

(2011) 04 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 2371 of 2009

Shivkupa Builders and Developers

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Development Control Rules for Greater Mumbai, 1967 — Rule 10
Maharashtra Regional and Town Planning Act, 1966 — Section 151, 152, 44, 45, 45
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 12(1), 12(10), 13, 13(2), 2

Citation : (2011) 4 ALLMR 120 : (2011) 5 BomCR 434

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Anand Grover and Firdaus Moosa, instructed by, Prakash Mahadik, for the Appellant; Milind More, AGP for Respondent No. 1, G.D. Utangale, B.V. Phadnis, instructed by y, Utangale and Co. for Respondent Nos. 2 and 3, S.U. Kamdar Zubin Behram Kamdin, instructed by y, Bharucha and Partners for Respondent No. 4, T.H. Puranik, for Respondent No. 5, Samir A. Vaidya, for Respondent No. 6, Bhalchandra Palav, instructed by y, A and M and S.A. Shroff and Co. for Respondent No. 7, P.K. Dhakephalkar and Naira Variava, instructed by y, Umashankar Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—The Petitioners have challenged the order dated 14/10/2009 passed by Respondent No. 3 (The Chief Executive Officer (CEO), Slum Rehabilitation Authority) u/s 13 of the Maharashtra Slum Areas (Improvements, Clearance and Redevelopment) Act, 1971 (for short, the Slum Areas Act) thereby has approved the termination of the Petitioners development agreement and simultaneously permitted to appoint new developer,/Respondent No. 8, to continue to develop the slum rehabilitation scheme as announced 10 years back.

FACTA PROBANDA

2. Basic facts are as under:

The Petitioners are a registered partnership firm and have been involved in building, development and redevelopment activities since 1995.

3. The State of Maharashtra (Respondent No. 1) has formed and approved various schemes and policies and framed rules and regulations under the various State Acts, to rehabilitate slum dwellers and occupiers of the Government and the Corporation lands and/or otherwise. Respondent No. 2 is the Slum Rehabilitation Authority (the SRA) constituted under the Slum Areas Act. Respondent No. 3 is CEO who functions as a head of Respondent No. 2/SRA. Respondent No. 4 is Indira SRA Cooperative Housing Society Ltd (Indira) of the Slum dwellers on whose applications the impugned order is passed. Respondent No. 5 is the Municipal Corporation of Greater Mumbai who is the owner of the land (MCGM). Respondent No. 6 is a Cooperative Society of slum dwellers/tenants claiming rights over the land in question i.e. Prem Siddha Cooperative Housing Society (Prem Siddha). Respondent No. 7 is Birla Industries Group Charity Trust (the Trust), claiming perpetual lease rights over part of the land under the scheme, therefore, filed Writ Petition No. 6277 of 2000, now 1762/2006.

4. The tenants/ occupants/slum dwellers, 2,270 in number, residing on C.S. No. 20 (Part), 32 (part), 33, 35, 36, 41, 65, 66 Worli Scheme No. 58, plot 88 to 104 admeasuring about 42,955.22 sq. mtrs. situated at Worli which falls into G/South Ward belonging to Bombay Municipal Corporation (MCGM) formed a Cooperative society (Respondent No. 4 Indira Society) for the purpose of protection of their right, title and interest and for deriving the benefits of the Slum policy of the Government of Maharashtra.

5. As the members of Indira CHS Ltd were not in a position to approach Slum Authorities and other concerned authorities and to obtain sanction from them, the Society vide its General Body Resolution, appointed the Petitioners as a builder and developer for the scheme, to be implemented on the property mentioned above, and executed a necessary agreement dated 04.11.1994.

Pursuant to the General Body Resolution and consent of more than 70% of tenants/ occupants, the Petitioners had prepared a proposal for the Slum Redevelopment scheme (the Scheme) and approached the MCGM, for certification and verification of the tenants/ occupants on the property.

6. On 25/10/1996, the Officer of the MCGM physically verified the tenants and occupants and the consent terms executed in favour of the Petitioner and accordingly certified the lists as Annexure II.

7. On 18/11/1997, the scheme submitted by the Petitioners on behalf of Respondent No. 4 was principally approved by Respondent No. 2.

8. On 31/12/1999, a Letter of Intent (LOI) was issued, of the complete area. On 30/03/2000, Respondent No. 2 issued a Commencement Certificate (C.C.).

9. On 10/01/2000, the SRA permitted the Petitioners to revise its plan excluding

the trust area.

10. The Trust filed a Writ Petition in this Court at its Appellate side bearing No. 6277 of 2000 (now W.P. No. 1762/2006(O.S.)) This Court on 21.11.2000 admitted the above Petition and pending the hearing and final disposal, Respondent No. 4/ Society and consequently the Petitioners, were prevented from constructing and/or developing plot bearing Nos. 9195 and 100104 and also using FSI of the said plots. The interim order has been in force since then till this date. The challenges are also to NOC dated 18/11/1997, LOI dated 31/12/1999 and IOA and CC dated 30/03/2000 issued in favour of the Petitioners and Respondent No. 4/society.

11. On 20/12/2000, the Petitioners, pursuant to the commencement certificate dated 30/03/2000 started construction of the rehabilitation building No. 10, however, by a letter Respondent Nos. 2/3 informed Respondent No. 4/society and in turn directed the Petitioners to stop the same. Since then the issues with regard to the legality, validity and propriety of the NOC, LOI and IOA granted by the SRA in favour of the Petitioners and Respondent No. 4, have been subjudice till this date.

12. On 31.10.2001 a fresh development agreement (The contract) with the Petitioners. There was no substantial progress in the matter till 2005.

13. In August 2004, Respondent No. 4(Indira) filed a Petition challenging the new Yojana on the ground of pendency of the trust petition.

14. On 4.01.2005, a letter to Respondent No. 4/Society expressing willingness to commence the work on undisputed land by the Petitioners. On 20.03.2005, an alleged Resolution by Respondent No. 4/society of terminating the contract of the Petitioners; and the appointment of the new developer.

15. On 27.03.2005, an alleged communication terminating the Petitioners agreement was sent, but never received by the Petitioners. On 25.10.2005, the Petitioners letter for approval of transit camp rehab building No. 1, upto 17.05.2007, but there was no reply/response. On 31.10.2005, Respondent No. 4 published notice about the Petitioners" termination.

16. On 15.05.2006, an objection to the above termination as unauthorised, was raised and requested not to take any action, by the Vice President and the Joint Secretary of Respondent No. 4/society.

17. On 01/11/2007, a Full Bench of this Court in Tulsiwadi Navnirman Coop. Housing Society Ltd. and Another Vs. State of Maharashtra and Others, , directed the Government of Maharashtra to constitute a High Power Committee for deciding the dispute arising out of or in respect of Slum Rehabilitation Scheme. On 15/11/2007, the Government of Maharashtra vide G.R. Dated 15/11/2007 constituted the High Power Committee and mentioned the jurisdiction of the said committee. Respondent No. 6's application is also pending before the High Power Committee as filed after order dated 15th December 2007 based upon Tulsiwadi (supra).

18. On 15/12/2007, a representation made by Respondent No. 4 to change the developer before Respondent No. 2/Respondent No. 3. In the month of March, 2008, Respondent No. 4 filed an application before Respondent Nos. 2 and 3 inter alia praying for that the representation dated 15/12/2007 for change of developer be ordered and a revised letter of intent be issued in favour of Respondent No. 4 and its new developer. The sole reason, on the basis of which the application was submitted is, the delay on the part of the Petitioners in implementing and executing Slum Rehabilitation Scheme.

19. On 02/06/2009, for the reasons best known to Respondent Nos. 2 to 4 the application was not proceeded till June 2009 and as alleged, surreptitiously, a notice issued for fixing the date of hearing on 06/06/2009 at 10.30 a.m. at Bandra.

20. On 06/06/2009, the Petitioners submitted an application that they have not received any notice of hearing.

21. On 25/06/2009, a show cause notice u/s 13(2) of Slum Areas Act shown to have been issued to the Petitioners on the address mentioned in cause title of the petition.

22. On 03/07/2009, another show cause notice dated 03/07/2009 u/s 13(2) of Slum Areas Act given to the Petitioners on different address, which was not the address of the Petitioners on the record or proceeding nor same is the address of the Petitioners. The said show cause notice with different outward number and sent by R.P.A.D. and received by the Petitioners on 05/07/2009.

23. On 07/07/2009 applied for certified copies and on 08/07/2009, the Petitioners received a copy of roznama and the order along with application dated 06/06/2009. On 10/07/2009, without prejudice to the rights and contention, the Petitioners pointed out to Respondent No. 2 that notice dated 03/07/2009 amounts to interference in the administration of justice on the backdrop of the facts, LOI, IOA and CC which are subject matter of the Trust writ petition. On 01.09.2009, an order of High Court in the writ petition filed by the Petitioners directing the SRA to decide all the issues was passed. On 14/10/2009, the impugned order was passed by Respondent No. 3. Hence the Petition. On 08/09/2010, the Petition was admitted and ordered to maintain the status quo. On 14.11.2009, a Suit No. 2412/2009, filed by the Shendge brothers claiming to be partners of the Petitioners, but no interim relief in their favour.

24. It was pointed out that there is a termination of perpetual lease of the Trust by MCGM on 08.12.2010. Therefore, a fresh Petition filed by the Trust (2675/2010) referring to part of the land again. The same is also pending.

25. On 27/04/2010, the partners of the Petitioners firm settled their internal dispute as recorded in the writ petition.

26. On 22/02/2011, a Division Bench in Appeal No. 1171 of 2011 against the status quo orders, directed the learned Single Judge to rehear on interim relief.

The statement was recorded that the status quo will be maintained. By consent of the parties and considering the urgency and the issues raised, the main writ Petition itself listed for final hearing and heard finally in the month of April 2011.

27. The learned Counsel appearing for the respective parties have relied on the following judgments.

(a) By the Petitioners

i) 2005(3) All MR 889 Amba Chawl Wadi Rahiwasi Seva Sangh v. Municipal Corporation of Greater Mumbai and Ors.

ii) Awdesh Vasistha Tiwari and Others Vs. The Chief Executive Officer, Slum Rehabilitation Authority and Others, .

iii) Om-Sai Darshan Cooperative Housing Society (Proposed) and Chandrakant Ramchandra Thakur Vs. The State of Maharashtra, SRA Section and Others, .

(b) By Respondent Nos. 2 and 3

i) WP No. 2375 of 2005 Bipinkumar Hawaldar Jaiswar, Chief Promoter, Babu Jagjivan Nagar CHS (proposed) and Ors. v. The State of Maharashtra and Ors. Dated 16th December, 2005.

ii) Writ Petition No. 130 of 2010 M/s. Om Shree Sai Developers v. State of Maharashtra and Ors., dated 17th March, 2010

iii) Writ Petition No. 1606 of 2010 Omkar Realtors & Developers Pvt. Ltd. v. Slum Rehabilitation Authority and Ors., dated 26th October, 2010,

c) By Respondent No. 4

i) OmSai Darshan (Supra) .

ii) Omkar Realtors & Developers Pvt. Ltd. (Supra)

d) By Respondent No. 6

i) Tulsiwadi Navnirman (Supra)

ii) Writ Petition No. 2284 of 2007 Prem Siddha Cooperative Housing Society v. The State of Maharashtra and Ors., dated 5th December, 2007

e) By Respondent No. 8

i) Canara Bank and Others Vs. Shri Debasis Das and Others, .

THE RELEVANT PROVISIONS:

28. The relevant provisions of the Slum Area Act, referred by all, are as under;

Definitions

Section 2(c) - "Competent Authority"

Competent Authority" means a person or body appointed to be the Competent Authority u/s 3;

Section 2(hc) "Slum Rehabilitation Authority"

Slum Rehabilitation Authority" means the Slum Rehabilitation Authority or Authorities appointed by the State Government u/s 3A;

Section 2(hd) "Slum Rehabilitation Scheme"

"Slum Rehabilitation Scheme" means the Slum Rehabilitation Scheme notified u/s 3(B);

Section 13-Power of Competent Authority to redevelop clearance area.-

1) Notwithstanding anything contained in Sub-section (1) of Section 12 the Competent Authority may, at any time after the land has been cleared of buildings in accordance with a clearance order, but before the work of redevelopment of that land has been commenced by the owner, by order, determine to redevelop the land at its own cost, if that Authority is satisfied that it is necessary in the public interest to do so.

(2) Where land has been cleared of the buildings in accordance with a clearance order, the Competent Authority, if it is satisfied that the land has been, or is being, redeveloped by the owner thereof in contravention of plans duly approved, or any restrictions or conditions imposed under Sub-section (10) of Section 12, or has not been redeveloped within the time, if any, specified under such conditions, may, by order, determine to redevelop the land at its own cost:

Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why the order should not be passed.

THE JURISDICTION & THE AUTHORITY OF THE SRA

29. To achieve the object and reasons under the Maharashtra Regional and Town Planning Act, 1966 (for short, MR & TP Act), a Development Control Regulations for Greater Bombay, 1991 has been announced and amended from time to time, basically to implement the Slum Rehabilitation Scheme.

30. The SRA is a planning authority. It is an independent autonomous body. The SRA can declare any area as slum rehabilitation area for the rehabilitation of slums. As per the scheme, certain slum areas become slum rehabilitation area by means of deeming provisions. All these areas and schemes are under the jurisdiction of SRA. The SRA is empowered with various powers to implement the schemes. It includes; planning and implementation, Building permission and supervision, Eligibility certification, eviction of nonparticipants and declaration of slum areas and slum rehabilitation areas, Registration of cooperative housing societies, Land management (Demarcation, subdivision of plots and leasing of slum lands), Community Development, Accounts and Finance and General Administration.

31. By letter dated 18/11/1997, the Chief Engineer of SRA had approved the proposal on the plots in question by addressing to the Architect and a copy was sent to Respondent No. 4 (Indira CHS Ltd.). By letter dated 31/12/1999, referring to Clause 33(10) and Appendix (IV) of Amended D.C. Regulations, issued a letter of intent/approval, subject to certain conditions, referring to the complete area of the land admeasuring 40,755.22 sq. mtr. providing a rehabilitation and a free sale component. It also referred to the deposits towards infrastructural development charges as per 124 (E) of MR & TP Act, thereby intimated to submit a proposal for approval of plans, consuming full sanctioned FSI separately for each building.

32. By letter dated 30th March, 2000, an intimation of approval under Sub regulation 2.3 of Appendix IV of DCR No. 33(10) with certain conditions and instructions, was forwarded to the Chairman/Chief Promoter of Respondent No. 4. The approval was u/s 45 of the MR & TP Act. The reference was also made to the commencement certificate u/s 44/69(1)(a) of the MR & TP Act, apart from DC Regulation No. 38 (27), Appendix IX DC Regulation 5 (3) (IX) have been made by the Executive Engineer of SRA. It is relevant to note special instruction No. 2, which is as under:

(2) u/s 151 & 152 of MR & TP Act, 1966, as amended the Chief Executive Officer, Slum Rehabilitation Authority has empowered the Chief Engineer (S.R.A.)/ Executive Engineer (S.R.A.) to exercise, perform and discharge the powers duties and functions conferred and imposed upon and vested in the C.E.O. (S.R.A.) by section of the said Act.

33. The commencement certificate/building permission was granted for Scheme No. 58 of Ward G/S. of Worli Division, in question, covering all the plots in question by the Executive Engineer (SRA) (IV), For the Chief Executive Officer, the SRA, as empowered to function as Planning Authority.

34. By letter dated 22nd December, 2000, the CEO of SRA in view of the order dated 21/11/2000 passed in Writ Petition No. 6277 of 2000 now, Writ Petition No. 1762 of 2006 (O.S.), directed Respondent No. 4 Society not to carry out any construction as it would amount to violation of the High Court's order. The Petitioners therefore could not continue with the construction/progress as per the scheme.

35. It is necessary to consider the basic scheme of both the Acts, including the Regulations.

36. The guidelines for the implementation of Slum Rehabilitation Scheme in Greater Mumbai provide procedure for submission, processing and approval of SRA Scheme which are as under:

"IV. PROCEDURE FOR SUBMISSION, PROCESSING AND APPROVAL OF SLUM REHABILITATION SCHEMS

1 All slums and pavements whose inhabitants' names and structures appear in

the electoral roll prepared with reference to 1st January 1995 or a date prior thereto and who are actual occupants of the hutments are eligible for the slum rehabilitation scheme.

2 70% or more of the eligible hutment dwellers in a slum or pavement in a viable stretch at one place have to show their willingness to join slum rehabilitation scheme and come together to form a cooperative housing society of all eligible hutment dwellers through a resolution to that effect. The following resolution should be adopted

(a) Resolution electing a Chief Promoter.

(b) Resolution giving the Chief Promoter authority to apply for reservation of name for cooperative housing society.

(c) To collect share capital (Rs. 50/per member for slum societies) and Re.1/as entrance fee and to open account in Mumbai District Central Cooperative/ Maharashtra State Cooperative Bank Ltd. (any branch).

3 The chief promoter, office bearers and the members of the proposed society should collect the documents such as 7/12 extract and the PR card of the plot on which the slum is situated they should then get the plot surveyed/measured and prepare map of the plot showing slum structures therein with the help of surveyors attached to the office of Additional Collector (Encroachment) or the Deputy Collector (Encroachment) of the zone.

4 While undertaking the survey they should collect the information of the proposed members/slum dwellers and fill up AnnexureII prescribed by SRA. AnnexureII gives the details of land occupied by the slum dwellers, number and type of structures such as Residential, Industrial, Commercial, amenity structures etc. and the list of eligible and ineligible occupants and consent of slum dwellers to join the scheme. Earlier the promoter/cooperative housing society had to first approach the different Competent Authorities namely Additional Collector for the slums on government and private lands and the land owning authorities for the slums on different public authority lands for obtaining certified Annexure II, before they could put in application for slum rehabilitation scheme to SRA. As a simplification measure, this procedure is now discontinued and Annexure II format is now required to be filled up by the promoter/cooperative housing society itself for submitting building proposal to SRA; so that the scrutiny of the proposal and certification of Annexure II can start simultaneously. Annexure II needs to be submitted in duplicate. As a measure of further simplification, Additional Collector (Encroachment) is being designated as the sole Competent Authority for deciding eligibility and for taking eviction action against nonparticipants in slum rehabilitation schemes.

5 The Chief Promoter and the office bearers of the proposed society should then apply for name reservation of the proposed cooperative housing society along with the self prepared AnnexureII and the required resolutions to the Assistant

Registrar of Cooperative Societies. To facilitate this office of the Assistant Registrar has been started in SRA itself. It is no longer necessary to approach different offices of the Cooperation Department for this purpose. The Assistant Registrar/SRA will issue a letter reserving the name for the proposed Cooperative Housing Society and permission to open a bank account in the proposed society's name.

6 While the above steps are being taken the decision to search a competent developer to act as a promoter has to be taken up by the proposed cooperative housing society of slum dwellers. The society itself or an NGO/developer/owner can take up slum rehabilitation scheme as a promoter.

7 The promoter so chosen has to enter into agreement with every eligible slum dweller while putting up slum rehabilitation proposal to SRA for approval. SRA is in the process of trying to evolve standard formats for the following four types of agreements required in the schemes, with the approval of the State Government.

(a) Consentcum agreement between the promoter and the slum dwellers.

(b) Development rights/Agreement to lease between the promoter and the land owning authority.

(c) Lease agreement between the land owning authority and the cooperative society of slum dwellers.

(d) Lease Agreement between the land owning authority and the cooperative society of free sale tenement buyers.

8 The promoter has also to appoint an architect in consultation with the proposed cooperative housing society of slum dwellers to prepare the plans of development of the slum area, as per the DCR 33(10). It is expected that the architect ensures community participation in preparation of the building plans. All required documents such as building plan, layout plan, PR Card etc., along with AnnexureI, AnnexureII and Annexure III are to be submitted to SRA by the architect along with an application for the slum rehabilitation scheme. A check list of all such documents required for submission is available in SRA office.

9 AnnexureI gives details about ownership o land, details of plot area, details of existing hutments and their type, computation of tenement density, extent and type of reservations, amenities, FSI available, number of tenements to be constructed including calculation of TDR etc.

10 Annexure III is prescribed to assess the financial capability of the promoter. The items contained in Annexure III are self explanatory. Keeping in view the sensitivity of this information, it is kept strictly confidential by SRA. (The formats of Annxure I, II and III at Appendix C).

11 After a pre scrutiny by a designated engineer of SRA, to ensure completeness of the proposal submitted, so far as documents are concerned, proposals are accepted. Then a computerised file number is allotted to the scheme on payment

of scrutiny fees which are charged at half the rate of the Municipal Corporation's general building permission fees. Upon acceptance, the scrutiny of Annexures, I, II and III start simultaneously In the Building Permission Wing. Eligibility Certificate Wing and Accounts & Finance Wing respectively.

12 Earlier, Letter of Intent conveying approval to the scheme, approval to the Layout building wise plan approval (Intimation of Approval) and Commencement Certificate were different stages of approval in the scheme, each having a long validity period. To speed up the actual commencement of building construction work on site, architects have been advised to submit slum rehabilitation proposals complete in all respects to enable SRA to give all the four approvals, at least for the first rehabilitation building, at one go. The validity period of the approval has been reduced from one year to 3 months (Circular number 4 dated 27th August, 1997 has been issued by SRA detailing the simplified procedure. (Appendix D).

13 In the slum rehabilitation scheme, the promoter is required to deposit Rs. 20000 per rehabilitation tenement with SRA as per the time schedule laid down by Chief Executive Officer of SRA. The promoter is also required to pay an amount of Rs. 840 per sq. m. For the built up area over and above the normally permissible FSI., for the rehabilitation and free sale tenements. After elaborate discussions with all concerned, suitable deferments on the statutory payments and flexibility in the installments of such payments have been provided by SRA. (Circular No. 1 dated 25th November, 1997 is at Appendix E).

14 Providing temporary transit accommodation to the slum dwellers, during the construction of rehabilitation and free sale tenements, is the responsibility of the promoter. SRA facilitates obtaining constructed transit tenements, if available, by recommending the same for allotment to MHADA. SRA also helps in getting no objection certificates, from public authorities on nearby identified public authority lands, for putting up temporary transit structures. These structures are required to be demolished and cleared after completion of the slum rehabilitation scheme.

15 While applying for occupation certificate of rehabilitation building, the architect is expected to give the details of tenement allotments, done by the cooperative society by drawing lots, in the joint names of the head of the household (pramukh) and his/her spouse, SRA will generate computerised identity cards in the joint names of pramukh and spouse and hand over the same to each allottee family. The cad will clearly mention that the rehabilitation tenements cannot be sold/leased/assigned or transferred in any manner for ten years (except to legal heirs) and tenements illegally transferred will be taken over by SRA. Any change of allotment within the members of the cooperative society, has also to be with the prior permission of SPA.

Eviction of eligible but non participant slum dwellers: A special wing has been started in SRA under the Additional Collector to decide and remove the hurdles and obstructions being created sometimes by a few slum dwellers with vested

interests. There is already a legal procedure laid down for taking action against such nonparticipants in the DCR 33(10). SRA assures the promoters of slum rehabilitation schemes with prompt action in such eventualities.

37. The Apex Court has also in *Pramila Suman Singh Vs. State of Maharashtra and Others*, has considered, though on different facts, the purpose and object of the Slum Acts and scheme in the following words:

8 Although all planning and development works were covered under the aforesaid Act, however, with a view to make better provision for the improvement and clearance of slum areas in the State and their redevelopment and for the protection of occupiers from eviction and distress warrants, the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "the 1971 Act") was enacted by the State of Maharashtra.

9 Chapter IA, however, was inserted by Maharashtra Act 4 of 1996 providing for slum rehabilitation scheme.

38. Regulation 33 (10), Annexure, II, (iii) as relevant for the present purpose is reproduced as under, which includes an amendment by G. N. No. DCR.1095/1209/CR273/95/UDII, dated 30/11/2002, whereby the following sentence has been inserted i.e. Any area where an object under slum rehabilitation scheme has been approved by CEO/SRA shall be deemed slum rehabilitation area.

II. Definitions of Slum, Pavement, and structure of hut. (i) For this purpose slums shall mean those censused or declared and notified, in the past or hereafter under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Slum shall also mean areas/pavement stretches hereafter notified as Slum Rehabilitation Areas [or deemed to be and treated]

(ii)

(iii) Slum rehabilitation area shall also mean any area declared as such by the Slum Rehabilitation Authority though preferably fulfilling conditions laid down in Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to qualify as slum area and/or required for implementation of any slum rehabilitation project. (Any area where a project under Slum Rehabilitation Scheme has been approved by CEO/SRA shall be deemed slum rehabilitation area.)

39. It is clear from the above that the basic guiding factors in and for rehabilitation scheme and/or for the area are the provisions of MR & TP Act read with the Regulations framed under the same and the Slum Area Act. It is difficult to dissect for any purpose these Acts and the Regulations. On the contrary, inspite of existence of MRT & TP Act, 1956 in question, the Slum Area Act has been introduced in the year 1971. In principle, the object is to protect the occupiers, their possession as well as distress warrants, if any, apart from to

empower Competent Authority, as well as, the SRA to do all necessary things for the slum development and/or rehabilitation in the respective slum areas as notified and/or declared and/or deemed to have been declared.

40. By 1996 Amendment, Maharashtra 4 of 1996, Chapter 1A has been added in the Slum Area Act, covering Sections 3(A) to 3(W), which includes Section 13, which is reproduced as under:

13 Power of Slum Rehabilitation Authority to develop slum Rehabilitation area.

(1) Notwithstanding anything contained in Sub-section (10) of Section 12, the Slum Rehabilitation Authority may, after any area is declared as a Slum Rehabilitation Area, if the landholders or occupants of such area do not come forward within a reasonable time, with a scheme for redevelopment of such land, by order, determine to redevelop such land by entrusting it to any agency for the purpose.

(2) Where on declaration of any area as a Slum Rehabilitation Area the Slum Rehabilitation Authority, is satisfied that the land in the Slum Rehabilitation Area has been or is being developed by the owner in contravention of the plans duly approved, or any restriction or conditions imposed under Sub-section (10) of Section 12, or has not been developed within the time, if any, specified under such conditions, it may, by order, determine to develop the land by entrusting it to any agency recognised by it for the purpose:

Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why the order should not be passed.

41. The original Section 13, as reliance has been placed strongly, deals with the power of Competent Authority to develop clearance area. The concept of "clearance area" is different than the slum area under the Act and the Regulation itself. The Competent Authority as referred under the Act and u/s 13 is also different and independent for all the purposes than the SRA. They are in no way in conflict with each other, on the contrary have to play their independent role as prescribed and empowered under both the Acts and the Regulations.

42. The above facts, as recorded, clearly shows that the Petitioners, based upon then existing provisions and the announced scheme on the land entered in to the commercial contract. All correspondences which are part of record shows that the scheme was under DC R 33(1). The same was accordingly proposed, moved, sanctioned and approved by the SRA and its Officer. The commencement certificate was issued under Sections 44, 45 and 69 of the MRTP Act in the year 2000 itself. Admittedly, the land belongs to the Respondent No. 5 Corporation.

43. As noted, all the correspondences and the representation so made by the Petitioners and the Society (Indira), the SRA proceeded and granted the permission so referred above. Therefore, the SRA who has been empowered under the Act to deal with the scheme has definite a power to deal with and/or decide all the related objections so raised. Therefore the submission that the

"Competent Authority" as contemplated u/s 13 (original) only has the jurisdiction to decide such objection and not the SRA is unacceptable. In the absence of sanction and approval or permission by the SRA, the Petitioners could not have even proceeded further for any purpose. Therefore, the Petitioners are estopped from even raising such objection against the SRA in the present case.

44. The concept of "deemed declared slum area" is well recognised under both the Acts as well as the Regulation and as noted, even by the 2002 amendment to the DC Rules 10 as reproduced above. Both these Acts contemplate the concept of "notified", "declared" or "deemed to have been declared as slum area". Therefore, the submission that Respondent No. 2 has no jurisdiction and authority to issue show cause notice and/or pass order u/s 13(2) (newly added) of the Slum Act, for want of declaration and/or notification, as submitted, is also unacceptable, specially at the instance of the Petitioners, in the present facts and circumstances of the case. Having once acted upon the same, I am not inclined to accept the contention of the Petitioners that the SRA has no jurisdiction to deal with the subject and/or the objection as raised and as decided.

THE POWER OF THE SRAQUASIJUDICIAL

45. Section 13 (newly added), empowers the SRA to deal with all the aspects of development of slum area, notwithstanding anything contained in Sub-section (10) of Section 12. It provides no bar that if any area is declared as a slum rehabilitation area, and the landholders or occupants of such area do not come forward within a reasonable time, with a scheme for redevelopment of such land, the SRA, by order and/or determine to redevelop such land by entrusting it to any agency for the purpose. Where on declaration of any areas as a slum rehabilitation area, the SRA is satisfied that the land in the slum rehabilitation area has been or is being developed by the owner in contravention of the plans duly approved, or any restriction or conditions imposed under Sub-section (10) of Section 12, or has not been developed within the time, if any, specified under such conditions, it may, by order, determine to develop the land by entrusting it to any agency recognised by it for the purpose. However, it is subject to hearing/ reasonable opportunity to the owner.

46. Neither the Petitioners nor the slum dwellers/occupiers are the owners of the measured land in question. The owner, as recorded, is the Municipal Corporation of Gr. Mumbai (Respondent No. 5). As per the Acts and the Regulation, the SRA is concerned with the development as per the plan duly approved and/or condition so imposed, apart from the timely development of the scheme as announced. The provisions as recorded above, definitely, create obligations on the developer and/or occupier and the concerned authorities, to see that the project/scheme as announced should be completed within reasonable time. Therefore, even the documents/permissions/various letters shows that various conditions so put while granting approval and/or while permitting them even to commence the particular project, provided with stage wise time limit. In totality, it is the responsibility of all the concerned to see that the project should be

completed without delay. Neither the developer nor the members or the occupiers independently can proceed with the project as announced and/or as sanctioned, even by the Authorities. The Authorities are also bound to see that the developer/promoter/occupiers or slum dwellers should comply with all necessary conditions/terms as announced from time to time. Though there is a power provided with the SRA to determine/cancel the existing contract and to entrust it to any agency recognised by it for the purpose, yet the SRA cannot permit and/or grant sanction to any of the society and/or of the developer or agency, without taking into consideration all facts and the law. The SRA is also bound by its own Rules and Regulations apart from the conditions so put while granting or approving or sanctioning the plan and all necessary documents as per the declared scheme. The SRA itself cannot even appoint any of its or governmental agency in view of the scheme itself.

47. The SRA is definitely empowered and has jurisdiction, if case is made out, after giving the hearing and opportunity to the owner to pass such order including to sanction, approve and appoint new developer/agency for the scheme. The power and jurisdiction of the SRA is definitely fall within the ambit of quasi judicial power/authority. In the present case, admittedly, all the necessary parties appeared before the SRA and filed their respective claim/objections and not only the owner. After hearing both the parties, the impugned order is passed. The word "owner" cannot be restricted for the "owner of the land" only.

THE DELAY OR WITHIN REASONABLE TIME

48. The points, therefore, boil down on the respective contentions so raised by the parties basically revolving around the concept of "Delay" or "reasonable time" for the development of the scheme, apart from the approval and permission to continue with the future development though the new developer, as per the old plan approved or even by the modified plan, based upon the same scheme of the area.

THE PARTIES ARE BOUND BY THEIR RESPECTIVE RIGHTS/CLAIMS & THE TERMS:

49. The occupiers/slum dwellers/members of the society have definite claims to get the property developed as per the announced scheme, but it is always subject to their right of the respective area/site only. They have no right and/or claim to encroach upon the free component sale, of the promoter/owner/developer. Any project/scheme of this kind means timely completion It involves early settlement, temporary dehousing, timely constructions and development and therefore, the financial implications which is mostly of the developer/promoter's liability and obligation. When the parties enter into a contract with clear understanding of development of the scheme means the collaboration and the cooperation from all side, right from the vacation of their occupied area/hut till they get new prescribed flat/area. An alternative accommodation or reasonable monthly rent/compensation and/or all facilities to be provided by the

developer to such coagulated occupiers during this interim period, just cannot be overlooked.

THE COMMERCIAL DOCUMENTS DEVELOPMENT AGREEMENTS OTHERS.

50. The agreement of development between the parties, the developer and the society and its members, on the measured land is definitely a commercial contract. To say that the contract is for the development/for the improvement of the slum area and it is only for the occupiers of the slum and no other parties, in my view, is unacceptable. Therefore, the submission that such scheme is always for the rehabilitation of the slum dwellers/occupiers and there should be no other interest of anybody else, is contrary to the whole scheme itself. The rights of occupiers/slum dwellers are restricted and also the rights of the developer/promoter/owner. Both are different and have distinct identity and purpose, but cannot be dissected only with a view to look into the interest of the slum dwellers/occupiers exclusively. In my view, both should run together.

THE ANNOUNCED SCHEME IS BASED ON THE MEASURED LAND

51. It is very clear, even from the scheme that 70% members of the society or slum dwellers can come forward and proceed to develop the land by forming the society and by appointing a developer to develop the measured and the declared area, as per the scheme. The objections, even by remaining 30% need to be overlooked for the purposes of development of the area. Those remaining members of the society/occupiers though not ready, but ultimately, as per the scheme, need to vacate the area. They are also entitled to have similar area/flat in the scheme. The provisions are made under the Acts to pass such appropriate order and/or to take action if objecting members/occupies refuse or do not cooperate to vacate the premises. The Competent Authority, as well as, the SRA, as noted above, therefore, play dominant role while sanctioning or granting any approval including 70% consent and all necessary documents. It is always subject to the demarcated land/area.

52. Before any project/scheme is declared, the first and foremost aspect, according to me, is the actual land/area which is under occupation of the slum dwellers. The State Government's policy is based upon the area/land on which the tenants/occupiers/slum dwellers have been residing and/or doing their business. The slum dwellers or occupiers, therefore, are entitled to retain their respective area of flats preferably on the land in question subject to terms and conditions. The remaining area is available as a component for sale. Therefore, when the society/its members enter into a development agreements with the developer, the measured area of the land with clear demarcation, is always basic part/component of the agreement. The developer/promoter, based upon the same enter into a contract with the society/its members and agreed to develop the property accordingly. The requirement of plans, apart from various other formalities itself means clear demarcation of area for all the purposes, i.e. area/site for the occupiers and the area/site for the free component. The conditions or

restrictions as the SRA is entitled to put, definitely based upon this foundation. One cannot overlook, even the requirement of verification of financial capacity of the promoter/developer by the SRA.

53. The concept of encroachment even by the developer is always a matter of objection by the Competent Authority and/or by the occupiers and/or by third person who are affected by such encroachment. This also means the requirement of clear demarcation of the land and the area. The Authorities, in a given case, are entitled to take action against the developer and/or society if they contravene any provisions/approval or sanction conditions and/or if there is any contravention of the plans by putting unauthorised construction by encroachment or otherwise. The slum dwellers/members/tenants and their entitlement, based upon the land in their occupation therefore just cannot be overlooked, while submitting any modified plans, as well as, granting any kind of approval or sanction by the SRA.

ADMITTEDLY NO CHANGE OF CIRCUMSTANCESLITIGATIONS ARE STILL PENDING.

54. About 2270 tenants/occupiers formed the society (Respondent No. 4) for the purposes of protection of their right, title and interest and for the purposes of deriving benefits of the slum policy of the Government on land admeasuring about 42955.22 sq. mtrs. Situated at Worli which falls into G/South Ward, C.S. No. 20 (part) 32 (apart), 33, 35, 36, 41, 65, 66, Worli Scheme No. 58, plots 88 to 104 which is admittedly owned by the Corporation, based upon the then existing provisions/Regulations. Those tenants/occupiers took various steps and in the year 1996 itself, the requisite documents were signed/filed. In the year 1997, the scheme was submitted by the Petitioner on behalf of Respondent No. 4/ society which was approved by Respondent No. 2/SRA. However, out of the land in question plot Nos. 91 to 95, 100 to 104 admeasuring about 12,000 sq. mtrs (the disputed area) has been in possession of the Respondent/Trust, based upon the lease deed executed in their favour, by the Corporation. Therefore, arose dispute with regard to the said area. The Trust filed the Writ Petition and this Court after hearing the parties, granted the stay with regard to the area by order dated 21.11.2000 and thereby ordered and prevented the Society/Respondent No. 4 from constructing and/or developing disputed area. However, it is clarified that the order could not preclude Respondent No. 4 (Indira), Respondent No. 6 (Prem Siddha) and one more society (Andromeda) to take steps for sanctioning the scheme in respect of above as some tenant/occupiers have their huts/houses on the disputed land also.

55. The SRA's officer, therefore, immediately communicated to Respondent No. 4/Society (Indira), as work was in progress, not to continue with the construction and in fact directed to stop construction. There is no dispute that the said writ petition is still pending. All the interested parties, at the relevant time, have applied for appropriate order, but the stay so granted remained intact and has been in force since 21.11.2000.

56. Here it is necessary to note that as recorded that there are two other societies (Prem Siddha and Andromeda) of slum dwellers claiming to have their rights or interest on the property which is part and partial of the scheme so announced. The Respondent/Authorities had granted the sanction including the commencement certificate, inspite of pendency of the said Trust Petition. The agreement dated 31.10.2001 was signed/executed by the Society Indira with the Petitioners/developer, with the clear description of the property being plot Nos. 88 to 104 of scheme No. 58, admeasuring 45,733.03 sq. mts.

RECIPROCAL OBLIGATIONS AND THE LIABILITIES OF THE PARTIES:

57. There is a clause in the agreement which is as under:

29 The Developer agree to complete the project within reasonable time of 5 years on the receipt of commencement certificates of rehab proposed buildings or buildings and all the present occupants vacating the said property and handing over vacant possession to Developer after obtaining approval of regular building plans and I.O.A. From SRA.

58. The above clause shows the clear intention and their respective obligations to complete the project within a reasonable time of 5 years on the receipt of commencement certificate and all the persons vacating the property and handing over of vacant possession to the developer after obtaining approval of regular building plan and IOA from SRA. It also means respective obligations of all the parties were subject to the necessary certificates or permission from the Competent Authority. Any default and/or breach of the parties, therefore, needs to be taken note of while considering the aspect of delay on the part of developer and/or failure on the part of developer to complete the project within the time.

THE SRA DIRECTED TO STOP THE CONSTRUCTIONTHE PROJECT HALTED.

59. The record shows and as documents referred and relied by the parties, that nothing developed, after the date of the order passed by the High Court in the Trust Petition, except the correspondences and/or representations. The Respondent No. 4/society as well as the developer's attempt to get the stay vacated and/or early decision of the Trust Petition was also failed. The SRA, as noted, itself directed to stop the construction work. The other societies application/representation with regard to the same property are pending.

60. Though started with good intention and accordingly the parties agreed and proceeded also, but because of Court orders the development as per the scheme halted. Merely because the High Court has permitted to all the societies concerned to apply for sanction that itself was not sufficient to develop the property IN PIECE as per the plan announced. That was the reason that all the parties tried their level best to see that project should be completed or continued on the whatever the land available or excluding the land of the Trust upto 2005, but failed till this date.

61. All the parties were fully aware of the importance of the order on the Trust

Petition. Neither Respondent No. 4/society or its members or occupants nor the Petitioners could proceed as agreed and/or as announced. The Respondent/ Authority also, in view of the above, as nothing is pointed out, could not direct or permit the Petitioners to continue with the project/scheme. There are correspondences on record from the side of the Petitioner that the parties were trying hard to proceed with the development even to construct on undisputed portion. That was going on since 2002 till 2008.

UNCERTAINTY & UNREST OCCUPIER FAILED/REFUSED TO VACATE BUT APPOINTED THE NEW DEVELOPER:

62. Such halt of SRA project always create unrest and raises various doubts in the mind of occupiers or slum dwellers. Therefore, they were also unable to take positive decisions and refused to vacate the remaining huts/area in their occupation. There was no progress in construction of rehabilitation area.

63. The role of Respondent No. 4/society and its members in above circumstances is also important. As submitted, though resolution was passed there was no direct communication to the Petitioner so far as the termination of the contract in question. The submission is also made that there is a receipt of letter of withdrawal of the termination order/resolution. The other side is opposing the same. Respondent No. 4/the society, however, as alleged had passed resolution, for whatever may be the reason, but definitely for the reason of delay in completion of project and has appointed Respondent No. 8 to continue with the project. In view of the above, the SRA has also, without considering the scheme purpose and mandate of the provisions of the Act and Regulations, apart from the order in the Trust Petition and the pendency of other societies application for redevelopment, approved the action of the society/Respondent No. 4 in all respects.

64. Whether the termination of the contract between the society/Respondent No. 4 and the Petitioner has any binding effect and/or pendency of the dispute with regard to the same or the pendency of other litigations, in no way empower the SRA and/or its officer to accept such termination in this background specially when there is nothing on record to show that the Trust has given any no objection/consent to the Respondents 4 and 8 to permit the developer to proceed with the development as per the scheme so announced even on disputed land.

No trust permission in favour of R4/R8.

65. The learned Counsel appearing for Respondent No. 6/Prem Siddha submitted and pointed out that the Trust has never granted permission to Respondent No. 8/ Respondent No. 4/society but it was granted to Respondent No. 6 only. The parties can definitely settle the matter, but in a situation like this, where there are disputes or conflicts and as whole land is not available as announced initially, the action of Respondent/society, as well as, the grant of approval and/or permission by the SRA, in my view, is in contravention of the provisions itself.

66. The background of 31 October 2001, the commercial document with the Petitioners and thereafter formation of Respondent No. 4 (Indira society) and the pendency of the Trust litigation and other occupiers/tenants applications even on disputed land, apart from LOI, approval and sanction of the plan and the construction of first rehab building with RCC structures/frame work by the Petitioner all important and interconnected elements and have been overlooked by the society as well as the SRA. The termination/resolution dated 20 March 2005, as alleged to have been withdrawn by meeting dated 1 January 2006/16 January 2006 by Respondent No. 4/society which is also in dispute, the order passed in Trust Petition with regard to the disputed land which is part of the slum development scheme as announced and as there was no substantial change in the circumstances, the Society's resolution dated 14.09.2007 whereby they removed/terminated even the contract of one m/s. M.G. Township and appointed Respondent No. 8 as new developer to continue with such halted project, in my view, are quite important aspect/factors which have not been dealt with in detail and as it goes to the root, therefore, merely because Respondent No. 8 has obtained fresh 70% consent and invested and submitted a Bank Guarantee for performance of Rs. 4 Crores and odd cannot be the reason to maintain the action of Respondents 1 to 4 and 8. The action so initiated by the society and dealing by the SRA on such applications was itself wrong. The facts that the Petitioners have constructed 7th floor of rehab building, based upon Commencement certificate and plan already sanctioned and has been paying the rent for 56 tenants since 2000 and various applications to SRA moved from time to time even after 2005 are also relevant factors.

THE DELAY AT EVERY STAGENO TIMELY STEPS

67. It is relevant to note that the alleged termination by resolution and notice were of the year 2005. Respondent No. 8/new developer appointed in the year 2007. The application filed by Respondent No. 4/society some time in December 2007 and decided by the impugned order in the year 2009 after issuing show notice dated 25.06.2009. The timely decision and/or action by the Respondents are again missing. The decision and reasoning of the SRA and the submissions of the contesting parties on the ground of delay of the project/scheme is therefore unacceptable. It is based on other consideration than law.

THE COMPLETE LAND IS NOT AVAILABLE

68. As per Respondent No. 6, another contesting society (Prem Siddha) whose members/slum dwellers are claiming similar right on the land, but the same is not yet decided on merit. The land even of 30,000 sq. mts is not available at present for consideration/development as permitted. There is nothing in the reasoning to show that the whole land or 30,000 sq. mts. Land and/or any undisputed land is freely available for the development of the scheme as announced. The vagueness, uncertainty, ambiguous and various important factors unless addressed properly, the permission/approval to continue with the halted scheme, to the new builder is just an eye wash. It is unviable and

unworkable. The decision in Trust Petition and/or application or any other litigation, if any, pending between the parties in no way will rectify the decision/action so already taken by Respondents 2 to 4 and 8 which, in view of above, is apparently illegal and without jurisdiction.

69. If the Petitioner could not get the approval for the rehab building pending the Trust Petition since the year 2005, the action of Respondents 4 and 8 to proceed with the construction or the scheme as announced is also reflects non application of mind of law as well as the record. There is no question of showing or approving or getting fresh 70% consent of the members at this stage to continue with the project.

THE PETITIONER'S DEVELOPERS WRONGLY HELD RESPONSIBLE FOR THE DELAY.

70. The situation was not comparatively changed except so called delay in completing the project for the above factors. The importance of project as sanctioned remained same till this date including on the Trust land. There is nothing on record to show that during this period or before termination of the contract, Respondent No. 4/society or requested the Petitioner to modify the plan and/or to amend the plan and/or move accordingly for fresh plan for sanction in view of order in Trust Petition. No directions or order was given by the concerned Authorities to send or to modify or submit new plan, except not granting permissions though sought for, from time to time in this regard. In my view, once the plan is sanctioned covering the land in question, the same plan unless modified either by consent or by whatever means available and in view of the pendency of Trust litigation and as admittedly, no progress could be made in view of the above circumstances, the steps taken by the Respondent/society to terminate the contract and to appoint new developer is incorrect. The SRA has also, because there was delay as contended and as submitted and as recorded and as project was not completed within reasonable time as agreed as referred in Clause 27 of the agreement, permitted/sanctioned the action of society of termination of the contract and sanction of new development to construct and/or to proceed with the construction/scheme.

71. Importantly, whosoever wants to develop a particular property, the area must be specified and clear. The slum dwellers/occupiers for whatever may be the reason, if fail to cooperate and/or refused to vacate and if there is a breach of commitments on their part, the reason may be the Court's order or otherwise or their internal dispute, with other members of the society or dispute with other societies just cannot be overlooked. In my view, even the Authority at a given point of time could not take steps or pass appropriate order in this regard. Any such scheme needs to be completed within a reasonable time, which cannot be without cooperation from all. Therefore, to blame only the Petitioners in the present facts and circumstances for delay is apparently incorrect and impermissible. No one party can be blamed when there is High Court order in favour of the third party, but referring to the disputed land which is part of the sanctioned scheme.

ACTUS CURIAE NEMINEM GRAVABIT "ACT OF THE COURT SHALL PREJUDICE NONE"

72. The factum of court's order needs to be respected by all. There is no point in discussing the same and blaming only one party.

73. In my view, whether Trust litigation is pending or not or whether decision goes either in favour of the Trust or the Trust that itself should not be the reason to overlook all above events taking such alleged drastic action of termination and appointment of new developer before passing such order. I am inclined to accept the contention as raised by the learned Counsel for the Petitioners, that merely because the Court has permitted the society to proceed for sanctioning that itself was not sufficient to continue in piecemeal with the project in part, on the basis of sanction/permission already granted in the year 2000 by excluding the disputed area. Respondent No. 4/society, as well as, Respondent Nos. 2 and 3, the SRA ought not to have taken such un rectifiable decision. The action and the order are bad abinitio & contralegem.

74. As noted, Section 13 (newly added) of the Slum Act itself contemplates that once the plan is duly approved or sanctioned and any restriction or condition so imposed, the owner or the developer, if contravene the same or make any construction by breaching the restriction or condition so imposed, that would be illegal. Therefore, having once sanctioned the plan, all the concerned parties are bound to proceed for the development as per the plan duly approved in the year 2000. In view of this itself, to permit the new developer to continue and proceed with the scheme is in contravention of this provision itself, specially without giving such opportunity to the Petitioners.

THE PETITIONERS/DEVELOPER OUGHT TO HAVE GIVEN SUCH OPPORTUNITY TO DEVELOP THE SCHEME BY THE SRA WITHIN REASONABLE TIME.

75. The order of the Court of permitting the parties to apply for sanction, on the remaining land, that itself, in my view, was not sufficient to direct the new builder to proceed with the development scheme on the remaining land unless the plan or permission so sanctioned or granted is modified in accordance with law, specially without giving any such opportunity to the Petitioner and even otherwise. The concerned Authorities have never directed immediate or within reasonable time to the Petitioner to proceed and/or submit new or modified plan or continue with the project.

76. The commercial contracts, and its respective obligations of all including of the SRA, in my view, definitely play important role even in such situation. The SRA/ Officers cannot direct the developer to construct the area for the slum dwellers/ occupants only, irrespective of the no permission to construct, develop or on the other portion or part of the land or unless the parties agree accordingly, subject to normal law. As noted, both the constructions of respective entitlement and the development need to go simultaneously. That is always subject to coordination & cooperation from all the parties. Had the Authority, in a given case, sanctioned or

permitted and/or directed the Petitioners to proceed irrespective of the pendency of the Trust Petition and if the Petitioners failed to comply with the same, the situation would have been different. There is nothing on record to suggest or show that Authority acted within the reasonable time and passed any such direction earlier at any point of time.

THE SRA/AUTHORITY u/s 13(2) OF SLUM ACT ALSO MUST ACT WITHIN THE FRAME OF LAW AND THE RECORD.

77. The object of early development of such scheme and rehabilitation of the occupiers or the slum dwellers, though prime and important consideration, yet the Authorities are bound to act within the reasonable time to see that the project is completed as announced. The Authorities accordingly empowered to take steps and to pass such appropriate order. Therefore, if they are empowered to permit the developer in case of such situation to develop or continue with the project based upon the original sanctioned plan, and if the parties agree, such order can be passed. But to pass order or permit the new developer by accepting the case of society for termination of the contract with the Petitioners on the ground of delay of the project, in the present case, is contrary and impermissible and it is without jurisdiction. In my view, the Authority has no power or to modify the plan or grant such sanction to continue with the construction of its scheme based upon the certificates and sanction of the plan of the year 2000 in such fashion without following due procedure of law and in fact is contrary to the record itself. Therefore, as admittedly, there was no substantial change in the circumstances so far as the availability of the land in question, except the alleged ground of delay and/or not completion of project within the time, such drastic action by overlooking the commercial aspect of such agreement, in my view, is bad in law.

78. The slum dwellers, who are on the disputed or undisputed land, if not willing to vacate the area and because of delay, and some slum dwellers/occupants or the tenants, not willing to vacate the existing area inspite of the agreement, to permit the society to terminate the contract, and to grant/permit new developer to continue with the project, without verifying pending litigations and which required regulations, in my view, is impermissible.

THE RIGHT TO SLUM EDWELLERS/TENANTS ON THE DISPUTED LAND.

79. Merely because the new developer have more than 70% consent and/or have valid consent or signed agreements, by overlooking the rights of slum dwellers who are on the trust land, or the pendency of other societies applications and the litigations, in my view, will make the situation and circumstances quite Gordian & knotty, than solving it. The interest of all the slum dwellers/occupants need to be taken care of once the scheme is sanctioned. If it is not possible to complete the scheme as sanctioned, the part or piecemeal permission on the claimed undisputed land/area, keeping rest of the rights of the slum dwellers in suspension, who are on the disputed land, in my view, just not permissible

basically in the present facts and circumstances of the case.

80. I am not inclined to accept the reasoning and observation of the Respondent/SRA that the Petitioners/developer has caused the delay as observed. The Authority, as noted above, failed to take into consideration the detailed submission and objections raised by the other societies and the pendency of their litigation.

THE DELAY IN DEVELOPMENT OF ANY SCHEME IS NOT IN THE INTEREST OF PUBLIC OR OCCUPIERS - UNHEALTHY COMPETITION.

81. Such delay is definitely not in the interest of slum dwellers or it is not in the public interest. Though this SRA scheme and the policy is for rehabilitation of such slum dwellers/occupiers/tenants on the Government land or the Corporation land, yet the commercial aspect of such development just cannot be overlooked. The unhealthy competitions and the commercial aspect, even in the mind of slum dwellers/occupiers though project is for the development of slum dwellers just cannot be overlooked. I am not inclined to accept the case/submission of the learned Counsel for the Respondent that the Court must consider such project from the point of view of slum dwellers only; there is no commercial interest of anybody and specially of the developer and the developer wants to develop this property as per the scheme. As noted already, all things should run together. The Authority ought to have considered all above circumstances before passing the impugned order. The SRA is, therefore, bound to pass the order within the frame work of law first and not on sympathetic consideration only for the slum dwellers.

NO DETAIL SHOW CAUSE NOTICE

82. The submission of the Petitioners so far as not providing detail show cause notice by the SRA in question, in my view, has no force. The SRA definitely, as recorded above, heard the parties and passed the order though hurriedly. The principle of natural justice, in the present facts and circumstances of the case, in no way is in breach.

THE SCOPE & POWER u/s SECTION 13 OF SLUM ACT IS QUITE LIMITED, STILL BASIC SUBSTANTIVE LAW AND PROCEDURE LAW NEED TO FOLLOW.

83. The Petitioners or such other company and/or their interse dispute or litigation, in my view, in no way should affect and/or influence the Authority to pass such orders. The jurisdiction as contemplated u/s 13(2) is quite limited. The pendency of litigation between the parties, even if any, cannot be adjudicated finally and/or in a given case, the Authority just cannot wait for final decision also. The Authority may take prima facie view and pass judicial order after giving hearing to all the parties. The principle of Evidence Act and the CPC though may not be available, yet the Authority/any such Authority, who is empowered to take such drastic decision and/or power to pass such order of permitting the society to terminate the contract and sanction/permit the other developer to proceed with the project will definitely affect their rights which definitely based upon the

commercial agreement/documents, therefore, the basic principles which are required for proper adjudication of such rights need to be followed by the SRA or such Authority while passing such order.

84. In view of the above retrospection, the authorities so cited by the parties as, are distinct and distinguishable on facts and circumstances, are of no assistance. The decision and observation on law based upon the Acts and the Regulation need no discussion.

WRIT PETITION MAINTAINABLE.

85. The impugned action/order so passed by overlooking the commercial contract and the provisions of the law are illegal and without jurisdiction. Therefore, the writ petition as filed is only the proper and efficacious remedy. The Full Bench judgment in Tulsiwadi (supra) therefore in view of the above is of no assistance. Merely because there was no challenge to the alleged resolution and the termination dated 20.03.2005/27.03.2005, which was even before the expiry of 5 years of the commercial document dated 31 October 2001 that itself cannot be the reason to accept the case of Respondents 4 and 8, based upon the Resolution dated 13 August 2007. The SRA or such other Authorities action and the order so passed therefore is contrary to law.

THE PUBLIC INTEREST - BALANCE OF CONVENIENCE AND EQUITY AND THE CONDUCT OF THE PARTIES.

86. In view of the above, it is not the question of only equity and balance of convenience, but the question is of the legality and wrong exercise of power by the Authority. The conduct of the parties also play important role in such matters. The occupiers/tenants have been divided for long and worst of all the parties have made only halting progress. Now, with great suddenness the SRA has sanctioned and approved both the action new appointment and the termination. Therefore, the impugned order and the actions based upon the same are liable to be quashed and set aside.

ALL MUST ACT TOGETHER.

87. The slum development scheme is a nodes of interests. The Gordian knot needs to be cut at the earliest, mainly in the interest of the slum dwellers/occupiers. This is possible only if all cooperate and work together. The appointment of new developer frequently, creates more litigations and liability on the society and it's members. The compensation or damage suit against such society after long time remain on record as it will be difficult to get/recover damages from slum dwellers/tenants after long time. The settlement and early disposal of the conflicts is always effective and efficacious remedy.

88. The learned Counsel for the Petitioners also submitted to remand the matter for rehearing. Once observed that whole actions were unjust, wrong, illegal, there is no case of remand. There is no question of any rectification of any action of Respondent No. 4/Respondent No. 8/Respondent No. 2/3 as it was, in view of

above, contrary to the Acts and the Regulations, based upon the above undisputed facts or circumstances.

89. On the whole, as the action/steps so initiated by Respondent No. 4/society and as confirmed/approved by Respondents 2 to 3, are illegal and wrong, there is no option but to reject/the resolutions and the representation filed by Respondent No. 4/society in favour of Respondent No. 8, it also liable to be rejected. In case, the parties are enable to settle the matter, the Petitioners as well as Respondent No. 4/society are at liberty to file a fresh modified proposal/scheme. The Respondents/Authorities to consider as per law at the earliest and pass an appropriate order to get the scheme proceeded further in the interest of all concerned.

90. I am of the view, when the necessities change it also changes the ideologies. The new practical problems crop up. Therefore, the needs of the changing society must be addressed or reshaped at the earliest. It should not remain unsolved. All are interconnected and interlinked for the developing society. Therefore, any such steps or order cannot be termed as judicial activism or revolutionary approach or liberalism. An evolutive process by way of order or interpretation is necessary by a judicial moderation. It is necessary to struck a balance between the commercial and financial aspects with the fundamental, social and human aspects in any development. It cannot be one sided or biased.

OPERATIVE ORDER

91. In view of the above, I am inclined to allow this Petition in terms of prayer (a). The order impugned in the Petition is accordingly quashed and set aside. However, a liberty is granted to the parties to settle the matter in the public interest and of the scheme.

92. The Petitioners to take appropriate steps afresh for the development of the scheme, even by applying for permissible modification of the scheme/plan, if necessary.

93. The Respondent/Authorities to consider the same in accordance with law/regulation, within reasonable time.

94. There shall be no order as to costs.

95. The learned Counsel for Respondents 4 and 8 seeking stay of the effect and operation of this judgment and the order. The learned Counsel for the Petitioner is opposing the same. However, considering the fact that the Petition is pending since 2009 and the status quo order has been continuing since long in favour of the Petitioners and as I am deciding these issues in this Petition finally, I am inclined to grant the stay for a period of four weeks from the receipt of copy of this judgment/order.