* (supra) cannot cover a case like *Tulsiwadi* (supra). He submitted that in *The Secretary Sh.A.P.D. Jain Pathshala's case* (supra), the validity of Grievance Committee was directly in an issue before the Apex Court. Counsel submits that in this case, the High Court while constituting the Grievance Committee barred the jurisdiction of the Civil Court. However, in *Tulsiwadi's case* (supra), despite constitution of the High Power Committee, the jurisdiction of the High Court is kept intact. Lastly, he submitted that this Court, in view of the decision of the Full Bench in *Tulsiwadi's case* (supra), is bound to refer the matter to the High Power Committee.

7. Since the issue raised by Mr. Grover is likely to affect large number of litigants and the validity of the Government Resolution constituting the High Power Committee was also challenged, we requested learned Advocate-General to make submission regarding the stand of the State Government. Learned Advocate General took us through the Full Bench judgment in *Tulsiwadi's case* (supra). He invited our attention to the provisions of Section 3 (k) of the Slum Act under which the State has powers to give directions to the SRA. He submitted that noticing the increasing spate of litigation in the High Court arising out of development of slum areas, the High Court considered the Government's power to give direction to SRA u/s 3(k) of the Slum Act, and thereafter, a mechanism was evolved thereby directing the parties to approach the High Power Committee under Article 226 of the Constitution of India. He submitted that the remedy under Article 226 of the Constitution of India is not taken away by *Tulsiwadi's* judgment. He further submitted that merely by constituting the High Power Committee, the High Court and Government tried to reduce the pressure on the High Court. Learned Advocate-General also pointed out that a conjoint reading of the *Tulsiwadi* and *D.R. Patil's* judgments makes it abundantly clear that the State Government on its own has constituted the High Power Committee. The source of the power can be traced to the provisions of Section 3(k) of the Slum Act, and therefore, the issue whether the Court or the State has ventured to legislate does not arise. He submitted that, therefore, the judgment of the Apex Court in *The Secretary Sh.A.P.D. Jain Pathshala's case* (supra) would not apply to the facts and circumstances of the present case.

8. Having heard learned senior counsel for the respective parties, and having gone through the compilation of the writ petition along with ratio of the Apex Court decisions cited at bar, we first propose to discuss the last submission of Mr. Grover viz. that the decision of the Full Bench in *Tulsiwadi's case* (supra) is overruled by the Apex Court in *The Secretary Sh.A.P.D. Jain Pathshala's case* (supra). The Full Bench in *Tulsiwadi's case* (supra) considered the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (hereinafter referred to as "Slum Act" for short), Maharashtra Regional and Town Planning Act, 1960 (herein after referred to as "MRTP Act" for short) and the

Development Control Regulations of Brihanmumbai (for short "D.C. Rules 1991"). The Full Bench noted down the incentives offered by the above enactments to the slum pockets and noticed the increasing spate of litigation between the slum dwellers/encroachers and the local authorities and appropriate agencies. The Full Bench found that the litigations are consuming valuable time of this Court, and therefore, felt it necessary to lay down certain parameters. The Full Bench examined the scheme of the above enactments and especially the Slum Act. In paragraph 28, the Full Bench quoted the provision of Section 3(k) of the Slum Act which speaks about powers of the State Government to issue directions to the Slum Rehabilitation Authority for carrying out the purpose of the Slum Act. In paragraph 106 of the said judgment, the Full Bench referred to the State Government's power to issue directions under the Slum Act. The Full Bench after examining the scheme of the Slum Act, rules framed thereunder and D. C. Control Regulations found that the aggrieved party including the slum dwellers can approach the SRA and seek redressal of any of the grievances. It was also found that if the SRA refuses to intervene, then, the State Government can be approached. The Full Bench further observed that if the State Government refuses to take cognizance of the grievances and fails to exercise its powers in that behalf, then recourse to a writ petition is permissible. The Full Bench was conscious of the fact that they have no power to direct creation of quasi judicial forum. In paragraph 107, the Full Bench observed that it is for the Legislature to intervene and provide a complete corrective mechanism by setting up a Supervisory and Monitoring Authority and such an authority can be set up by the State by making appropriate changes or amendments in the relevant statutes. In paragraph 108, the Full Bench observed that appropriate exercise of power or authority vested in State Government would help reduction in litigation and expeditious resolution of dispute or problems. In paragraph 111, the Full Bench expressly made it clear that they have not expressly or impliedly restricted the scope of applicability of Article 226 of the Constitution and it was further observed that they have only indicated certain cases where inter or intra-departmental mechanism may be invoked in consonance with the scheme of the Act before approaching this Court. The State Government thereafter by passing Government Resolution dated 15th November, 2007 constituted the High Power Committee. The constitution of this High Power Committee was challenged in Writ Petition No. 3068 of 2009 in the case of D.R. Patil v. State of Maharashtra and Ors. This writ petition was dismissed by the Full Bench. The observation of the Full Bench in paragraph 19 of the D.R. Patil's case (supra) makes it abundantly clear that the High Power Committee is constituted by the State Government not only on the basis of the observations of the Full Bench in Tulsiwadi's case (supra) but on account of the statement of the Advocate General before the Full Bench in Tulsiwadi's case(supra). A proper reading of the Full Bench decision in Tulsiwadi's case (supra) makes it clear that the State Government has constituted the Committee on its own but in due deference to the statement of learned Advocate General and the observations of the Full Bench. We find that the argument of Mr. Grover that the High Power Committee

was directed to be constituted by the High Court is not correct.

9. Now the question that deserves consideration is whether the State Government by executive fiat could have constituted the High Power Committee. Mr. Grover, in this regard, heavily relied upon the decision of the Apex Court in *The Secretary Sh.A.P.D. Jain Pathshala's case (supra)*. The issue before the Apex Court in that case was about the validity of the constitution of the Grievance Committee to decide the grievance relating to selection, appointment, re-appointment or mid year cancellation of appointment of Shikshan Sevaks. Initially, the Grievance Redressal Committee was merely a mechanism to hear grievances of Shikshan Sevaks and give its recommendation to the Education Department, so that the department could take appropriate action. However, the High Court by subsequent directions modified the scheme and made significant changes in the constitution and functioning of the Committee. Under this modification, the Committee was required to be headed by retired District Judge. The High Court also directed that an opportunity should be given to the parties, and lastly it directed that the Committee should be only adjudicatory authority and excluded the jurisdiction of the Civil Courts to entertain any suit or application in regard to the disputes relating to selection, appointment, re-appointment or cancellation of appointment of Shikshan Sevaks. The question that was raised before the Apex Court was whether the High Court can direct the State Government to create quasi judicial forum and whether creation of such a forum by an executive order, by the State Government, in pursuance of such a direction is valid? The issue regarding exclusion of the jurisdiction of civil courts can be directed by the High Court was also sub-judice before the Apex Court. The Apex Court on the basis of the uncontroverted facts concluded that the High Court under Article 226 of the Constitution of India does not have power to create quasi judicial forum nor does the State Government exercises any executive function for the purpose of creating quasi judicial body. In the present case, we have already concluded that the constitution of the High Power Committee is not a result of the direction of the High Court and the said High Power Committee was constituted by the State Government, on its own, taking into consideration the observations of the High Court in *Tulsiwadi's case (supra)*. The submission of Mr. Grover that the High Power Committee could not have been constituted by the State by executive fiat is also without any merit. The Full Bench in *Tulsiwadi's case (supra)* considered the provisions of Section 3 (K) of the Slum Act which deals with the power of the State Government to issue directions to the SRA. We have also considered the provisions of the said Section. Perusal of the said Section, makes it clear that the State Government is not only authorized to issue directions to the SRA but the State Government is also authorised to suspend execution of any resolution or any order of the Authority which in its opinion, is in contravention of, or in excess of, the powers conferred by the Slum Act or any other Act for the time being in force, or is likely to lead to abuse or misuse of, or to cause waste of the fund of the authority. The Government Resolution dated 15th November, 2007 under which the High Power

Committee is constituted by the State Government makes it clear that the High Power Committee consists of the Secretary of the State and other high officials of the Government. In short, the powers of the State Government u/s 3 (K) of the Slum Act are being exercised by the High Power Committee. The source of the power of the High Power Committee can be traced to the provisions of Section 3(K) of the Slum Act. The Full Bench in Tulsiwadi's case (supra) has not taken away the remedy of the parties to approach the High Court under Article 226 of the Constitution of India. It is only expected that before approaching the High Court under Article 226 of the Constitution of India, the parties should try to resolve their dispute by intervention of the High Power Committee. The object and intention of the High Court as well as the State Government in constituting the High Power Committee seems to be very laudable viz. to minimize the litigation in the High Court and to provide speedy remedy to the parties. In our opinion, the judgment of the Apex Court in The Secretary Sh.A.P.D. Jain Pathshala's case (supra) stands on different footing. The said judgment does cover case like Tulsiwadi (supra).

10. Even assuming for the sake of argument that the ratio of the decision in Tulsiwadi's case (supra) is impliedly overruled by the Apex Court in The Secretary Sh.A.P.D. Jain Pathshala's case (supra), the question remains whether the constitution of the High Power Committee can said to be illegal or be ignored. It is not disputed by any of learned senior counsel that the decisions in Tulsiwadi's case (supra) as well as D.R. Patil's case (supra) were challenged by filing separate SL Ps, and both the SL Ps were dismissed by the Apex Court. We find substance in the submission of Mr. Grover that the dismissal of the SL Ps challenging the decisions in Tulsiwadi's case and D.R. Patil's case (supra) does not amount to confirmation of the said decisions by the Apex Court. The Apex Court's decision in S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another, in fact supports Mr. Grover's contention in this regard.

11. Learned Single Judge of the Calcutta High Court in Lakshmi Kanta Kahar's case (supra) had an occasion to consider the distinction between overruling the judgment and order, and setting aside the judgment and order. The relevant observations are contained in paragraph Nos. 19 to 26 which reads as under:

19. From the aforesaid, it must be held that this Court had the jurisdiction to entertain and try the writ petition. Even if it be held that the order of the learned Single Judge was erroneous in fact or in law, the order is valid and binding. The fact that a judgment is erroneous does not mean that the order passed therein is not binding. If that is so, it will be an invitation to the litigants to disobey orders of Court on the ground that the same is erroneous in law and as such not binding.

20. It has been contended that in view of the judgment of the Special Bench reported in 1988 Vol.II CLJ Page 1 the judgment of the learned Single Judge stands overruled.

21. However, one must remember the distinction between overruling a judgment

and setting aside a judgment and order. A judgment and order is set aside only in appeal or in a review or revision, as the case may be. In fact a judgment and order can be set aside/modified in the manner following and no other: (a) Court passing the order recalls it on sufficient cause being shown or in exercise of its inherent power; (if it applicable in the facts of the case) (b) The Court passing the order recalls/modifies it upon review application being filed, (c) The order is set aside on appeal; (d) In special and rare cases, the order can be set aside on the ground of fraud in an independent proceeding filed specifically for the purpose of challenging the order e.g. an ex-parte decree can be challenged by filing a separate suit on the ground that the decree had been obtained by fraudulent suppression of summons.

22) If a judgment and order is set aside by adopting any of the modes mentioned above, only then it ceases to exist in the eye of law.

23) However, this is not the same as overruling a judgment. A judgment is overruled when a Superior Court disagreed with the legal reasoning contained in a particular judgment. A judgment may be overruled specifically or impliedly but an order of this Court cannot be set aside impliedly in another proceeding.

24) In this case the judgment, which is disapproved by the Superior Court ceases to be "good law" can no longer be cited as a binding precedent. It however, does not mean that the order passed ceases to be valid. It continues to bind the parties and otherwise remains valid since the overruling of the judgment does not have the effect of setting aside the order. In the instant case the order passed by the learned single Judge has not and could not have been set aside and, therefore, remains valid. No doubt the special Bench has disapproved of the reasoning on the basis of which the order had been passed but the order stands. The order was not impugned in the proceeding before the Special Bench as mentioned before.

25. It cannot be contended that just because a judgment is erroneous the order is valid or of no effect. In this connection one can profitably repeat what Sabyasachi Mukharji, J. (as His Lordship then was) held in AIR 1988 SC 1531 at 1577 that the "authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to, every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong." (emphasis added)

26. If the law had been otherwise it will lead to judicial anarchy and chaos. Orders passed by High Courts all over India can be said to become of no effect and sought to be ignored on the ground that the Supreme Court has delivered a recent judgment which is inconsistent with thousand of judgments and orders passed by various High Courts all over India.

Perusal of the above observations makes it clear that the judgment and order can be set-aside/modified only in appeal or in a review or revision, or Court passing the order recalls it on sufficient cause being shown or in exercise of its

inherent power, and or in special and rare cases, the order can be set aside on the ground of fraud in an independent proceeding filed specifically for the purpose of challenging the order. The observations also make it clear that overruling of the judgment does not have the effect of setting aside the order. We respectfully agree with the ratio of this decision of the learned Single Judge of Calcutta High Court. If the argument of Mr. Grover is accepted to hold that the constitution of the High Power Committee is null and void, in that event, all the proceedings so far conducted by the High Power Committee would become null and void, and without jurisdiction because the validity of the High Power Committee itself would be in question.

12. The observations of the Apex Court made in *Bharat Sanchar Nigam Ltd.*'s case (supra) in this regard are important. The Apex Court in paragraph 22 has held that the decision can be set-aside in the same lis on a prayer for review or an application for recall. It was observed that overruling of a decision takes place in a subsequent lis where the precedential value of the decision is called in question. The Apex Court further observed that it was open to a court of superior jurisdiction or strength before which a decision of a Bench of lower strength is cited as an authority, to overrule it. The Apex Court also observed that this overruling would not operate to upset the binding nature of the decision on the parties to an earlier lis.

13. If the decision of the learned Single Judge of the Calcutta High Court in *Lakshmi Kanta Kahar*'s case (supra) and the decision of the Apex Court in *Bharat Sanchar Nigam Ltd.*'s case (supra) are considered in proper perspective, then, we find merit in the submission of Mr. Kamdar learned senior counsel appearing for the Petitioner that the constitution of the High Power Committee cannot said to be void ab-initio. It is a settled principle that the Larger Bench of the High Court or the Apex Court can overrule the ratio of a decision in collateral proceedings, however, that would not amount to setting aside the conclusion of that decision. The Apex Court has dismissed the SL Ps filed challenging the decisions in *Tulsiwadi*'s case (supra) as well as *Dr. R. Patil*'s case (supra) . Though it cannot be said that the Apex Court confirmed the decision of the Full Bench in *Tulsiwadi*'s case (supra), the fact remains that the decisions in *Tulsiwadi*'s case (supra) and *D. R. Patil*'s case (supra) have achieved finality. Thus, the conclusion of decisions in *Tulsiwadi*'s case (supra) and *D. R. Patil*'s case (supra) cannot be disturbed and set-aside in any other case. The Larger Bench of the High Court can overrule the ratio of the decision in collateral proceedings, however, that would not amount to setting aside the conclusion of that decision. Considering from this angle, we are of the view that the constitution of the High Power Committee cannot said to be null and void ab-initio. Even assuming that the Apex Court impliedly overruled the decision of the Full Bench in *Tulsiwadi*'s case, in view of the decision in *The Secretary Sh.A.P.D. Jain Pathshala*'s case (supra) , the constitution of the High Power Committee under the Government Resolution cannot said to be null and void.

14. This takes us to consider Mr. Grover's first objection that the Appellants are precluded from raising the issue of maintainability of the writ petition, since despite opportunity they have not raised the said objection before the learned Single Judge. This objection is without any merit. Paragraph 84 of the impugned judgment is titled as "WRIT PETITION MAINTAINABLE" wherein the learned Single Judge has made a reference to the decision of the Full Bench in Tulsiwadi's case (supra). The learned Single Judge, however, held that the writ petition is only the proper and efficacious remedy. There is no discussion as to why the remedy before the High Power Committee is not efficacious. Even otherwise, the maintainability of the writ petition is purely a question of law which can be raised at any stage of the proceedings and even at the appellate stage. Reference can be made to the decisions of the Apex Court in Chitturi Subbanna Vs. Kudapa Subbanna and Others, and J.P. Builders and Another Vs. A. Ramadas Rao and Another, . Mr. Grover, in this regard, relied upon the decision in Amanullah's case (supra). In this case, the Apex Court held that normally it is to be presumed that all the arguments actually pressed at the hearing in the High Court were noticed and were properly dealt with, and if the judgment of the High Court does not contain discussion on a point, then, that point should be assumed prima-facie not to have been argued at the bar, unless the contrary is satisfactorily shown. In our view, this judgment has no application as we have found that the point regarding maintainability of the above petition was not only argued but this argument was dealt with by the learned Single Judge and thereafter he arrived at the conclusion that the writ petition is the only remedy. The decisions of the Apex Court in Kedar Shashikant Deshpande and North Delhi Power Limited's cases (supra) is also not applicable to the facts and circumstances of the present case as it was Respondent No. 4's contention since inception that alternative remedy before the High Power Committee is available to the Petitioner.

15. The second submission of Mr. Grover that the Full Bench decision in Tulsiwadi's case (supra) does not contemplate an appeal before the High Power Committee against an order passed by the SRA while exercising quasi judicial power u/s 13(2) of the Slum Act is also without any merit. Clause (D) of paragraph 118 of Tulsiwadi's case (supra) reads as follows:

D) As far as disputes and questions involving the slum dwellers and Slum Rehabilitation Authority/Public Body/State, Co-operative Housing Society of Slum Dwellers and Developers, Registered Co-operative Housing Society of Slum Dwellers on one hand and proposed Co-operative Society on the other, Developers and S.R.A./State, a writ petition under Article 226 of the Constitution of India would not lie or would be entertained unless and until the parties exhaust the remedy of approaching the High Powered Committee referred to above.

A reading of the above clause makes it abundantly clear that the dispute between the parties to the present appeals is also covered under the above said

clause, and therefore, the High Power Committee, in our considered opinion, can entertain the dispute between the parties to this petition.

16. Let us now consider the decision relied upon by Mr. Grover and which are not referred above in C. N. Rudramurthy's case (supra). the Apex Court held that when the law as declared by the Supreme Court contradicts what has been stated in another case, that case stood impliedly overruled. There is no dispute regarding the proposition laid down in the said case by the Apex Court. However, in the present case, we find that the High Power Committee is constituted by the Government in view of the statement made by learned Advocate General in deference to the observations made by the Full Bench in Tulsiwadi's case (supra). We also find that the source of power of the State Government is under Maharashtra Slum Areas (Improvement, Clearance 3(K) of the Slum Act. In Tulsiwadi's case (supra), the Full Bench has not taken away the jurisdiction of the High Court under Article 226 of the Constitution of India. In that view of the matter, ratio of this case cannot be made applicable to the present case. The Apex Court in Director of Settlements" case (supra) considered the provisions of Article 141 of the Constitution of India. The Apex Court defined the ratio as " principle found out on reading of the judgment in the light of question before Court." The Apex Court further held that the ratio of decision, and not any finding of facts, has binding force. There is no dispute about the above proposition. We also agree with the ratio of decision in The Secretary Sh.A.P.D. Jain Pathshala's case (supra). The High Court in exercise of its powers under Article 226 of the Constitution of India or the State Government by executive fiat cannot create quasi judicial forum. However, in the present case, we have already observed that the High Power Committee is not constituted in pursuance of the direction of the High Court, and so far as the State Government is concerned, we refer to the provisions of Section 3(k) of the Slum Act as a source of power of the Government to constitute the High Power Committee. The Apex Court's decision, therefore, will not be applicable to the facts and circumstances of the present case.

17. In the light of the above observations, we are of the view that the remedy to approach the High Power Committee was always open to the Petitioner before approaching the learned Single Judge of this High Court under Article 226 of the Constitution of India. We have already observed that the said remedy is not only speedy but also effective and efficacious. The High Court in such cases should be slow in exercising jurisdiction under Article 226 of the Constitution of India. Despite objection of Respondent Nos. 4 & 8, the High Court entertained the Petitioner's writ petition. As stated earlier, paragraph 84 of the impugned judgment and order deals with the objection of Respondent Nos. 4 & 8 regarding alternative remedy. However, we find that the learned Single Judge has not given any reason to conclude that the High Power Committee is not an alternative remedy to the Petitioner. In these circumstances, we uphold the objection of Respondent Nos. 4 & 8 and direct the Petitioner to approach the High Power Committee constituted in pursuance of the Full Bench judgment in Tulsiwadi's

case (supra). Consequently, the impugned judgment and order is quashed and set-aside.

We make it clear that we have not gone into the merits of the case and all the points and contentions of the respective parties in this regard are expressly kept open to be agitated before the High Power Committee. By this order, we have only decided the limited issue regarding availability of alternative remedy to the Petitioner to approach the High Power Committee.

In the event, the Petitioner approaches the High Power Committee by way of an appeal/application within a period of four weeks from today, the same shall be disposed of by the High Power Committee within a period of twelve weeks from the date of filing of such appeal/application.

Subject to above, the appeal is disposed of. There shall be no order as to costs.