REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7435 OF 2008
(Arising out of SLP (Civil) No. 3166 of 2007)

Pramila Suman Singh .... Appellant

Versus

State of Maharashtra and others ..... Respondents

J U D G M E N T

S.B. SINHA, J.

Leave granted.

1. In the Metropolitan Town of Mumbai there exist a large number of Slums. 55 % population of Greater Bombay does not have authorized shelter. Nearly 2525 hectares of lands in the City are under slums. Lands occupied by slums are allocated for different users, and are designated, reserved or allotted for various existing or proposed public purposes in the draft or final revised Development Plan of Greater Bombay.

2. For rehabilitation of the slum dwellers living in distress the Legislature of Maharashtra enacted the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the 1966 Act') in terms whereof respondent Nos. 2 and 4 are treated to be planning authorities as would appear from Section 2(19) thereof.

3. Section 2(27) defines "regulation" to mean a regulation made under Section 159 of this Act and includes zoning, special development control regulations and other regulations made as a part of a Regional Plan, Development plan, or town planning scheme.

Grant or refusal of permission for development is governed by Section 45, which reads thus:-

> "45. Grant or refusal of permission.
>
> (1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing -

(i) grant the permission, unconditionally;
(ii) grant the permission, subject to such general or special condition as it may impose with the previous approval of the State Government; or
(iii) refuse the permission;

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days:

Provided that, the development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant. Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act:

Provided further that any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed

to be an unauthorized development for the purposes of sections 52 to 57.

(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned."

4. Indisputably all Planning Authorities are conferred with power to make Regulations as envisaged under Section 159 of the 1966 Act.

5. The State of Maharashtra also framed Regulations known as Development Control Regulations for Greater Bombay, 1991 (DCR). Relevant portion of Regulations 5(3) and 33(10), read :-

"5. Procedure for obtaining Development Permission and Commencement Certificate.

(3) Information accompanying notice. –

(i) Key plan, site plan, etc. to accompany notice. – The notice shall be accompanied by the key plan (location plan), a site plan, sub-division/lay-out plan, building plan, specifications and certificate of supervision, ownership, title, etc. as prescribed in clauses (ii) to (xiii) below.

(ii) Ownership title and area.- Every application for development permission and commencement certificate shall be

> accompanied by the following documents for verifying the ownership and area etc. of the land :-
>
> > (a) attested copy or original sale/lease/power of attorney/enabling ownership document wherever applicable."
>
> 33(10). Rehabilitation of slum dwellers through owners/developers/cooperative housing societies. -For redevelopment or restructuring of censused slums or such slums whose structures and in habilitants whose names appear in the Legislative Assembly voters' list of 1985 by the owners/developers of the land on which such slums are located or by Cooperative Housing Societies of such slum dwellers a total floor space index of upto 2.5 may be granted in accordance with schemes to be approved by special permission of the Commissioner in each case. Each scheme shall provide inter-alia the size of tenements to be provided to the slum dwellers, the cost at which they are to be provided on the plot and additional tenements which the owner/developer can provide to accommodate/rehabilitate slum dwellers/project affected persons from other areas etc. in accordance with the guidelines laid down in the Regulations in Appendix IV."

6. In terms of Regulation 33(10) of DCR, three annexures were prescribed in Appendix IV.

7. 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. We may notice a few provisions thereof.

Sections 2 (hc) of the 1971 Act reads :-

> "'Slum Rehabilitation Authority' means the Slum Rehabilitation Authority or Authorities appointed by the State Government under Section 3A."

Section 2(hd) of the 1971 Act reads :-

> " 'Slum Rehabilitation scheme' means the Slum Rehabilitation Scheme notified under section 3B "

8. Chapter I-A, however, was inserted by Maharashtra Act 4 of 1996 providing for Slum Rehabilitation Scheme.

9. Sections 3A ; 3B ; relevant part of 3D ; 3 K and 3V read as under :-

"3A. Slum Rehabilitation Authority for implementing Slum Rehabilitation Scheme :- (1) Notwithstanding anything contained in the foregoing provisions, the State Government may, by notification in the Official Gazette, appoint an authority to be called the Slum Rehabilitation Authority for such area or areas as may be specified in the notification; and different authorities may be appointed for different areas.

(2) Every Slum Rehabilitation Authority shall consist of a Chairman, a Chief Executive Officer and fourteen other members, all of whom shall be appointed by the State Government.

(2A) Every Slum Rehabilitation Authority appointed under sub-section (1) shall be a body corporate by the name of "The…… Slum Rehabilitation Authority" and shall have perpetual succession and common seal; with power to contract, acquire, hold and dispose of property, both movable and immovable, and to do all things necessary for the purposes of this Act, and may sue and be sued by its corporate name.

(3) The powers duties and functions of the Slum Rehabilitation Authority shall be, -

(a) to survey and review existing position regarding slum areas ;

(b) to formulate schemes for rehabilitation of slum areas ;

(c) to get the Slum Rehabilitation Scheme implemented;

(d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slums.

(4) The terms and conditions of appointment of the non-official members of the Slum

Rehabilitation Authority shall be such as may be specified by the State Government.

(5) The Slum Rehabilitation Authority may appoint Committees consisting of its members and experts to facilitate its working and speedy implementation of the scheme prepared under section 3B."

"3B Slum Rehabilitation Scheme. - (1) the State Government, or the Slum Rehabilitation Authority concerned with the previous sanction of the State Government, shall prepare a general Slum Rehabilitation Scheme for the areas specified under sub-section (1) of section 3A, for Rehabilitation of slums and hutment colonies in such areas.

(2) The General Slum Rehabilitation Scheme prepared under sub-section (1) shall be published in the Official Gazette, by the State Government or the concerned Slum Rehabilitation Authority, as the case may be, as the Provisional Slum Rehabilitation Scheme for the area specified under section 3A(1), for the information of general public, inviting objections and suggestions, giving reasonable period of not less than thirty days, for submission of objections and suggestions, if any, in respect of the said Scheme.

(3) The Chief Executive officer of the Slum Rehabilitation Authority shall consider the objections and suggestions, if any, received within the specified period in respect of the said Provisional Scheme and after considering the same, and after carrying out such modifications as deemed fit or necessary, finally publish the said

scheme, with the approval of the State Government or, as the same may be, the Slum Rehabilitation Authority in the Official Gazette, as the Slum Rehabilitation Scheme.

(4) The Slum Rehabilitation Scheme so notified under sub-Section (3) shall, generally lay down the parameters for declaration of any area as the slum rehabilitation area and indicate the manner in which rehabilitation of the area declared as the slum rehabilitation area shall be carried out. In particular, it shall provide for all or any of the following matters, that is to say,-

(a) the parameters or guidelines for declaration of an area as the slum rehabilitation area;

(b) basic and essential parameters of development of slum rehabilitation area under the Slum Rehabilitation Scheme;

(c) provision for obligatory participation of the landholders and occupants of the area declared as the slum rehabilitation area under the Slum Rehabilitation Scheme in the implementation of the Scheme;

(d) provision relating to transit accommodation pending development of the slum rehabilitation area and allotment of tenements on development to the occupants of such area, free of cost.

(e) scheme for development of the slum rehabilitation areas under the Slum Rehabilitation Scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the

option available to the Slum Rehabilitation Authority for taking up such development in the event of non-participation of the landholders or occupants;

(f) provision regarding sanction of Floor Space Index and transfer of development rights; if any, to be made available to the developer for development of the slum rehabilitation area under the Slum Rehabilitation Scheme;

(g) provision regarding non-transferable nature of tenements for a certain period, etc."

"3D. Application of other Chapters of this Act to Slum Rehabilitation Area with modification. – On publication of the Slum Rehabilitation Scheme under sub-section (1) of section 3B, the provisions of other Chapter of this Act shall apply to any area declared as the slum rehabilitation area, subject to the following modifications, namely :-

… ….. ……"

"3K. Power of State Government to issue directions. - (1) The State Government may issue to the Slum Rehabilitation Authority such general or special directions as to policy as it may think necessary or expedient for carrying out the purposes of this Act and the Slum Rehabilitation Authority shall be bound to follow and act upon such directions.

(2) (a) Without prejudice to the generality of the foregoing provision, if the State Government is of

> opinion that the execution of any resolution or order of the Authority is in contravention of, or in excess of, the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to abuse or misuse of or to cause waste of the Fund of the Authority, the State Government may, in the public interest, by order in writing, suspend the execution of such resolution or order. A copy of such order shall be sent forthwith by the State Government to the Authority and its Chief Executive Officer.
>
> (b) On receipt of the order sent as aforesaid, the Authority shall be bound to follow and act upon such order."
>
> "3V. Power to make regulations. – The Slum Rehabilitation Authority may make regulations consistent with this Act and the rules made thereunder for all or any of the matters to be provided under this Act by regulation and generally for all other matters for which provision is, in the opinion of the Slum Rehabilitation Authority necessary for the exercise of its powers and the discharge of its functions under this Act."

10. In view of Section 3A Slum Rehabilitation Authority was appointed, which is a body corporate and having a perpetual succession and common seal. Powers, duties and functions of the Slum Rehabilitation Authority hae been laid down under the said Act. Sub-section (1) of Section 3B postulates preparation of Slum Rehabilitation Scheme while sub-section (2) thereof provides for its publication in the official Gazette. Such a Scheme attains

finality upon inviting objections and suggestions and upon consideration of the same. Section 3C, however, provides for declaration of slum rehabilitation areas which upon publication in the official gazette is required to be given wide publicity in the manner as may be specifically specified by the authority. Section 3D provides that on publication of the Slum Rehabilitation Scheme the other provisions of the Act shall apply to any area declared as the slum rehabilitation area subject to modifications prescribed therein.

Section 13 of the Act provides for power of Competent Authority to redevelop clearance area in the manner as stated therein.

The State Government is empowered to issue directions to the State Rehabilitation Authority in terms of Section 3K of the Act. Section 3V empowers the State Rehabilitation Authority to make regulations consistent with the provisions of the Act and the rules made thereunder for all or any of the matters provided under the Act by regulations and for all other matters for which provisions are, in the opinion of the Slum Rehabilitation Authority, necessary for the exercise of its powers and the discharge of its function.

11. Concededly despite constitution of the Slum Rehabilitation Authority in the year 1977, no Regulations were framed by it. Policy guidelines, however, were being issued from time to time keeping in view the aforementioned objective by the State. The manner of re-development of existing slums occupying lands from residential commercial, industrial zones and lands reserved/designated/allotted for various public purposes was divided into seven categories.

12. The Bombay Municipal Corporation, being one of the Planning Authorities, had also issued circulars in respect of development plan of Greater Bombay for implementation of lands allocated to the various users designated/reserved by slums etc. One of such circulars is dated 13th October, 1992 whereby it was directed that all concerned should comply with the requisitions prescribed in the said circular before forwarding the proposal for administrative and financial scrutiny for obtaining the approval of the High Power Committee.

13. As stated earlier, in terms of DCR 33(10), annexures, three in number, were prescribed in Appendix IV. Annexure-I lays down the format for submitting the Scheme as per modified scheme. Annexure-II provides for a certificate in respect of the persons residing in a slum within the

purview of the said policy decision. Annexure-III provides for the details required to be furnished to assess the financial capability of the 'Developer' to execute the SRA Scheme.

14. Appendix X of the DCR prescribes a Form of Notice and the 'first application' required to be filed for development in terms of Sections 44, 45, 58 and 69 of the 1966 Act and erection of a building under Section 337 of the Bombay Municipal Corporation Act, 1888 wherewith ownership documents and property registered card were to be annexed.

15. The procedure for submission, processing and approval of Slum Rehabilitation Schemes, is as under:

> "*1*. All slums and pavements whose inhabitants' names and structures appear in the electoral roll prepared with reference to 1-1-1995 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 situate. 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 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 the 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 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 non-participants 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 Annexure II 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 an 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 Scheme, with the approval of the State Government.

(*a*) Consent-cum-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 freesale 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 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 Annexure I, Annexure II and Annexure III are to be submitted to SRA by the architect along with an application for the Slum Rehabilitation Scheme. A checklist of all such documents required for submission is available in SRA office.

* * *

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.

11. After a pre-security 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 (*sic*) 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 Certification Wing and Accounts & Finance Wing respectively."

16. Indisputably the matter relating to development and redevelopment of slums used to be carried out by an Authority known as Slum Rehabilitation Authority. The constitution of the Committee was dependent on the fact as to who was owner of the land.

17. On or about 27th August, 2001 Slum Rehabilitation Authority issued a circular in terms whereof Architect/Developer or Office Bearer of the Society themselves were authorized to fill up Annexure-II. But it was subject to scrutiny by the competent authority. However, approval was to be granted only upon receipt of certified copy of Annexure-II from the competent authority.

18. We have noticed hereinbefore that an application for redevelopment of the slum areas could be filed by an owner of the land, non-governmental organization, a cooperative society of the slum dwellers and/or a developer. Appellant herein is a developer while respondent No.6 is a proposed Cooperative Group Housing Society. Both were entitled to file applications

for development scheme of the slum areas. In terms of the provisions of 1966 Act and the Scheme framed thereunder Final Plot Nos. 559 and 569 were demarcated. Both the said Final Plots were, however, tenanted or encroached.

19. On or about 21st October, 1978 an order/Notification was passed/issued under Section 3(a) of the Slum Development Act declaring the said F.P. No.559 as a Slum Land. Under the Development Plan for City of Mumbai the said plot was proposed to be reserved for recreation ground which was later confirmed in the year 1992 in terms of the final development plan.

20. Appellant claimed ownership of plot No.559 of Town Planning Scheme IV of Mahim Division admeasuring 5274.30 sq. mts. Out of which 1242.30 sq. mtrs. of land was acquired by the Municipal Corporation of Greater Bombay. No compensation is said to have been paid for the said acquisition.

21. F. Plot No.569, however, admeasures 9702 sq. mts. Indisputably in the year 1995 respondent No.6 filed an application for development of a part of Plot No.569 measuring 3205 sq. mtrs. of land. On 15th October,

1996 the Bombay Municipal Corporation granted a 'no objection certificate' in its favour in requisite form i.e. Annexure-II in respect of F. Plot No.569 admeasuring 3205 sq. mtrs. including the four chawl which were known as Dholkwala Chawl. It gave all the particulars of eligible Slum dwellers and had granted consent to participate in Slum Rehabilitation Scheme.

22. The plans submitted by the appellant as also the 6th respondent cover an area of 1081 sq. mtrs. carved out of Final Plot No.569. Scheme of the appellant was in respect of her F. Plot No.559 and 1081 sq. mtrs. of land from F. Plot No. 569.

23. Appellant also filed an application and obtained a 'no objection certificate in respect of F. Plot No. 559.

24. Indisputably on receipt of the said application, Slum Rehabilitation Authority called upon Bombay Municipal Corporation to clarify whether a certificate as envisaged under Annexure-II in respect of 32 dwellers of Dholkawala Chawl could be issued. Bombay Municipal Corporation rejected the said proposal stating that it had already issued Annexure-II in favour of respondent No.6 and all the 32 names had been appearing therein.

Indisputably a copy thereof had not been forwarded to the appellant which, as would be noticed hereinafter, will have some bearing.

25. Indisputably again a composite building plan in favour of respondent No.6 was approved on 2nd July, 2005. They were directed to carry out construction activities.

26. Thereafter only appellant filed a writ application before the High Court of Judicature at Bombay which was marked as WP No.397 of 2006 inter alia for directions and/or orders to the Slum Rehabilitation Authority to consider her proposal, in accordance with law, for sanctioning the Slum Scheme or issuance of the Letter of Intent or a Commencement Certificate.

27. A Division Bench of the High Court by reason of an order dated 29th March, 2006 passed in presence of counsel for the parties thereto, directed the Authority to hear all the parties including respondent No.6 herein and to pass appropriate orders as per law. No interim order was passed despite the fact that by that time construction of the building had already commenced.

28. A petition for grant of special leave was filed in April, 2006 against the order dated 29th March, 2006 which was dismissed by this Court by an

order dated 11th May, 2006 permitting the appellant to obtain interim protection from the High Court. Pursuant to or in furtherance of the said observation, the appellant again filed a writ petition before the Bombay High Court bearing Writ Petition No. 1473 of 2006 for grant of an interim relief. The said writ petition, however, was dismissed by an order 22nd June, 2006 recording the statement made by the Authority that a final order on the appellant's application would be passed within seven days.

29. The Slum Development Authority passed the impugned order dated 28th June, 2006 inter alia on the following grounds :-

a) The Petitioner has submitted Annexure-I of FP No.559 only and not of FP No.569 (Part).

b) Petitioner's Annexure-III was not certified by Financial Controller, SRA.

c) Petitioner submitted photocopy of Annexure-II dated 15.10.was 1996, actually issued to Bhavani CHS-Respondent No.6 in respect of larger area admeasuring 3205.43 sq. mts. out of FP No.569 (Part).

d) Asstt. Municipal Commissioner by letter dated 31.08.2001 informed SRA that fresh Annexure-II could not be issued in favour of Petitioner qua 1081 sq. mtrs. of FP No.569.

e) SRA has already approved Slum Scheme on FP No.569 (Part), admeasuring 3205.43 sq. mtrs. including an area of 1081 sq. mtrs. of 32 structures of Dholakwala Chawl."

30. Questioning the legality of the said order, the appellant filed a writ petition before the High Court of Judicature at Bombay on 19th October, 2006 which was marked as WP No.2849 of 2006. In the said writ petition, it was contended that the purported reasons assigned by the Authority were extraneous and not germane for considering her application, stating :-

> "(i) As far as the composite proposal is concerned, without the portion of F.P. No. 559 which is under R.G. Reservation which may or may not be submitted for Slum Rehabilitation Authority in view of a Writ Petition before this Hon'ble Court being Writ Petition No.1152 of 2002, the Respondents ought to have considered the Petitioner's proposal for F.P. No.569 entirely and sanctioned the same.
>
> (ii) The Petitioner has submitted Annexure I with her Architect's communication dated 12th March, 2001 for which there is an acknowledgment from the Respondents.
>
> (iii) As far as Annexure II is concerned, the Municipal Authorities were asked to issue a fresh Annexure II by communications dated 8th August, 2001 and 10th August, 2001 to which the Municipal Authorities have replied on 31st August, 2001 saying that the portion of 1081 sq. meters is separate identifiable portion for which the Petitioner has submitted proposal and therefore there is no necessity for issuing a fresh Annexure. Thus, this objection in the order is also erroneous.
>
> (iv) As regards the non-submission of Financial Statement is concerned, this is factually incorrect and legally erroneous assertion in

> as much as on 5th April, 2002 the Petitioner had submitted the Financial Statement with an undertaking as well as the certificate from the Chartered Accountant. The apparent grounds therefore given by the Respondents in the impugned order are imaginary and non-existent."

31. A Division Bench of the High Court dismissed the said writ application principally on the following grounds:-

a) This is a proxy litigation between two developers;

b) SRA has already sanctioned Slum Scheme in favour of Respondent No.6 ;

c) It is not a fit case to interfere in the matter by the High Court in its extraordinary writ jurisdiction under Article 226 of the Constitution so far as the decision taken by SRA in granting LOI in favour of Respondent No.6 is concerned."

32. Principal contentions of Mr. Shyam Diwan, learned senior counsel appearing on behalf of the appellants, are:-

(i) That the High Court committed a serious error in so far as it failed to take into consideration the contentions of the appellant on merits of the matter as the entire premise on the basis whereof the impugned order dated 28th November, 2006 was passed, was non existent.

(ii) The High Court despite noting and recording the submissions of the appellant could not have summarily rejected the writ petition at the threshold without dealing therewith at all, particularly in view of the fact that in the earlier writ petition a direction was issued on Slum Rehabiliation Authority to pass a speaking order.

(iii) That the grounds stated in the order of Slum Rehabilitation Authority were wholly untenable as :-

(a) Had the order of the SRA in respect of Plot No.569 been made known to the appellant she could not have filed a separate application in respect of Plot No. 569.

(b) Appellant having furnished all the details in regard to her financial capacity and, thus, non issuance of the financial certificate was an internal matter of the Authority, whereover the appellant had no control.

(c) The purported 'no objection certificate' granted in favour of respondent No.6 should not have been found the basis for rejecting the appellant's claim as:-

- the same did not create any monopoly in its favour;'

- it should not have been kept alive for an indefinite period;
- such a 'no objection certificate' did not have any statutory force; and
- the date on which the scrutiny fee was paid should have been considered to be the cut off date for the purpose of considering the respective applications for grant of letters of intent.

(iv) The letter of intent granted in favour of respondent No.6 was violative of the guidelines issued by the Authority itself which, it was bound to follow.

33. Mr. Shekhar Naphade, learned counsel appearing on behalf of respondent Nos. 2 and 3, on the other hand contended:

(i) Bombay Municipal Corporation being the owner of the land had a role to play and as 'no objection certificate' had been granted in favour of respondent No.6, which having not been withdrawn, remained valid.

(ii) A composite Scheme both in respect of Plot Nos. 559 and 569 was not maintainable as the same would be contrary to the Town Planning Scheme of 1973 which has a statutory force.

(iii) The Slum Rehabilitation Scheme must cover either whole plot or part of the plot but a scheme on two plots was legally impermissible.

(iv) Consent of Bombay Municipal Corporation having not been sought for and only a query having been made which was duly replied, it was not legally permissible for the Authority to allow the application of the appellant.

34. Mr. Arvind V. Savant, learned senior counsel appearing on behalf of respondent No.4 and 5, would submit:

(i) That no objection certificate having been refused by the Bombay Municipal Corporation in terms of its letter dated 31st August, 2001 in reply to the Authority's letter dated 10th August, 2001, which having not been challenged, the impugned order should not be interfered with.

(ii) In terms of Sections 3A; 3D ; 3K and ; 3 V of the 1971 Act the State and the Slum Rehabilitation Authority, in absence of any

Regulation, were entitled to issue circulars/policy decisions and guidelines from time to time.

(iii) The copy of the application produced by the appellant before this Court being not the same, and furthermore, as from the records it would appear that the requisite annexure being Annexure II, having been furnished only in respect of final plot No. 559 and not for No. 569, the appellant is not entitled to any equitable relief being guilty of suppression of fact and/ or misleading the court. As in some correspondences both plot Nos. 559 and 569 (part) have been mentioned, her application for both the plots was incomplete.

(iv) Appellant, as would appear from paragraphs 2.22 and 2.23 of her writ application, was aware of the letter issued by the Municipal Corporation dated 31st August, 2001 and hence she is estopped and precluded from contending that she was not aware thereof.

(v) In view of the decision of a Division Bench of the Bombay High Court in Awdesh Vasistha Tiwari and others v. Chief Executive Officer, Slum Rehabilitation Authority and Others [2006 (4) Mh. L.J. 282] which has been upheld by a Full Bench of the said Court in Tulsiwadi Navnirman Co-op. Housing

Society Ltd. v. State of Maharashtra [2007 (6) Mh. L.J. 851], the authority cannot be said to have committed any illegality in proceeding on the premise that unless the application of the respondent No. 6 was disposed of, no other or further application can be entertained.

(vi) The State government having laid down the scheme which may not have the force of statute, the procedures laid down therein were required to be followed.

35. Mr. Mukul Rohtagi, learned senior counsel appearing on behalf of respondent No.6 would contend:

(i) Appellant being not the sole owner even of F. Plot No. 559 nor any consent of the Corporation having been taken, the writ petition should have been dismissed in limine as the premise on which the same was filed was false.

(ii) The 1971 Act itself contemplates consent of the owner and in the event the same is not given , his right has to be acquired in terms of Section 14 of the Act and in that view of the matter, the appellant has no locus standi to file application without the consent of the Bombay Municipal Corporation.

(iii) All the persons living in the chawls have since given their consent in favour of respondent No.6 and they being in the transit camp for more than three years, this Court should not interfere with the impugned judgment.

(iv) Huge construction having come up and the FSI available in respect of 1081 sq. meters having already been consumed, no further area is available for construction of any building at present.

36. Mr. Pravin H. Parekh learned senior counsel appearing on behalf of the impleaded respondent would urge:-

(i) The application required to be filed being only in respect of 1081 sq. meters which having not been complied with by the appellant, the same had rightly been rejected by the Authority.

(ii) Appellant herself having filed the application in respect of Final Plot No. 559 in the year 1994 and having not taken any step to raise constructions for a long time is estopped and precluded from contending that respondent No.6 should have

taken steps to raise construction after obtaining no objection certificate from the Bombay Municipal Corporation in 1996.

(iii) Assuming that the said no objection certificate of 1996 could not have been given effect to, in view of the fact that the respective applications filed by the applicant and respondent No.6 being for different areas and contained different schemes, the Authority cannot be said to have acted arbitrarily or unfairly.

37. Appellant indisputably filed a composite application for development of a slum area, that is, both for plot No. 559, of which she is said to be the owner, and plot No. 569 (part).

38. Contention of Mr. Rohtagi that she has made incorrect averments as regards ownership of plot No. 559 in her writ application as the sale deed executed in respect of the said plot being in the name of Subhash Venkatrao Rajurkar, Asgarali Abdulhusain Jariwal and Roshan Meher Singh son of the appellant is not of much significance. It is true that her son was a co-owner along with two others. However, the co-owners, viz., Subhash Venkatrao Rajurkar and Asgarali Abdulhusain Jariwal by affirming affidavits declared

that the said property in its entirety belonged to the appellant as a sole and absolute owner. What would be the legal position in regard thereto is a question which need not be gone into by us herein. We are not dealing with a suit relating to declaration of title. The said Subhash Venkatrao Rajurkar and Asgarali Abdulhusain Jariwal have not filed any suit. They have not denied or disputed the title of the appellant. Suffice it to say that the title of the appellant has been accepted by the authority as it in its impugned order dated 28th June, 2006 expressly recorded that she is the owner of final plot No. 559 "as per entries in the Survey Register of Island City of Mumbai". Appellant has also been shown to be the owner in the property for final plot No. 559 maintained by the Superintendent of the Land Records.

39. For the purpose of determining the said question, the appellant must be held to have disclosed the entire facts with sufficient particulars in the manner in which she claimed herself to be the owner thereof in paragraphs 2.5, 2.6, 2.11 and 2.12 thereof. Pleadings, as is well known, must be read as a whole. In any event, the absence of title or non-ownership is not a ground on which the appellant's application was rejected by the Authority or by the High Court.

40. Contention of Mr. Naphade that the owner of a plot even in terms of the slum rehabilitation scheme vis-à-vis Development Control Regulations (DCR) has a say in the matter is not necessary to be determined finally. Prima facie, however, the scheme does not say so. It is also difficult to pronounce finally upon the question as to whether Regulation 5(3) read with Regulation 33(10) in a situation of this nature would be attracted.

41. Regulation 5(3) is a general provision which mandates disclosure of ownership in regard to the plot on which permission for development is sought for. It is possible to contend that the slum development scheme, however, stands on a different footing. Even assuming that it was obligatory on the part of the authority to insist upon a no objection certificate from the owner of the land in respect whereof our attention has not been drawn to any statutory provision, the letter dated 15th October, 1996 cannot be said to be a no objection certificate. The said certificate has been issued by a Ward Officer. It has not been shown that the Ward Officer was competent to issue such a certificate.

42. In absence of any statutory provisions in terms whereof the Corporation or for that matter any owner of the land was required to issue no objection certificate, we do not find any reason to arrive at a conclusion

that the same amounts to a no objection certificate which was required to be obtained in terms of the statutory provisions. What is meant by such a no objection, in our opinion, should be considered from the point of view that the BMC as a planning authority at the relevant point of time gave its consent to carry out the rehabilitation project. If there was any impediment whether statutory or otherwise, it was entitled to raise an objection in regard thereto as for example, provision for sewarage was to be maintained therefrom.

43. Regulations provide for exemption from compliance with various other requirements such as mandatory open spaces, dimension of structure, etc. Regulation 33(10) which is applicable to such a scheme does not require that an application for development of a plot must be accompanied by documents verifying the ownership of the plot, as the key requirement thereof is consent of 70% of the eligible slum dwellers who may be rank encroachers.

44. Unlike Appendix X, Annexure I does not require production of documents of ownership of the title. What is required is disclosure as regards the identity of the owner of the property as per property records maintained by the City Survey Office. Even deed of lease is required to be

executed within a period of sixty days as would appear from Para 1.11 of Appendix IV.

45. Submission of Mr. Diwan that Section 14 of the Act providing for acquisition of land may not be held to be applicable in relation to a slum development scheme need not go into. A larger question, viz., whether by reason of the circulars issued by the State Development Authority which admittedly do not have the force of the statutes, a valuable constitutional right of property, as adumbrated under Article 300A of the Constitution of India can be taken away, would have to necessarily be gone into therefor. Validity of a circular or scheme providing for grant of a mandatory lease by the owner of a land for a period of thirty years may have to be considered in the light of the constitutional scheme in an appropriate case.

46. Such a provision, however, ex facie appears to be a mandatory one. The owner has no choice. He does not make an option. If for obtaining owner's consent, no provision exists, keeping in view the fact that the 1971 Act and the scheme applied to the entire State of Maharashtra, the legality of Regulation 5(3) only in respect of the Greater Bombay, may have to be considered. However, as at present advised, we need not pronounce our opinion in this case.

47. The certificate dated 15th October, 1996 (Annexure II) was, as noticed hereinbefore, issued by a Ward Officer, which reads as under:

> "Hence, as far as G/North Ward Office is concerned, there is no objection to permit the redevelopment of the portion occupied by the locality known as Nikamwadi, Dholakawala Chawl and part of Buddha Christianwadi at T.P. Reserved Final Plot No. 569 T.P.S. IV (M) after fulfilling the Town Planning/ Development Plan reservation."

48. The Ward Officer was merely performing his duties. He has no authority to grant a no objection certificate on behalf of the Corporation. At least no provision in relation thereto has been brought to our notice. It merely contains a general verification of the eligibility of the occupants intended to be covered by the Slum Rehabilitation Scheme. This takes us to the question as to whether it was obligatory on the part of the appellant to challenge the validity of the order dated 31st August, 2001.

49. Contention of the appellant is that the same had not been communicated to her. It might not have been communicated to her, but whereas there may be some justification therefore. She did not refer thereto in her first and second writ application, but, even in the third writ

application, she did so as would appear from the statements made in paragraphs 2.22 and 2.23.

50. The said letter was written in response to the authority's letter dated 10th August, 2001, the relevant part whereof reads as under:

> "Please find enclosed a copy of Slum Rehabilitation Authority letter No. SRA/Eng/636/GN/PL/LOI, dtd 8/8/2001. You have already issued Ann-II on the F.P. Nos. 569 (pt) for 186 slum dwellers on 15/10/96 in favour of Bhavani CHS (P). However, Architect Subhash V. Rajurkar through developer Smt. Pramila Singh has submitted S.R. Scheme for the slum dwellers on F.P. No. 559 which includes 44 slum dwellers on F.P. No. 569 (Pt) which belongs to MCGM. These 44 slum dwellers have given consent in favour of the developer Smt. Pramila Singh. You are therefore requested to consider issue of Ann – II in respect of those 44 slum dwellers as early as possible.
>
> Dy. Collector
> Slum Rehabilitation Authority
>
> Copy to the Executive Engineer, SRA (IV) with a request to communicate whether there is any S.R. Scheme with ref. to the Ann – II earlier issued by the Ward Officer on 15/10/96."

51. The Corporation in its letter dated 31st August, 2001 stated:

> "Ref: No. SRA/297/EE/2001/Dy. Collr. dated 10.8.2001.
> Sir,

> With respect to above subject matter and reference, I have to inform you that this office has already forwarded Annexure II for Bhavani CHS (P) at F.P. No. 569(Pt.) to your office on 15/10/1996. These occupants as stated in your above reference letter were already accommodated in the above proposed society. Hence issuing of fresh Annexure II does not arise.
>
> However, you may contact Chief Engineer (D.P.) City for advise in the matter please."

52. We would assume that in view of the purported simplification of the procedure, such an annexure was required to be filed along with the application, subject of course to the scrutiny thereof. It was required to be verified. It was refused to be done on the plea that Annexure II had already been issued in favour of the respondent No. 6 as far back on 15th October, 1996. Admittedly, whereas the application for development of slum area filed by the respondent No. 6 was in respect of a part of Plot No. 569 admeasuring 3205 sq. mtrs. out of more than nine thousand square feet, the application filed by the appellant was a composite application both for plot Nos. 559 and 569 (part). Appellant herself contended that whereas 70% of the inhabitants of the slum including the four chawls aforementioned hailed from the other part (i.e. part other than area in question admeasuring 1081 sq. m.), the consent given by the slum dwellers in her favour were the

inhabitants of the four chawls only. If the appellant was aware of the refusal on the part of the Corporation to carry out its obligation under the Scheme, i.e., to verify Annexure II, which for one reason or the other, had been refused to be carried out, in our opinion, it was necessary for her to question the validity thereof.

Interpretation of Mr. Diwan that by reason of the said letter only the Corporation has refused to verify the occupancy position for the purpose of the Slum Rehabilitation Scheme and, thus, was not required to be challenged, cannot be accepted. The authority was aware of the said letter of the Ward Officer dated 15th October, 1996. It was in that view of the matter, a request was made to communicate as to whether there had been any other Slum Rehabilitation Scheme pending for consideration with reference to the Annexure II which had been issued earlier by the Ward Officer, i.e., on 15th October, 1996. It was in the aforementioned context further verification was required to be made. Verification was, therefore, required to be made. Consent, as noticed hereinbefore, was given by the inhabitants of the slums in respect of the said 1081 sq. m of land only. Their consent had not been obtained by the respondent No. 6. The schemes propounded by the appellant and the respondent No. 6 were different ones. Only a part of the scheme, viz., 1081 sq. m. of land was common. It was substantially different in material particulars. In that view of the matter, in

our opinion, it was necessary for the appellant to question the validity thereof.

53. Annexure II may not have any statutory force but when guidelines were issued, an application for grant of sanction for development of a slum area was required to be in conformity with the said guidelines, unless the same is found to be ultra vires. No law contrary to the guidelines has been pointed out to us.

54. This leads to the question as to whether the appellant filed Annexure I in respect of plot No. 569 (part). The document which has been filed before us being a copy of the application shows that the appellant in her application dated 12th March, 2001 annexed Plan of F.P. 569 (Part) as Item No. 7 and Annexure I for plot No. 569(Part). One of the grounds on which the appellant's application was rejected was that Annexure I for Plot No. 569 (part) had not been supplied. Before us the original record had been produced. We have verified the same. In the original, such an annexure had not been given. Even we have seen the requisite annexure. It was only in respect of plot No. 559 and not for 569. Some explanation had been sought to be offered that a copy was produced later on and in the office copy of the forwarding letter an endorsement had been made. The items

mentioned at Item Nos. 8 and 9 in the original appeared after the words "thanking you". Ordinarily, they could have formed part of the original application. Even otherwise enclosure of such an annexure was not mentioned in the original letter. It is true that in various other documents annexed with the said application, both the plots were mentioned. Presumably, only on that basis, the officers of the authority in their correspondences either with the appellant or with the Corporation referred to both plot Nos. 559 and 569 (part) as would appear from their letters dated 8th August, 2001 and 10th August, 2001.

55. There cannot be any doubt whatsoever that in their aforementioned letters both plot Nos. 559 and 569 had been mentioned but it must have been done on the basis of the other documents available on the record and not on the basis of Annexure II. It is not the case of the appellant that in fact a separate Annexure II had been enclosed with another letter at a different point of time. Prior to 8th August, no such statement was made. We having satisfied ourselves that the appellant did not annexe Annexure II in respect of plot No. 569 (part) along with her original application, we do not find any legal infirmity in the authority's impugned order dated 28th June, 2006.

56. We, therefore, although may accept the contention of Mr. Diwan that the second reason assigned in support of the said order dated 28th June, 2006 that financial capability of the appellant had not been certified by the Financial Controller of the SRA as not correct, we have no other alternative but to uphold the said order. In this view of the matter, it is not necessary for us to consider other and further contentions raised by the parties hereto including the observations made by the Division Bench of the High Court in Awdesh Vasistha Tiwari (supra) and Tulsiwadi Navnirman Co-op. Housing Society Ltd. (supra).

57. Appellant in paragraph 2.16 of her writ application referred to the permission of the Deputy Commissioner himself to grant necessary sanction for retaining 1081 sq. m. of land appurtenant to final plot No. 569 (part).

58. It is of some significance to note that the Corporation in paragraph 8 of its counter affidavit before this Court and the Authority also in paragraph 3(c) of its affidavit in reply dated 7th May, 2007 categorically stated in regard to the legal effect of the said communication dated 31st August, 2001. Paragraph 8 of the counter affidavit of the Corporation reads as under:

> "8) I say that the petitioner further by her letter dated 1/8/2001 claims the redevelopment of only part portion admeasuring 1081 sq. mtrs. of F.P. No. 569 and has requested to issue

> N.O.C./Annexure for 44 Slum Dwellers. The S.R.A. vide its letter dated 10.8.2001 requested the Asst. Municipal Commissioner, G/North Ward to consider the issue of those 44 slum dwellers on F.P. No. 569(part) belonging to MCGM which are intended to be included in proposal on F.P. 559 submitted by the Petitioner. I say that this Respondent had rejected the application of Petitioner for Annexure II on 31.8.2001, on the grounds that these 44 slum dwellers on F.P. No. 569 belonging to MCGM are already included in Annexure II of Bhavani Co-op. Housing Society of F.P. No. 569(part), which is annexed at Exhibit – 'P' page 82 of the writ petition No. 2849 of 2006 and it appears that the same has not been challenged by the petitioner till this date. It is incidentally necessary to mention that carving out the area of the 4 chawls situated on F.P. No. 569 would amount to sub division of F.P. No. 569."

59. Appellant did not traverse the said allegation that she had knowledge thereabout. She merely raised legal contentions stating:

> "8. In reply to this paragraph it is respectfully submitted that it is partly a matter of record and it is further submitted that these respondents have wrongly rejected the request of the SRA to issue Annexure – II in respect of the occupants of the four chawls as the Annexure – II issued on 15.10.1996 was just a list of Slum Dwellers as the area covered under it was not declared as Slum. It is further submitted that the contention of the Respondent No. 2 and 3 that carving out the area of four chawls situated in F.P. 569 would amount to sub division of F.P. NO. 569 is defeater by their own act of sub dividing area admeasuring 3205 sq. meters in an odd shape out of the total area of 9702 sq. meters which is the total area of F.P. 569.

> The Respondent No. 2 and 3 have been a party to such a Sub Division as per the Annexure P-28 annexed with the reply to counter affidavit of Respondent No. 6. It is further submitted that otherwise also in any case carving out the four chawls situated on F.P. No. 569 would not amount to sub division because of said four chawls are separate entity as other areas which separate names and entities as Jalanwadi, Budha Christian Wadi, Ram & Shyam Wadi and Nikam Wadi which are part of F.P. 569 and have segregated themselves and are redevelop independently as per the wishes of the occupants."

60. Furthermore, it does not appear that any contention, as has been sought to be raised before us, in regard to the interpretation of the said letter dated 31st August, 2001 was advanced before the High Court. The aforementioned averments also clearly show that a specific stand had been taken both by the Corporation as also by the Authority that the scheme in respect of 1081 sq. m. of plot No. 569 was not viable. Such a contention having although not been raised before the High Court, this Court is not precluded from considering the said question.

61. If the scheme is final and binding upon everybody, merger of the plots is impermissible. Appellant does not deny or dispute that having regard to the order passed by the High Court in plot No. 559 was reserved for recreational purposes, and, thus, the authority could not have granted

any permission for development of that plot. Appellant being a developer was surely aware of the aforementioned order of the High Court. Even if she did not know thereabout, her contention that she was ready and willing to develop the 1081 sq. m. occupied by the chawls independently could not have been considered by the Authority for more than one reason, firstly, because such an application was not before the authority; secondly, because her application was stated to be a composite application; and thirdly, because another application in respect of the said land had already been pending.

62. For the reasons aforementioned, it is also not necessary for us to consider as to whether in the aforementioned situation, the appellant is entitled to any equitable relief vis-à-vis the respondent Nos. 6 and 7.

63. Before parting with the case, we must observe that we agree with the submission of Mr. Diwan that in a case of this nature, the High Court was required to go into the merit of the matter and should not have decided such issues only on the ground of lack of locus standi of the appellant to maintain the writ application. She had the requisite locus standi. Her writ application, thus, deserved consideration on merit but as we have ourselves

gone through the entire records and heard the learned counsel for the parties at length, it is not necessary for us to remit the matter to the High Court.

Mr. Diwan is further correct in his submission that the authority having a statutory status should have considered the application filed by the appellant at an early date. We fail to understand that if the policy of the State as also the authority was to see that slum dwellers should be rehabilitated and all modern facilities are made available to them so as to make the city of Bombay a planned one, why the respondent No.6's application was kept pending since 1995 and it was permitted to deposit the scrutiny fee only in the year 2004, i.e., much after the scrutiny fee deposited by the appellant. It is also beyond our comprehension as to why no action had been taken against the respondent No.6 by the Municipal Authority for its inaction for such a long time. If the scheme was to be implemented with sincerity as the policy decision professes, it was imperative for all the statutory authorities to take appropriate action within a reasonable time. Keeping in view the fate of a large number of people, hanging for a long time at the hands of the statutory authority, the same itself may be held to be unreasonable so as to attract the wrath of Article 14 of the Constitution of India. The Municipal Corporation also does not appear to be correct in its stand that Annexure-II issued in favour of the Respondent No.6 amounted

to a 'No Objection Certificate' and if that be so, the law as it then stood, the question of issuance of such certificate at that point of time so as to bind it for all time to come evidently was not comprehended thereunder. In any view of the matter such a no objection certificate does not and cannot be permitted to remain operative for a long time. It was in the aforementioned backdrop that the authority also should have made all endeavours to dispose of the appellant's application forthwith. As the appellant's application was defective as has been found to be and as it has been contended that the same could not have been taken into consideration, we fail to understand why the same could not have been rejected at the threshold. There is absolutely no reason as to why prompt action could not be taken by the authority. If a person is not entitled to a relief he should be informed thereabout at an early date so that if aggrieved thereby he can take recourse to the remedies available to him in law.

We also fail to appreciate as to why in the earlier round of litigation, the authority could not have explained its position so that filing of the second and third writ petitions before the Bombay High Court as also the SLP preferred before this Court by the appellant could have been avoided. These acts of omission and commission on the part of the planning authorities clearly go to show that a well thought out regulation so as to meet these contingencies is imperative. We hope and trust that the authority

shall bestow its serious consideration in framing an appropriate regulation in terms of 1971 Act as expeditiously as possible.

64. We, therefore, agree with the judgment of the High Court, albeit for different reasons. Appeal is dismissed. No costs.

…….J.
[S.B. Sinha]

..……J.
[Cyriac Joseph]

New Delhi;
December 19, 2008