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**(2002) 01 BOM CK 0028**

**In the Bombay High Court**

**Case No : Writ Petition No. 3433 of 1988**

Rameshwar Prasad Thakurdin Pande

APPELLANT

Vs

Deputy Collector (ENC) and Another

RESPONDENT

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**Date of Decision : 21-01-2002**

**Acts Referred:**

**Citation : AIR 2003 Bom 150**

**Hon'ble Judges : J.G. Chitre, J**

**Bench : Single Bench**

**Advocate : R.K. Desai, for the Appellant; P.I. Khemani, A.G.P., for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

J.G. Chitre, J.—The Petitioner is hereby taking exception to the judgment and order passed by the Maharashtra Slum Areas ( I. C. & R.) Tribunal, Bombay, in appeal No. 59 of 1983 whereby the appeal of the petitioner has been dismissed and the amount deposited by the petitioner has been directed to be paid to the Commissioner appointed by the Tribunal.

2. The property concerned is situated in Vile Parte East owned by the petitioner Rameshwar Prasad Thakur din Pande bearing C.T.S. No. 225 Military Road, Marol.

3. The matter revolves around notification which was issued by the State of Maharashtra on 24-3-1983 declaring the said property of the petitioner as "slum" in view of provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "the Act" for convenience) which was published in the Government Gazette dated 22-3-1979. The petitioner had challenged the earlier notification by filing the appeal bearing No. 184 of 1980 which was allowed by the Maharashtra Slum Areas (I. C. & R.) Tribunal, Bombay by its judgment dated 17-2-1983. The latter declaration was also challenged by the petitioner by preferring the appeal bearing No. 59 of 1983 which was dismissed by the said Tribunal on 19-6-1984. The petitioner has filed

this petition for taking exception to the said judgment and order.

4. In this context, two Commissioners were appointed and they had submitted two reports. The earlier was dated 27-1-1983 and the latter was dated 16-4-1984. The first report was cryptic. Second seems to be having better information about the condition of the said inhabitation.

5. Shri R. K. Desai, counsel appearing for the petitioner submitted that when the tribunal had by its judgment and order quashed the earlier declaration - notification, there was no reason and sufficient ground for the Tribunal to dismiss the appeal preferred by the petitioner assailing the second declaration - notification. He submitted that the Tribunal did not inform itself properly and, therefore, landed in error of not affording the petitioner the opportunity of during the defects which were pointed out by the Commissioner's report which was latter one. He also submitted that when the initial report was not showing the defects glaringly, there was no reason for the Government to issue the said notification and to declare the said inhabitation as "slum". He submitted that by exercising jurisdiction vested in it. this Court be pleased to quash the said Judgment and order in view of Article 227 of the Constitution of India.

6. Mr. Khemani, A.G.P., supported the said judgment and order by pointing out the similarity between the two reports of the Commissioners and the glaring defects in the said inhabitation so far as amenities provided to the persons in it are concerned. He submitted that the writ petition be dismissed.

7. If the said two reports are compared, by its appearance both the reports show that the gutters are open gutters and there is no proper provision for disposal of waste water flowing through the said gutter. Entrance is also narrow as indicated by both the reports. The first report which, according to Mr. Desai, happens to be favourable to the petitioner, shows that there is a passage of only 5 feet between the chawl. The said report also shows that the height of the entrance from the entry point was 6" and it was upto 14" in the middle. The first report pointed out that the height of some tenements was increased after the declaration of the said notification. The first report shows that there were 29 tenements and out of them 5 tenements were used for commercial purposes. The first report showed that 120 persons were residing in the said "habitation". The second report shows that there were about 140 persons residing in the said locality. Second report shows that the height of the structures at the point of entry was 6 and it increased to 10" and thereafter to 12". Both the reports show that there were 4 W.Cs. with septic tank. Second report shows that there were five chawls in existence in the said locality. Second report showed that out of four W. C. units, three were in the use and the fourth one was made to use two days prior to visit of the Commissioner as told by the tenants. The second report indicated that the septic tank was very small and it was full of waste water when the Commissioner visited the said locality. Second report showed that in some of the tenements there were only one small window provided near the door for ventilation but there was no provision for cross ventilation. On this point, the first report is

cryptic and it indicates : "Ventilation - Yes, provided."

7A. Mr. Desai had submitted that those tenants were not paying the rent to the petitioner and there were litigation pending against them filed by the petitioner. Even taking that into consideration though there is nothing on record to show that that is so, even then, the status provided to said inhabitation is not justifiable.

8. When the Commissioners had visited the said locality, the State of affairs were pertaining to the inhabitation of about 120 to 140 persons in a commercially advanced city like Mumbai and that too of 20th Century. It is unthinkable that even 120 persons would be satisfied by using 4 W.C. units, leave aside the idea of their comforts. 120 persons, at least, were residing in the said tiny structures having only one open space called as window for ventilation, leave aside the idea of cross ventilation. Though the reports do not use the words "pigeon holes", they are similar to them. One cannot avoid the temptation of describing them as totally unsatisfactory arrangements made for human beings to live therein. How that can be said to be justifiable, prima facie?

9. Shri Desai has placed reliance on the judgment of the Supreme Court in the matter of the The Government of Mysore and Others Vs. J.V. Bhat and Others, for supporting the cause of the petitioner. But the observations made by the Supreme Court in it does not support the cause of the petitioner so far as the present writ petition is concerned. The said judgment speaks of the necessity of affording the opportunity of being heard to a person against whom such a declaration is to be made. But in this case, there is no such defect when the Tribunal entertained, heard and decided the appeal of the petitioner, when it passed the judgment and order in Appeal No. 59 of 1983 on 19-6-1984. it is necessary to mention the exact words of the members of the Tribunal for necessary information. They are:--

"Out of the 4 W.Cs three were in use and fourth one was made available only two days prior to the inspection. The surrounding area was not clean. There is no proper arrangement for discharge of waste water. Septic tank was very small and had no capacity to accommodate the waste water, from all the W.Cs. The tank was leaking and flowing in front of the door of the tenement. There was no ventilation. Some tenements had one small window near the door. There were no street lights nor proper drainage system.

Internal passage was 4 to 6 feet wide. Open gutter was flowing through that passage. There is no open space except a 10 x 12 ft. piece to the East side."

One cannot avoid the temptation of thinking as to how a hell could be described. But many slums are so and worst than this. And, therefore, the Act has been legislated.

10. The Act has been brought in force for a benevolent purpose. The preamble to it can be taken into consideration in that context which provides :--

"WHEREAS, it is expedient to make better provision for the improvement and clearance of slum areas in the State and for their redevelopment and for the protection of occupiers from eviction and distress warrants; and for matters connected with the purposes aforesaid. It is hereby enacted in the Twenty Second Year of the Republic of India as follows" :--

That was the context to year 1971. The said notification was declared on 24-3-1983 and was published in Government gazette dated 14-4-1983. It means that it was after a decade of the preamble to the Act. It means it was after 32nd year of India becoming the Republic. Even then the persons residing in the said locality were required to live in such hopeless and hapless situation. The petitioner, who was and who happens to be their landlord, had not provided them with the minimum requirements of a human being living in an educated and tolerably good society. Free air, proper ventilation, potable water, minimum hygienic condition, the facility to breathe good and pure air are the minimum requirements of human beings in cities. Whether the inhabitation in question was sufficient enough to answer it affirmatively? The answer would be unequivocal "No". In such a condition why the State Government should not come out for the protection of those hapless persons by way of a declaration which has been put to challenge by the said appeal which was filed by the present petitioner. In its judgment and order, the Tribunal pointed out the glaring drawbacks and thereafter concluded that the appeal of the petitioner deserves to be dismissed and in fact dismissed it.

11. Shri Desai submitted that proper opportunity has not been given to the petitioner and he was not afforded the opportunity of rectifying the defects which were pointed out by the report of the commissioner. This Court cannot agree with him because when Shri Desai was asked to read out the reply which was given by the petitioner to the show cause notice, the said reply did not even indicate a whisper of the desire of the petitioner to go for rectifying the said defaults and insanitary condition of the said inhabitation. Had there been bona fides with the petitioner, he would have at least whispered of his desire to mend himself to the benevolent spirit indicated by the preamble to the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The act marches for the purpose of allowing the owners of such slums to go for improvement and redevelopment but they should express their desire to do so. If the citizens do not it voluntarily, they are required to be made to subvert themselves to the consequences which are to follow by the legal provisions which are enacted for giving protection to the citizens. The State of Maharashtra has done it by its declaration which was challenged by the petitioner before the Tribunal. The Tribunal has taken proper approach of dealing with the grievances put forth by the petitioner. The judgment and order passed by the Tribunal which is intended to be assailed by this writ petition speaks of good reasoning and, therefore, it cannot be said to be improper, incorrect and bad in law.

12. When this court is exercising its jurisdiction in view of Article 227 of the

Constitution of India, it would be informing itself whether there is any need of interfering with the judgment and order which is put to challenge by the writ petition. In this case, the answer would be "No" and that would be the factor deciding the fate of this writ petition. Thus, the writ petition stands dismissed with costs. Rule stands discharged.