

(2016) 02 BOM CK 0174

In the Bombay High Court

Case No : Writ Petition No. 1891 of 2008

Indrabahadur P. Sharma & Others

APPELLANT

Vs

Dy. Collector (Enc) and Competent Authority, Andheri & Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 4 AIRBomR 410 : (2017) 2 ALLMR 533 : (2017) 3 MhLJ 447

Hon'ble Judges : M.S. Sonak, J.

Bench : Single Bench

Advocate : Mr. H.P. Pandey, Advocate, for the Appellant; Mr. S.D. Rayrikar, AGP, for the Respondent

Final Decision : Disposed Off

Judgement

M.S. Sonak, J.—The learned counsel for the parties agree that these petitions can be disposed of by a common judgment and order. In all the three petitions, the challenge, is to the orders dated 12 December 2001 and 14 May 2007 made by the President of the Slum Areas (I.C. & R.) Tribunal (Slum Tribunal).

2. These petitions concern the property admeasuring about 7171.1 sq. meters surveyed at CTS Nos. 823, 823/1 to 170 Marol, Andheri, Bombay Suburban Division (suit property). In 1978, the suit property, was declared as "slum area", in terms of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act). At the behest of some Imla Maliks (owners of structures), the Slum Tribunal, by order dated 25 April 1979, set aside such declaration and remanded the matter to the Competent Authority for re-determination. On 25 January 1983, portion of the suit property, admeasuring 6942 sq. meters or thereabouts, was re-declared as "slum area". The Slum Tribunal, again at the behest of some Imla Maliks, by order dated 30 April 1985 set aside such declaration and remanded the matter to the competent authority for redetermination. Once again, the competent authority on 18 October 1985

declared portion of the suit property admeasuring 6654.6 sq. meters as "slum area". This declaration was published in the official gazette on 7 November 1985.

3. The predecessor in title of the petitioners, as also, several other Imla Maliks instituted in all ten appeals bearing nos. 46/1986 to 55/1986 before the Slum Tribunal to question the declaration dated 18 October 1985. The Slum Tribunal by order dated 29 November 1988, set aside the declaration dated 18 October 1985 to the extent, such declarations apply to the properties of the appellants. The operative portion of the order dated 29 November 1988, reads thus:

ORDER

The Appeals Nos. 46 of 1986 to 55 of 1986 are allowed and the declaration dated 18th October, 1985 published in Government Gazette dated 07th November, 1985 so far as it relates to the appellants' properties involved in these appeals, is hereby set aside.

No order as to costs.

Copy of this judgment be kept in each of the appeals record."

4. For a period of almost eight years, the Slum Tribunal's order dated 29 November 1988, remained undisturbed. However, on or about 9 October 2006 Dinesh Dube and Arun Mishra (respondent nos. 2 and 3) filed misc. applications bearing nos. 64/2006 to 73/2006, in the appeals disposed of by the Slum Tribunal by order dated 29 November 1988 purporting to be applications under the provisions of Order I Rule 8 of the CPC and Order IX Rule 13 of the CPC, in order to set aside the Slum Tribunal's order dated 29 November 1988. The reliefs applied for by the respondent nos. 2 and 3 in the said misc. applications, read thus:

"Therefore, the Applicants, pray :

(a) that the order dated 29th November, 1986 passed by the Honourable Tribunal in Appeal bearing No. 54 of 1986 in respect of the C.T.S. No. 823 part 823/169; be set aside and fresh a hearing to be given to the applicant, as deemed Respondent.

(b) pending the hearing and final disposal of the application the order dated 29th November, 1986 passed by the Honourable Tribunal in Appeal bearing No. 54 of 1986 in respect of the C.T.S. No. 823 part 823/169 by the Tribunal be stayed;

(c) that the ad-interim and interim reliefs in terms of the prayer clause (b) above;

(d) cost of the application;

(e) that such and other further reliefs may be granted as this Honourable Court may deem fit and proper to the Applicant.

Sd/-

Sd/-

Advocate for the Applicants 1.

2.

Applicants"

5. Although, the order dated 29 November 1988 had been made by the two Members constituting the Slum Tribunal, the misc. applications made by the respondent nos. 2 and 3 were disposed of by only the President of the Small Tribunal, who made the impugned orders dated 12 December 2006 and 14 May 2007. By the order dated 12 December 2006, the President of the Slum Tribunal allowed misc. applications filed by the respondent nos. 2 and 3 and set aside the Slum Tribunal's earlier order dated 29 November 1988 and restored appeal nos. 46/1986 to 55/1986 to the file. Further, by the impugned order dated 14 May 2007, the President of the Slum Tribunal, dismissed the said appeals and upheld the declaration dated 18 October 1985, thereby classifying the appellants properties as slum areas. The manner and the speed with which this exercise was undertaken, leaves much to be desired. Suffice to note at this stage that the appellants in appeal nos. 46/1986 to 55/1986, who had succeeded in their appeals by virtue of orders dated 29 November 1988, were not effectively heard, in this exercise, which led to setting aside of the order dated 29 November 1988, made by the Division Bench of the Slum Tribunal, in their favour.

6. M/s. S. C. Universal Developers (SCUD), applicant in civil application no. 1565 of 2008 in writ petition no. 1891 of 2008, claim to have purchased the suit property from its previous owners Damodardas Bhaidas Bhuta vide registered conveyance dated 6 June 2006. By the civil application no. 1565 of 2008, SCUD seeks intervention in the writ petition on the ground that it is now the owner of the suit property. In the petition, there were some allegations that the respondent nos. 2 and 3, at whose behest the impugned orders dated 12 December 2006 and 14 May 2007 came to be made by the President of the Slum Tribunal, were in fact proxies for SCUD. This Court, therefore, by its order dated 14 October 2015, whilst listing the petitions for final hearing, directed that the civil application seeking intervention shall be heard along with the main petitions. It is in these circumstances, that Mr. Chirag Balsara, the learned counsel appearing for SCUD was given a full hearing, in the matter of defence of the orders impugned in these petitions. In fact, as noted in the order dated 4 February 2016, on which date, these petitions and the civil application were finally heard, even the respondent nos. 2 and 3 have chosen to adopt the submissions of Mr. Balsara, learned counsel appearing for SCUD. Therefore, formal order is now made allowing the intervention application and permitting the intervention of SCUD. The SCUD shall therefore be deemed to be intervenor in writ petition no. 1891 of 2008.

7. Mr. Pandey, the learned counsel for the petitioners, has at the outset submitted that the provisions of Order I Rule 8 of the CPC or Order IX Rule 13 of

the CPC, have no application whatsoever to the proceedings before the Slum Tribunal. In any case, he submitted that the respondent nos. 2 and 3, were not at all parties to appeals 46/1986 to 55/1986, in which, the common order dated 29 November 1988 came to be made. Therefore, the respondent nos. 2 and 3 had no locus standi to apply for setting aside the common judgment and order dated 29 November 1988 made in the said appeals, and that too and after lapse of almost eight years since the making of the same. Mr. Pandey has submitted that the petitioners as also the other appellants in appeal nos. 46/1986 to 55/1986, were never effectively served in the proceedings taken out by the respondent nos. 2 and 3. The President of the Slum Tribunal has, in making the impugned orders, has purported to review the decision made by the Division Bench of the Slum Tribunal, when in fact, the Slum Tribunal, has no power to review its own decision. Mr. Pandey placed reliance upon the decision of this Court in the case of Kuwarben Chhabildas Patel through her C.A. Pratapsingh C. Patel v. State of Maharashtra & Ors. 2003 (3) Mh.L.J. 948 , in which it is held that the Slum Tribunal has no power to review its own orders. Mr. Pandey pointed out that the President of the Slum Tribunal has purported to rely upon the amended provisions contained in Section 4(4) of the Slum Act, when in fact, the amendment introducing section 4(4) in its present form came into force, much after institution of appeals by the petitioners and other Imla Maliks and compliance with the said provisions was neither warranted nor possible. Mr. Pandey pointed out that the respondent nos. 2 and 3, who were mere the slum dwellers, were put up by SCUD, which claims to have purchased the suit property from the erstwhile owner M/s. Damodardas Bhuta. Mr. Pandey pointed out that the erstwhile owner had no objection to setting aside of the declaration as to "slum area" and this is evident from the circumstance that the original owner Mr. Bhuta, at no stage, questioned the common judgment and order dated 29 November 1988 made by the Division Bench of the Slum Tribunal, when it set aside the slum declarations in so far as the appellants properties were concerned. As, there was no explanation for inaction on the part of the erstwhile owner, Mr. Damodardas Bhuta, SCUD, which claims title from Mr. Damodardas Bhuta, has put up the respondent nos. 2 and 3, to set at naught, the common judgment and order dated 29 November 1988. The decision making process, leading to the making of the impugned orders by the President of the Slum Tribunal, stands vitiated on account of breach in the compliance with the principles of natural justice and fair play. The President of the Slum Tribunal has also, proceed on the basis of irrelevancies and excluded the vital and relevant considerations. The President has virtually purported to exercise review jurisdiction, when in fact, none was ever vested with him. For all these reasons, Mr. Pandey submitted that the impugned orders, which in any case, were stayed by this Court, since the year 2008, deserve to be set aside, as the same are unreasonable, ultra vires and in patent excess of jurisdiction.

8. Mr. Chirag Balsara, the learned counsel for the intervenor in civil application no. 1565 of 2008 submitted that the exercise of jurisdiction by the President of

the Slum Tribunal in making the impugned orders, is squarely traceable to Regulation 17 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act Tribunal, Regulations 1974 (Regulations). He submitted that the respondent nos. 2 and 3 were in fact necessary parties to appeal nos. 46/1986 to 55/1986 and therefore ought to be deemed to be parties to the said appeal so as to entitle them to maintain an application under Regulation 17 of the Regulations. Mr. Balsara submitted that the principles analogous to Order I Rule 8 of the CPC and Order IX Rule 13 of the CPC clearly apply to proceedings before a Slum Tribunal. There was, in the present case due compliance with the requirements contained in Order I Rule 8 of the CPC. Despite, the publication of notices in newspapers, neither the petitioners nor any of the other appellants in appeal nos. 46/1986 to 55/1986 chose to appear before the Slum Tribunal in order to oppose setting aside of judgment and order dated 29 November 1988. Besides, the judgment and order dated 29 November 1988 made by the Division Bench of the Slum Tribunal, was a nullity for failure to comply with the procedure prescribed under Section 4(4) of the Slum Act, which is mandatory. In support of the contention that such procedure is mandatory, Mr. Balsara placed reliance upon the decision in the case of Satish B. Kadhe & Ors. v. Maharashtra Slum Areas (Improvement, Clearance and Re-development) Tribunal, Bombay 1997 (1) Mh.L.J. 107 . Mr. Balsara also submitted that the findings recorded in the judgment and order dated 29 November 1988 by the Division Bench of the Slum Tribunal were perverse, in as much as relevant voluminous material in the context of absence of amenities, was not properly noticed by the Slum Tribunal. Mr. Balsara also submitted that the petitioners have entered into agreements with SCUD and even, received certain amounts, and therefore are dis-entitled to even maintain the present petition. Mr. Balsara submitted that the conduct of the petitioners in entering into agreements with SCUD and thereafter, instituting the present petitions, dis-entitles the petitioners to any equitable relief under Articles 226 and 227 of the Constitution of India. Mr. Balsara submitted that several occupants in the suit property, have already entered into agreements with the SCUD for the purposes of development of the suit property, on the basis that the same is declared as slum area. For all these reasons, Mr. Balsara submitted that these petitions be dismissed.

9. The respondent nos. 2 and 3, who are present in person, state that they adopt the submissions made by Mr. Chirag Balsara and that they have nothing further to add in the matters.

10. Rival contentions now fall for determination.

11. If the impugned orders dated 12 December 2006 and 14 May 2007 are perused, then it is clear that the President of the Slum Tribunal, has virtually reviewed the judgment and order dated 29 November 1988 made by the Division Bench of the Slum Tribunal. Perhaps realizing that no such powers of review are vested in him, the President, has made the impugned order dated 12 December 2006, purporting to set aside the judgment and order dated 29 November 1988,

by purporting to rely upon Regulation 17 of the said Regulations, which empower the Slum Tribunal to restore the appeals dismissed for default or to set aside an ex parte decision, upon the motion of the absentee party. It is quite clear that the Slum Tribunal lacks in power to exercise review jurisdiction. It is settled position in law that powers of review are never inherent, but require specific conferment. The Slum Tribunal, is obviously a creature of the statute i.e. the Slum Act. And unless, there is any provision under the Slum Act entitling the Slum Tribunal to review its own orders, there is no question of the Slum Tribunal exercising the same. In fact, in the context of the powers of the Slum Tribunal itself, this question, is no longer res integra.

12. In the case of Kuwarben Patel (supra), this Court has held that the Slum Tribunal lacks the powers to review its own orders and orders in purported exercise of review jurisdiction are ultra vires. The relevant observations in paragraph 7, read thus:

"7. This submission of the learned Counsel for respondent Nos. 1 and 3 cannot be accepted for more than one reason. The Minutes of the Order signed by both the parties do not indicate in any manner that the power of review was available to the Slum Tribunal. All that the Slum Tribunal was required to do was to hear Misc. Application filed allegedly on behalf of Respondent No. 4 afresh and to decide the application after hearing both the sides, in accordance with law. Deciding the application in accordance with law would not confer the power of review on the Tribunal. As held by the Apex Court, unless the power of review is specifically conferred under the Act itself on the Tribunal, the Tribunal would not have any jurisdiction to review its own order. The Slum Tribunal is constituted under the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971. The powers and jurisdiction of the Slum Tribunal are circumscribed by the provisions of the Act. The Slum Tribunal being a creature of the statute cannot overstep its jurisdiction which it enjoys under the purview of the Act. There is no inherent power to review and, therefore, unless the power, was conferred either expressly or by necessary implication under the Act, there is no power to review."

(emphasis supplied)

13. The President of the Slum Tribunal, was no doubt, conscious of the aforesaid position. Therefore, even though in effect, the President has purported to exercise review jurisdiction, the same was preceded by making the impugned order dated 12 December 2006, in terms of which, the President has set aside the judgment and order dated 29 November 1988, which was incidentally made by the Division Bench of the Slum Tribunal. This exercise is defended by Mr. Balsara is relatable to Regulation 17 of the said Regulations. The perusal of Regulation 17, will indicate that the exercise cannot relate to exercise of powers under Regulation 17 and in any case the facts and circumstances on record, did not warrant the exercise of powers under Regulation 17 of the said Regulations.

14. Regulation 17, reads thus :

"17. Restoration of appeal, etc.

If any appeal, miscellaneous application or reference is decided by the Tribunal in the absence of either party to it, the party remaining absent may, within thirty days of the date of the decision, apply to the Tribunal for getting the ex-parte decision set aside stating grounds therefor. If the Tribunal is satisfied that there are sufficient grounds for setting aside the ex-parte decision, it may set it aside and restore the appeal, miscellaneous application or, as the case may be, reference to its file on such terms as it may impose, and proceed to decide it on merits on hearing both sides."

15. From the perusal of the provision contained in Regulation 17, it is quite evident that the same can apply in a situation where appeals are dismissed by the Slum Tribunal for default and the appellant, within thirty days of the dismissal, applies for restoration by pleading sufficient cause. Similarly, jurisdiction under Regulation 17 can be exercised where an appeal is allowed or some decision is made in the appeal, in the absence of the opposite party and where, the opposite party within a period of thirty days from the date of the decision, applies to the Slum Tribunal for setting aside the ex-parte decree and demonstrating sufficient grounds therefor. Accordingly, it is quite clear that jurisdiction under Regulation 17, can be invoked by the parties to the appeal before the Slum Tribunal. Further, in order to invoke the jurisdiction under Regulation 17, the absentee party, which may have suffered dismissal of the appeal for default or an ex-parte decision, is required to apply to the Slum Tribunal within a period of thirty days from the date of the decision. The absentee party is required to demonstrate that there are sufficient grounds for either restoration of appeal or setting aside of the ex-parte decision. The Regulation 17, is certainly, not a provision for seeking any substantive review on merits.

16. If the impugned order dated 12 December 2006 made by the President of the Slum Tribunal is perused, then the same, almost entirely proceeds on the basis that there was no compliance with the provisions contained in Section 4(4) of the Slum Act, before, appeal nos. 46/1986 to 55/1986 were disposed of. This is again, an error, apparent on face of record. The provisions contained in Section 4(4) of the Slum Act, upon which, reliance has been placed in the impugned order dated 12 December 2006, were not at all on the statute book when appeal nos. 46/1986 to 55/1986 were instituted by the respective appellants before the Slum Tribunal. In such circumstances, the President of the Slum Tribunal, who has virtually reviewed the judgment and order dated 29 November 1988, after a period of almost eight years from the date on which it was made, was not at all justified in finding fault with the decision made by the Division Bench of the Slum Tribunal, on the ground that there was no compliance with the provisions contained in Section 4(4) of the Slum Act, which were not even on the statute book on the date when the said appeals were lodged. The appeals were lodged

some time in the year 1985-1986. The provisions contained in Section 4(4) of the Slum Act, upon which, reliance has been placed in the impugned order dated 12 December 2006, came on the statute book in terms of the Maharashtra Slum Areas (Improvements, Clearance and Redevelopment) (Amendment) Act, 1987. This Act was assented to by the Governor on 5 August 1987 and published in the official gazette thereafter. Section 4(4) of the Slum Act which is relied upon in the impugned order dated 12 December 2006 prescribed the procedure to be complied with by the Slum Tribunal, no sooner the appeals are presented. The decision in case of Satish B. Kadhe (supra), is not an authority for the proposition that the provisions contained in Section 4(4) of the Slum Act have to be given a retrospective effect, in all cases. In the facts and circumstances of the present cases, the judgment and order dated 29 November 1988 made by the Division Bench of the Slum Tribunal cannot be said to have been vitiated for the non compliance of this provision, particularly, since the same was not even in existence on the statute book at the stage when the appeals came to be instituted.

17. Mr. Balsara, the learned counsel for the intervenor tried to contend that the provisions contained in Section 4(4) of the Slum Act, were on the statute book when the appeals were disposed of by the Division Bench of the Slum Tribunal by the judgment and order dated 29 November 1988. He submitted that the provisions contained in Section 4(4) of the Slum Act are retrospective in nature and will therefore, even apply to the pending appeals. In the first place, this is not at all the basis upon which the President of the Slum Tribunal has proceeded whilst making impugned order dated 12 December 2006. In fact, if the impugned order dated 12 December 2006 is perused, the President of the Slum Tribunal has proceeded on the basis that he was entertaining an application for setting aside the judgment and order dated 29 November 1986 made by the Division Bench of the Slum Tribunal. As on 29 November 1986, the provisions contained in Section 4(4) of the Slum Act, upon which reliance has been placed in the impugned order dated 12 December 2006, were not even on the statute book. Assuming that reference to the order dated 29 November 1986 is only a typographical error, the perusal of the impugned order dated 12 February 2006 would indicate that the President of the Slum Tribunal was not even conscious of the position that the provisions contained in Section 4(4) of the Slum Act were not on the statute book on the date when appeals 46/1986 to 55/1986 were in fact instituted. There is absolutely no discussion on the issue of retrospective application of the provisions contained in Section 4(4) of the Slum Act. As noted earlier, in case of Satish B. Kadhe (supra), the issue was not about retrospective operation of the provisions contained in Section 4(4) of the Slum Act. At this stage, therefore, it is impermissible to attempt to defend the impugned order on the basis of such a contention. Even otherwise, at such a belated stage, it is not possible to entertain a contention of this nature, particularly, since the Division Bench of the Slum Tribunal in its judgment and order dated 29 November 1988 had set aside the slum declaration, to the extent, it related to the properties of

the appellants in appeal nos. 46/1986 to 55/1986. At the stage of deciding application for restoration, it was impermissible for the President of the Slum Tribunal to advert to the merits of the judgment and order dated 29 November 1988. At the stage of deciding an application for setting aside the alleged ex-parte decision, the President of the Slum Tribunal was required to focus himself upon the parameters of Regulation 17, the cause shown and matters of like nature. Instead, the President of the Slum Tribunal, in the impugned order dated 12 December 2006 has virtually commented upon the merits of the judgment and order dated 29 November 1988 and virtually reviewed the same, which is undoubtedly an exercise in excess of jurisdiction.

18. Since, Mr. Balsara has placed reliance upon Regulation 17 of the said Regulations, it must be noted that in terms thereof, an application for restoration of an appeal or for setting aside of an ex-parte decision is required to be made within a period of thirty days from the date of the decision. In the present case, the decision which was sought to be set aside was made on 29 November 1988. The applications for setting aside the ex-parte decision were made on 9 October 2006 i.e. after the period of eight years. If the application is perused, there is hardly any cause shown, much less sufficient cause for the inordinate delay of over eight years in applying for setting aside of the judgment and order dated 29 November 1988 by the respondent nos. 2 and 3. There was no separate application for condonation of delay made, although, the delay was inordinate and extended to over eight years. Assuming however, that the Slum Tribunal can entertain an application made beyond the prescribed period of limitation by virtue of the provisions contained in Section 45(1A) of the Slum Act, from the records, it is quite evident that no sufficient cause shown in the matter of such inordinate delay of eight years in applying for setting aside the judgment and order dated 29 November 1988. The President of the Slum Tribunal has completely glossed over this important jurisdictional aspect and consequently the impugned order dated 12 December 2006 is unsustainable.

19. The President of the Slum Tribunal has also exceeded jurisdiction by purporting to apply the provisions of Order I Rule 8 of the CPC to proceedings for setting aside the judgment and order dated 29 November 1988. If the said Regulations are perused, there is no provision, even remotely akin to the provisions contained in Order I Rule 8 of the CPC. Besides, in the present case, really no case was made out by the respondent nos. 2 and 3 to take out an application for setting aside the judgment and order dated 29 November 1988, after a period of almost eight years by resort to the provisions contained in Order I Rule 8 of the CPC. As noted earlier, the respondent nos. 2 and 3 were not even parties to appeal nos. 46/1986 to 55/1986. There is no provision demonstrated in support of the contention that the respondent nos. 2 and 3 were necessary parties to the said appeals. Even assuming that they were necessary parties, they could have at the highest, instituted petitions against the judgment and order dated 29 November 1988, on the grounds that the said judgment and order really affects them and was made in violation of principles of natural justice

and fair play. In any case, the respondent nos. 2 and 3, if really aggrieved by the judgment and order dated 29 November 1988, were required to take steps within some reasonable period. Instead, for a period of eight years, the respondent nos. 2 and 3, who claim to be aggrieved by the judgment and order dated 29 November 1988 did absolutely nothing in the matter. The respondent nos. 2 and 3, made the applications under Order IX Rule 13 of the CPC and Order I Rule 8 of the CPC after a period of eight years, without, any sufficient cause to explain this inordinate delay. The resort to provisions under Order I Rule 8 of the CPC, was obviously to overcome the requirements in Regulation 17 of the said Regulation and further to bind the parties not before the Tribunal, but who may be affected by the orders which the Tribunal passes at their behest. In facts and circumstances of this case, such an approach was not at all proper..

20. There is merit in the contention of Mr. Pandey that the respondent nos. 2 and 3 were only proxies put up by the intervenor SCUD. The intervenor was conscious that any proceedings at his behest to set aside the judgment and order dated 29 November 1988, might not be maintainable. This is because SCUD claims to have stepped into the shoes of the erstwhile owners Damodardas Bhuta by virtue of conveyance dated 6 June 2006. The said owner, at no stage objected to the judgment and order dated 29 November 1988. Soon after the purchase, the respondent nos. 2 and 3, who were only some of the occupants / slum dwellers, lodged their applications under Order IX Rule 13 and Order I Rule 8 of the CPC. The intervenor SCUD, who appears to have taken over the suit properties for commercial purpose, is interested in reviving the slum declaration, which was set aside by the Division Bench of the Slum Tribunal by its judgment and order dated 29 November 1988, but SCUD is conscious that it could not have itself applied for setting aside the said judgment and order. Such circumstances on record does make it probable that the respondent nos. 2 and 3 were only fronts or proxies to pursue commercial interest of the intervenor SCUD and to assist SCUD to achieve indirectly, what perhaps SCUD could not have achieved directly.

21. The judgment and order dated 28 November 1988 was made by the Division Bench of Slum Tribunal. The impugned orders setting aside the judgment and order dated 29 November 1988 have been made only by the President of the Slum Tribunal. In administrative matters, it is possible that the President of Slum Tribunal, is vested with a position of pre-eminence, but when it comes to exercise of judicial powers, it is doubtful whether the President of Slum Tribunal can review or set aside the judgment and order made by the Division Bench of the Slum Tribunal. As noted earlier, power of review, has not even been conferred upon the Slum Tribunal. It is, however, clarified that the impugned orders are not being set aside upon this ground alone, as, even otherwise, there are several legal and jurisdictional infirmities, which vitiate the impugned orders.

22. If the record is perused, there is no satisfactory material to establish that the appellants in appeal nos. 46/1986 to 55/1986 were individually served in the

proceedings taken out by the respondent nos. 2 and 3. Considering that the respondent nos. 2 and 3 applied for setting aside of the judgment and order dated 29 November 1988, after a period of almost eight years, it was necessary that there is satisfactory record with regard to service upon all the appellants, who had succeeded by virtue of the judgment and order dated 29 November 1988. Mr. Balsara however, placed reliance upon the observations in the impugned orders with regard to service by paper publications. Even before, orders are obtained to serve parties by public publication, it is necessary to place on record the efforts made for the purposes of personal service. In the present case, looking to the facts and circumstances, it was necessary that the appellants in appeal nos. 46/1986 to 55/1986 were personally served. It is however made clear that the impugned orders are not being faulted with, only on the ground that there was no proper service upon appellants in appeal nos. 46/1986 to 55/1986. There are several other jurisdictional errors, which vitiate the impugned orders.

23. The impugned order dated 12 December 2006 is clearly in excess of jurisdiction and is therefore required to be set aside. In the first place, such an order could not have been made in exercise of powers to set aside ex-parte decisions vested in the Slum Tribunal under Regulation 17 of the said Regulations. The judgment and order dated 29 November 1988 was not at all an ex-parte decision. In any case, the respondent nos. 2 and 3 were not at all parties to appeal nos. 46/1986 to 55/1986. As such, they were not entitled to invoke the provisions of Regulation 17 and seek setting aside of the judgment and order dated 29 November 1988. Further, the respondent nos. 2 and 3 did not make their application for setting aside of the judgment and order dated 29 November 1988 within a period of 30 days from the date of the decision. They made such application after the period of eight years. There was no sufficient cause shown for such inordinate delay. There was no proper and effective notice to the Appellants in appeal nos. 46/1986 to 55/1986, before the judgment and order dated 29 November 1988 made almost eight years ago, was set aside at the behest of Respondent Nos.2 and 3, who were not even parties to such appeals. The impugned order proceeds on the basis that Section 4(4) of the Slum Act, which came into force much after the institution of the appeals was not complied. There is no basis to entertain the contention that the provisions of Section 4(4) of the Slum Act has retrospective effect. At least, the order dated 12 December 2006 does not proceed on such basis. In fact, this was not even the contention raised before the Slum Tribunal. The Slum Tribunal was not even conscious that the provisions contained in Section 4(4) of the Slum Act, upon which, it has placed reliance, were not at all existing on the statute book when the appeals came to be instituted. The impugned order dated 12 December 2006, virtually delves into the merits of the matter whilst deciding application for setting aside the alleged ex-parte order. This is also impermissible. The judgment and order, which has been set aside by the President of the Slum Tribunal was made by the Division Bench of the Slum Tribunal. The President, has purported

to set aside the same. Assuming that such a course was permissible, there are several other infirmities, as aforesaid, which render the impugned order dated 12 December 2006 as ultra vires, null and void. Accordingly, the impugned order dated 12 December 2006 is quashed and set aside.

24. Once, the impugned order dated 12 December 2006 is set aside, further impugned order dated 14 May 2007 cannot stand and the same is also required to be set aside and is hereby set aside. As noted earlier, by the impugned order dated 12 December 2006, the President of the Slum Tribunal has purported to set aside the judgment and order dated 29 November 1982 made by the Division Bench of the Slum Tribunal and thereafter, restored the appeal nos. 46/1986 to 55/1986 before himself. The impugned order dated 14 May 2007 purports to dismiss the said appeals on merits. Since, the impugned order dated 12 December 2006 is set aside, the impugned order dated 14 May 2007, does not survive and even the same is hereby set aside.

25. There is no merit in the contention of Mr. Balsara that the petitioners are not entitled to maintain the present petitions because they may have received some monies from the intervenor SCUD. In the first place, there are no clear records in this regard. Secondly, the monies received, may relate to agreements in the context of development of the suit property on the basis that the same is not a slum area. Thirdly, the manner in which the impugned orders have been made, leave, much to be desired. The President of the Slum Tribunal has purported to exercise powers which were never vested in him. The decision making process, which has ultimately led to making of the impugned orders, is questionable. In such circumstances, the petitioners cannot be non suited on the ground that they have been paid some amounts by the Intervenor (SCUD). Besides, Intervenor (SCUD) cannot pre-empt challenge to orders which are ex-facie in excess of jurisdiction and made in a manner in which they ought not to have been made by making payments to some of the Petitioners. In a matter of this nature, this Court is obliged to ensure that the Tribunals do not usurp jurisdiction not vested in them and that the decision making process is completely above board. The challenge to the impugned order, therefore, cannot be pre-empted upon such grounds and that too by the Intervenor (SCUD) who has stepped in the shoes of original owners Damodardas Bhuta. As noted earlier, the erstwhile owner M/s. Damodardas Bhuta had no grievance against the order dated 29 November 1988 and in any case, took no steps whatsoever for setting aside the same. It is to be noted that the intervenor SCUD had, at no stage, applied for setting aside of the judgment and order dated 29 November 1988, but rather, put forward the respondent nos. 2 and 3. On these grounds, Mr. Pandey, the learned counsel for the petitioners had in fact opposed the intervention of the intervenors SCUD. However, considering the circumstance that there were allegations made against the intervenor SCUD, it was deemed appropriate that Mr. Balsara, the learned counsel for the intervenor SCUD is heard in great details in the present batch of petitions. However, his objection to the maintainability of the petition does not deserve to be upheld in the facts and circumstances of the present case.

26. For all the aforesaid reasons, Rule is made absolute in the petitions. The impugned orders dated 12 December 2006 and 14 May 2007 made by the President of the Slum Tribunal are hereby set aside. The civil application no. 1565 of 2008 in writ petition no. 1891 of 2008 is also disposed of in the aforesaid terms.