REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9363 OF 2011

Balasaheb Arjun Torbole & Ors.
.....Appellants

Versus

The Administrator & Divisional Commissioner & Ors. **.....Respondents**

W I T H

C.A.No.9147 of 2011

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. These civil appeals are directed against judgment of Bombay High Court dated 31.08.2010 in W.P.(L) No.1915 of 2010 and dated 10.08.2010 in W.P.No.316 of 2010 respectively whereby the writ petitions preferred by the appellants were dismissed. For the sake of brevity facts have been taken from C.A.No.9363 of 2011. The High Court negatived all the five contentions advanced on behalf of the appellants and upheld the order dated 17.04.2010 passed by the High Powered Committee of the Govt. of Maharashtra dismissing Appeal No.62 of 2010 preferred by the appellants to challenge the

sanction of a scheme by the Slum Rehabilitation Authority of lands bearing CTS No.106, 106/1 to 5, 107/1 to 9, 108(Part), 111(Part), 111/1 to 77, 80 to 132 and 112(Part) of Village Kurla, Hutatma Prabhakar Keluskar Marg (Match Factory Lane), Kurla(West), Mumbai and also the orders for their eviction from the private lands.

2. On behalf of the appellants, only C.A.No.9363 of 2011 was argued at length by learned advocate Mr. Sanjay Parikh. He made it clear that this appeal relates not to the municipal plots but only to private plots which are owned privately bearing plot nos.106, 107 and 108. It is the appellants' case that a total of 124 families occupied dwellings in the slums existing over said plots. According to Mr. Parikh the respondent authorities committed error of law in treating the slum area over municipal plots and those over private plots as one slum area. This, according to Mr. Parikh, deprived the slum residents over private plots of having their own redevelopment activity limited to private plots as per the wishes of 70% of its occupants. As per his submission, by illegally declaring a common slum area over two different kinds of lands, one owned by municipal authority and the other by private persons, the rights of the petitioners to have their own say has been diluted and adversely affected. In other words, the major grievance of the appellants is that the respondents have wrongly treated that there exists a consent for redevelopment from 70% of the occupants. Such claim, according to appellants, must be rejected and the appellants should be allowed to have the redevelopment through a cooperative of

occupants of private plots exclusively. The other contention of the appellants is that their does not exist any valid Annexure II with respect to the private plots.

3. On the other hand, Mr. Shyam Divan, Sr. Advocate, appearing for respondent no.10 relied upon the same very legal provisions which were highlighted by Mr. Parikh to submit that there is no requirement in law to divide a slum area on the basis of nature of ownership of the concerned plots and since the private plots and municipal plots are contiguous, hence, for the purpose of redevelopment slum over both was rightly treated as one slum area and the same is permissible under the regulations. As a corollary, it was submitted that if the socalled merger is permissible then the requirement of consent of 70% of the occupants stands fully complied. It was further submitted that as a fact the High Powered Committee and the High Court have found that there exists valid Annexure II issued even in respect of slums over private plots.

4. Mr. C.A. Sundaram, Sr. Advocate, appearing for respondent no.8 who is the developer as well as owner of private lands, highlighted the rights and liabilities of owners of land declared as slum area and submitted that there was no violation of law in grant of approval to the rehabilitation scheme in the instant case to which respondent no.8 had given his consent. Mr. Sishodia, Sr. Advocate appearing for the Slum Rehabilitation Authority as well as Mr. Atul Chitale, Sr. Advocate for the Respondent No.12-Municipal Corporation of Greater Mumbai also defended the action of the

authorities as well as order of the High Court upholding the decision taken by the High Powered Committee.

5. The relevant facts and relief sought by the appellants can very usefully be culled out from paragraphs 1, 2 and 3 of the judgment under appeal :

> "1. What is challenged in this writ petition under Article 226 of the Constitution of India is the order dated 17 April 2010 of the High Powered Committee of the Government of Maharashtra, dismissing Appeal No.62 of 2010 of the present petitioners. In the appeal, the petitioners challenged the sanction of a scheme by the Slum Rehabilitation Authority on lands bearing CTS No.106, 106/1 to 5, 107/1 to 9, 108(pt), 111(pt), 111/1 to 77, 80 to 132 & 112(pt) of village Kurla, Hutatma Prabhakar Keluskar Marg (Match Factory Lane), Kurla (West), Mumbai. A Letter of Intent was issued for the whole plot on 29 April 2006. Out of the above plots, plot Nos.106, 107 and 108 are the plots in question which were earlier owned by respondent No.8 and were subsequently declared as slums. The other lands are of the Municipal Corporation of Greater Mumbai. The petitioners herein are residents in the slums on private plots owned by respondent No.8.
>
> 2. The competent authority declared the above private plots as well as Mumbai Municipal Corporation plots to be slum areas under section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act') by a notification dated 29 January 2003. The slum dwellers residing on both municipal plots and private plots formed a society in the name of respondent No.10 and requested respondent No.8 to implement the slum scheme. Respondent No.8 is owner-cum-developer and respondent No.10 being their developer as per their own proposal to the Slum Rehabilitation Authority (for short 'SRA'). On 30 June 2004, the competent authority decided the eligibility of the slum dwellers of the private plots and held that out of the occupants of 124 structures, occupants of 76 structures were eligible and that out of those, only 19 had given consent which amounted to 25%. Thereupon, on 13 January 2004, the respondent-Municipal Corporation issued Annexure-II for

the BMC Plots certifying that out of 367 slum dwellers, 251 were eligible and all of them have given their consent which represented 100% of the eligible slum dwellers. Since there was one proposal submitted by respondent Nos.8 and 10 for both the plots i.e. BMC plots and private plots, the officers of SRA prepared a report and on taking the consent of the slum dwellers of both BMC plots and private plots, came to the conclusion that the consent was given by 81.32% of the slum dwellers of all the plots taken together for which one common scheme was submitted. On 29 June 2006, SRA approved the Slum Rehabilitation Scheme and issued a Letter of Intent in favour of respondent Nos.8 and 10. On 14 February 2007, SRA approved the building plans for composite development of the Municipal plots as well as private plots. On 9 September 2009, SRA issued a revised Letter of Intent with a condition that respondent Nos.8 and 10 shall rehabilitate all eligible slum dwellers as held by the competent authority/Municipal Corporation. Condition No.23 of the Letter of Intent provides that individual agreements of at least 70% of the eligible slum dwellers shall be submitted prior to the Commencement Certificate.

3. In the meantime, the petitioners who are residents in the slums on the private plots, were not shifting to the transit tenements. The Deputy Collector, Kurla issued show-cause notices to the petitioners and after hearing them, passed the impugned order dated 25 May 2009 under sections 33 and 38 of the Slum Act requiring the petitioners to vacate the slums. Aggrieved by the said order, the petitioners filed an appeal before the Appellate Authority viz. Divisional Commissioner, Konkan Division, Mumbai who dismissed the appeal on 13 August 2009 after hearing the petitioners. The petitioners thereafter filed a writ petition before this court and the petitioners were relegated the alternative remedy for filing an appeal before the Committee. The petitioners, accordingly, filed appeal No.62 of 2010 before the High Powered Committee on 15 March 2010. The High Powered Committee issued notice to the respondents and respondent Nos.8 and 10 filed their reply. The petitioners as well as respondent Nos.8 and 10 filed their written statement. After the hearing concluded on 17 April 2010, by an order dated 17 April 2010, the High Powered Committee dismissed the appeal. Hence the present writ petition which came to be filed on 17 August 2010."

6. At the outset it is deemed proper to take note of relevant legal provisions. Sections 2(15) and 2(19) of the Maharashtra Regional and Town Planning Act, 1966 (for short, '1966 Act') define 'local authority' and 'planning authority' in following terms :

> "2(15) 'local authority' means –
>
> (a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act, or the Nagput Municipal Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948, or any Municipal corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949,
>
> (b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act 1965.
>
> (c) (i) a *Zilla Parishad* constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961,
>
> (ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976,
>
> (iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936
>
> which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act;
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> ... ...
>
> 2(19) *'Planning Authority'* means a local authority and includes –
>
> (a) a Special Planning Authority constituted or appointed or deemed to have been appointed under Section 40;

> (b) in respect of the slum rehabilitation area declared under Section 3C of the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under Section 3A of the said Act;"

It is relevant to note that 'Planning Authority' not only means a local authority but also includes by reference, the Slum Rehabilitation Authority (SRA) appointed under Section 3-A of the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971 (for short 'the 1971 Act') in respect of a slum rehabilitation area.

7. The power available to the planning authority to modify final development plan under sub-section (1) of Section 37 of the 1966 Act has also been now vested in the SRA appointed under Section 3-A of the 1971 Act by adding sub-section(1B) to Section 37 through an amendment of 1996. This sub-section reads as follows :

> "(1B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a final Development plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the *Official Gazette*, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government to sanction."

8. The Mumbai Municipal Corporation Act, 1888 was also amended in 1996 to insert Section 354AAA which enables vesting of power of the Commissioner and the Corporation relating to building regulations etc. in the SRA appointed under the 1971 Act. It reads as follows :

> "**354AAA. Empowerment of Slum Rehabilitation Authority for implementation of Slum Rehabilitation Scheme.-**Notwithstanding anything contained in any other provisions of this Act, the State Government may, by notification in the *Official Gazette*, direct that the powers of the Commissioner under this Chapter and the powers of the Corporation and the Committees of the Corporation under this Act, if any, relating to building regulations and matters ancillary or consequential thereto, shall be exercised by the Slum Rehabilitation Authority appointed under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, for the slum rehabilitation area declared under that Act."

9. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (the 1971 Act) was enacted 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. Its following provisions are deemed relevant and, therefore, reproduced hereinbelow :

> "2(ga) 'Slum area' means any area declared as such by the Competent Authority under sub-section (1) of section 4 and includes any area deemed to be a slum area under section 4A;

(h) 'Slum clearance' means the clearance of any slum area by the demolition and removal of building therefrom;

(h-a) 'Slumlord' means a person, who illegally takes possession of any lands (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or leave and licence agreements or any other agreements in respect of such lands, or who constructs unauthorized structures thereon for sale or hire, or gives such lands to any persons on rental or leave and licence basis for construction, or use and occupation, of unauthorized structures, or who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure, or who abets in any manner the doing of any of the above-mentioned things.

(h-b) 'Slum Rehabilitation Area' means a slum rehabilitation area, declared as such under sub-section (1) of section 3C by the Competent Authority in pursuance of the Slum Rehabilitation Scheme notified under section 3B;

(h-c) 'Slum Rehabilitation Authority' means the Slum Rehabilitation Authority or Authorities appointed by the State Government under section 3A;

(h-d) 'Slum Rehabilitation Scheme' means the Slum Rehabilitation Scheme notified under section 3B;"

10. Section 3A envisages a Slum Rehabilitation Authority (SRA) for implementing slum rehabilitation schemes. Section 3B provides for slum rehabilitation scheme. The power to frame a general rehabilitation scheme is vested in the State Government or the SRA concerned with the previous sanction of the State Government for rehabilitation of slums and hutment colonies in such areas. Section

3C vests power in the Chief Executive Officer of the concerned SRA to declare an area as slum rehabilitation area if such declaration is found justified in the light of an already published Slum Rehabilitation Scheme. Section 3C runs as follows :

> "**3C. Declaration of a slum rehabilitation area.—**(1) As soon as may be after the publication of the Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied that circumstances exist in respect of any area, justifying its declaration as slum rehabilitation area under the said scheme, may by an order published in the *Official Gazette*, declare such area to be a 'slum rehabilitation area'. The order declaring slum rehabilitation area (hereinafter referred to as 'the slum rehabilitation order') shall also be given wide publicity in such manner as may be specified by the Slum Rehabilitation Authority.
>
> (2) Any person aggrieved by the slum rehabilitation order may, within four weeks of the publication of such order prefer an appeal to the Special Tribunal; and the decision of the Special Tribunal shall be final.
>
> (3) On the completion of the Slum Rehabilitation Scheme, the Slum Rehabilitation Area shall cease to be such area."

11. The other relevant provisions of the 1971 Act include Section 4 which vests power in the Competent Authority to declare an area to be a slum area. Against such declaration in the Official Gazette, appeal is provided to the Tribunal provided it is filed within 30 days. The Competent Authority under the Act has also been vested with power under Section 11 to declare any slum area to be a clearance area from which buildings found to be not fit for human habitation may be cleared in accordance with the provisions of the Act.

It is not in dispute that for its own lands the Bombay Municipal Corporation has been appointed as the Competent Authority under Section 3 of the 1971 Act. For private lands, the concerned Deputy Collector (Encroachment) has been appointed as the Competent Authority.

12. The Bombay Municipal Corporation has framed Development Control Regulations for Greater Bombay under the provisions of Section 159 of the 1966 Act. These Development Control Regulations for Greater Mumbai, 1991 (for brevity 'DCR') came into force on 25.03.1991. Regulation 33(10) was inserted later in 1997. Its salient features are as follows :

> "**I. Eligibility for redevelopment Scheme**.—(a) For redevelopment of slums including pavements, whose inhabitants' names and structures appear in the electoral roll prepared with reference to 1st January 1995 or a date prior thereto, but where the inhabitants stay at present in the structure, the provisions of Appendix IV shall apply on the basis of a tenement in exchange for an independently numbered structure.
>
> (b) Subject to the foregoing provisions, only the actual occupants of the hutment shall be held eligible and the so called structure-owner other than the actual occupant, if any, even if his name is shown in the electoral roll for the structure, shall have no right whatsoever to the reconstructed tenement against that structure.
>
> **II. Definition 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.

(ii) If any area fulfills the conditions laid down in section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to qualify as slum area and has been censused or declared and notified shall be deemed to be and treated as Slum Rehabilitation Areas.

(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 areas 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.

(iv) Any area required or proposed for the purpose of construction of temporary or permanent transit camps and so approved by the Slum Rehabilitation Authority shall also be deemed to be and treated as Slum Rehabilitation Areas and projects approved in such areas by the Slum Rehabilitation Authority shall be deemed to be Slum Rehabilitation Projects.

(v) A pavement shall mean any Municipal/Government/Semi-Government pavement and shall include any viable stretch of the pavement as may be considered viable for the purpose of Slum Rehabilitation Scheme.

(vi) A structure shall mean all the dwelling areas of all persons who were enumerated as living in that one numbered house in the electoral roll of the latest date, upto 1st January, 1995 and regardless of the number of persons, or location of rooms or access.

(vii) A composite building shall mean a building comprising both rehab and freesale components or parts thereof in the same building.

(viii) Censused shall mean those slums located on lands belonging to Government, any undertaking of Government, or Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January 1995.

III. Joint ownership with spouse.—The reconstructed tenement shall be of the ownership of the hutment-dweller and spouse conjointly, and shall be so entered and be deemed to be so entered in the records of the co-operative housing society, including the share certificates or all other relevant documents.

IV. Denotification as Slum Rehabilitation Area.— Slum Rehabilitation Authority on being satisfied that it is necessary so to do, or when directed by the State Government, shall denotify the slum rehabilitation area."

Appendix IV contains various guidelines as indicated in Regulation 33(10) and some of the relevant guidelines are extracted hereinbelow :

" **RIGHT OF THE HUTMENT DWELLERS—**

1.1 Hutment dwellers, in the slum or on the pavement eligible in accordance with the provisions of Development Control Regulation 33(10) shall, in exchange for their structure, be given free of cost a residential tenement having a carpet area of [20.90 sq.m. (225 sq.ft)] including balcony, bath and watercloset, but excluding common areas.

... ...

1.3 All eligible hutment dwellers taking part in the slum rehabilitation scheme shall have to be rehabilitated according to the provisions in this Appendix. It may be in situ and in the same plot as far as possible.

... ...

1.7 The individual agreement entered into between hutment-dweller and the owner/developer/co-operative housing society/NGO shall be in the joint names of pramukh hutment-dweller and spouse for every structure.

... ...

1.15 Where 70 per cent or more of the eligible hutment-dwellers in a slum or pavement in a viable stretch at one place agree to join a rehabilitation scheme, it may be considered for approval.

Provided that nothing contained herein shall apply to Slum Rehabilitation Projects undertaken by the State Government or Public authority or as the case may be a Government Company as defined in section 617 of the Companies Act, 1956 and being owned and controlled by the State Government.

... ...

2. BUILDING PERMISSION FOR SLUM REHABILITATION PROJECTS :--

2.1 The proposal for each Slum Rehabilitation Project shall be submitted to the Slum Rehabilitation Authority with all the necessary documents, no-objection certificates, and the plans as may be decided by the Slum Rehabilitation Authority from time to time.

2.2 The approval to the Project shall be given by the Slum Rehabilitation Authority within a period of 30 days from the date of submission of all relevant documents. In the event of a failure by Slum Rehabilitation Authority to do so, the said approval shall be deemed to have been given, provided the Project is in accordance with the provisions in this Appendix.

... ...

3.14 **Amalgamation/Sub-division of Plots and Balancing of FSI thereon.—**Any land declared as slum rehabilitation area or on which slum rehabilitation project has been sanctioned, if it is spread on part or parts of C.S. Nos. or CTS Nos. or S.Nos. shall be treated as natural amalgamation/sub-division/s of that C.S. or C.T.S. or S.No. or F.P. No. for which no separate approval for amalgamation/sub-division of land would be necessary.

... ...

3.16 The Chief Executive Officer, Slum Rehabilitation Authority may if required adjust the boundary of the plot declared as slum rehabilitation area so as to suit the

building design and provide proper access to the Project.

... ...

7.7 Wherever slum and municipal/MHADA property are found together or adjoining it would be eligible for redevelopment using provisions of both DCR 33(7) and DCR 33(10). Development of slum and contiguous non-slum area under any other provisions of regulations may be allowed together in order to promote flexibility of design as well as to raise more resources, provided that the FSI of non-slum quantum of area shall be restricted to that permissible in the surrounding Zone inclusive of admissible TDR on non-slum area. Such a project shall be deemed to be a Slum Rehabilitation Project and plans for non-slum area including the plans for admissible TDR shall be approved by CEO, SRA. The power under D.C. Regulation 11(4) for shifting and/or interchanging the purpose of designations/reservations shall be exercised by the Chief Executive Officer, Slum Rehabilitation Authority in respect of slum rehabilitation areas/projects.

7.8 In case of two or more number of slums taken up for development by same owner/developer/NGO/Co-operative Society of the Slum dwellers, both Rehab and Free Sale Components of the said slums can be combined and located in any proportion in those plots provided in any plot, the FSI does not exceed 2.5 subject to the condition that the said slums have the same ratio of Rehab component to Free Sale Component as laid down in the Clause 3.3 to 3.5 of this Appendix."

13. Besides the statutory provisions and statutory regulations of 1991 which have been modified from time to time, the concerned authority has also issued guidelines for the implementation of Slum Rehabilitation Scheme in Greater Mumbai and also circulars reflecting policy decisions. The guidelines, *inter alia*, indicate the procedure for submission, processing and approval of slum rehabilitation schemes. For the purpose of deciding the controversy

at hand paragraphs 2, 3, 4, 5, 8 and 11 of clause IV relating to the procedure for submission indicate that 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 cooperative society of all eligible hutment dwellers through a resolution to that effect. The chief promoter, office bearers and the members of the proposed society should collect the necessary documents and get the plot surveyed/measured and prepare map of the plot showing slum structures with the help of surveyors attached to the office of Additional Collector (Encroachment) or the Deputy Collector (Encroachment) of the zone.

14. The procedure for submission, processing and approval of slum rehabilitation schemes also contains a guideline that by undertaking the survey, information of the proposed members/slum dwellers should also be collected and Annexure II prescribed by SRA should be filled up so as to give the details of land occupied by the slum dwellers, number and type of structures such as residential, industrial etc. and the list of eligible and ineligible occupants and consent to join the scheme. The guidelines also disclose that earlier the procedure of filling up Annexure II format was required to be carried on by competent authorities but by way of subsequent simplification of procedure it is now required to be filled up by the promoter/cooperative housing society itself for submitting building proposal to SRA. The decision to search a competent developer to

act as a promoter can be taken up by the proposed cooperative housing society of slum dwellers but it has been clarified that the society itself or NGO/developer/owner can take up slum rehabilitation scheme as a promoter. The promoter has to appoint an architect to prepare the plans of the development of the slum area as per DCR 33(10). All required documents such as building plan, layout plan etc. along with Annexure I, Annexure II and Annexure III are to be submitted to SRA by the architect along with the application for approval of the slum rehabilitation scheme. The proposal so submitted is subjected to a pre-scrutiny by a designated engineer of SRA to ensure that it is complete with all documents and then the proposals are accepted. Thereafter the scrutiny of Annexures I, II and III begins in different wings such as Building Permissions, Eligibility Certification and Accounts & Finance respectively.

15. The guidelines also indicate that circular no.4 dated 27.08.1997 had been issued by SRA to give details of the simplified procedure in the form of Appendix – D. *Inter alia*, this circular provides that in order to facilitate the disposal of slum rehabilitation schemes submitted for approval, the architect/developer or society bearers may submit Annexure II in duplicate, as prepared by them in the prescribed proforma signed by owner/developer/CP/NGO. A copy of the same will be then forwarded to the competent authority for getting it certified. The proposal will be scrutinized on the basis of Annexure II submitted by the architect but approval will be on the

basis of certified Annexure II from the competent authority and for this the SRA will follow up with the respective competent authority.

16. While replying to the arguments of Mr. Sanjay Parikh, counsel for the appellants in both the appeals, Mr. Shyam Divan highlighted the basic facts first from the records of Civil Appeal No.9147 of 2011 to show that plot nos.106, 107 and 108 are the concerned private plots which are subject matter of Civil Appeal No.9363 of 2011. The remaining plots, i.e., plot no.109(pt), 110(pt), 111(pt) and 112(pt) are the concerned municipal plots which are subject matter of the other civil appeal. His stand is that the notification dated 13.02.2003, no doubt contained a declaration of slum area under Section 3 of the 1971 Act even in respect of plots of Municipal Corporation but that will not make any difference. He referred to various documents to point out that the concerned plots of Municipal Corporation were censused slum colony as per municipal records and hence they were covered under the definition of 'slum' recognized under Regulation 33(10) which is part of Development Control Regulations for Greater Mumbai, 1991 (DCR). It was also pointed out that Chief Executive Officer of SRA approved the slum development scheme covering the slum over municipal plots as well as private plots on 26.03.2006 resulting into issuance of letter of intent on 29.06.2006 and first intimation of approval (planning permission) on 14.02.2007. Thereafter only 6 persons preferred an appeal before the Maharashtra Slum Areas Tribunal with a prayer to quash the notification dated 13th February 2003 containing

declaration of slums in respect of municipal plots. This appeal bearing no.22 of 2009 suffered from delay of 6 years which was not condoned by the Tribunal but while dismissing the same on 11.08.2009, the Tribunal noted the lacuna in the case of appellants that they had failed to support even their claim that they were residents of the municipal plots or that there did not exist any slum over the area and how they were affected by the declaration when the owner of the land, the Municipal Corporation, had no objection to such declaration with respect to its own land. The writ petition bearing No.316 of 2010 preferred against the order of the Tribunal was dismissed by order dated 10.8.2010, under appeal in Civil Appeal No.9147 of 2011. The High Court noticed that out of 6 petitioners only petitioner no.1 was an occupant of structure over the Municipal Corporation land whereas petitioner nos.2 to 4 resided on private lands and being not concerned with the municipal plots could not maintain the writ petition. With respect to petitioner no.1, the court noticed that his name was included in Annexure II of the SRA scheme and he had accepted an amount of Rs.60,000/- as rent in lieu of temporary transit accommodation and hence the High Court held that petitioner no.1 was estopped from challenging the notification declaring Municipal Corporation plot as slum area.

17. No reply to the grounds mentioned by the High Court for dismissing the writ petition has been offered on behalf of the appellants in C.A.No.9147 of 2011 and as noted earlier, Mr. Parikh has confined his submissions and arguments only against SRA

scheme for the private plots which is subject matter of C.A.No.9363 of 2011. The main two contentions of Mr. Parikh that there is no valid Annexure II for the private plots; and there was no valid consent of 70% of slum dwellers because the consent was not counted separately for residents of private plots have been addressed and replied at length.

18. In respect of Annexure II, Mr. Divan has placed reliance upon Annexure P-6 to C.A.No.9363 of 2011 and some other materials from the same very record. He pointed out that in the synopsis, against the date 05.03.2004 the appellants have averred in following words:- "Dy. Collector (E/I)-Chembur recorded the findings of his enquiry conducted on 20.11.2004 in the list of Annexure II that not a single person on private plots gave consent in favour of Jan Kalyan Society. A true and correct copy of the eligibility list of Annexure II as verified by the Deputy Collector (E/I)-Chembur purportedly acting as competent authority dated 5.3.2004 is Annexure P-6". In continuation of above the appellants have also averred that 17 residents were not present on 20.01.2004 and on the basis of their consents allegedly given in the year 2001, the Deputy Collector (E/R)-Chembur wrongly treated them to have given consent to the slum rehabilitation scheme. It was pointed out that the document Annexure P-6 dated 05.03.2004 bears the signature of concerned Deputy Collector and discloses verified list of 124 persons containing all the required details including consent etc. and on that basis it has been submitted that appellants' contention

that there exists no Annexure II for the private plots is against their own pleadings and contrary to records. By referring to the prayers made in the writ petition, it was also shown that there was no prayer to set aside or quash Annexure II for the private plots.

19. The appellants have failed to produce any worthwhile material to show that there was no Annexure II submitted before the SRA or that there was no verification made by the competent authority. The records clearly disclose that there was an objection raised by the verifying authority that only 25% slum dwellers of private plots have consented to the rehabilitation scheme and not the 70% as required by the regulations and the guidelines. However, such objection was considered and overruled by the competent authority under the 1971 Act by holding that there was no illegality or error in clubbing the adjoining municipal plots and private plots and treating the same as a slum area and permitting slum rehabilitation scheme for such slum area in aggregate as consent of 70% of the slum dwellers was found existing. In such a situation, we do not find merit in the stand of the appellants that their writ petition should have been allowed on the ground that there was no Annexure II available for the private plots.

20. When in aggregate consent of 70% or more slum dwellers has been obtained, the essential purpose of slum rehabilitation scheme cannot be put to peril on the ground that certain procedures were not strictly followed or some steps were against procedures prescribed in the guidelines for preparation of Annexure II in a

prescribed format. From the documents submitted and shown at the stage of hearing it has been noticed that even subsequent claims of some slum dwellers that they are eligible for rehabilitation have been verified and many have been allowed on the basis of relevant documents because it is not infrequent that at the time of one particular checking or verification some dwellers may be absent and might have gone to some other place. Clearly the process of preparation of the list described as Annexure II and its verification is meant to find out the claims of genuine slum dwellers who may be eligible for benefits under the slum rehabilitation scheme. Such beneficial provisions meant to ameliorate the poor condition of slum dwellers, in our considered view, should not be jettisoned only on technical grounds or procedural infirmities unless the persons coming to the court and seeking relief through writ petition are able to show that they have suffered injustice or legal injury.

21. In the present case, the only legal injury to appellants as per submissions of Mr. Parikh is that if the private plots were treated as separate slum area, the residents of these plots alone could have formed and carried out development scheme through their own cooperative society and gained some advantages including monetary. Such a plea is too far-fetched to establish legal injury to the appellants who claim to be slum dwellers and on such plea, in our considered view the appellants could not have been granted relief in writ jurisdiction which has been rightly denied to them, albeit for other reasons, after considering all their pleas on merits.

22. The only other substantial issue raised by Mr. Parikh that there could have been no clubbing of private lands with municipal lands for purpose of counting consent of 70% of the slum dwellers is also found to be without any merits. Mr. Divan rightly relied upon DCR of 1991 and particularly clause 1.15 of Appendix IV which clearly shows that 70% or more of the eligible hutment dwellers in a slum or pavement in a viable stretch at one place can agree to join a rehabilitation scheme. There is no merit in the submission on behalf of the appellants that the clause "in a viable stretch at one place" should be read only in conjunction with the word 'pavement' and not the word 'slum' although the use of the word 'or' between slum and pavement clearly shows both have to be treated at same footing and therefore both are qualified by the clause "in a viable stretch at one place". Clause 3.14 providing for amalgamation/sub-division of plots of Appendix IV of the DCR 1991 also goes a long way to support the submission that the statutory provisions clearly permit natural amalgamation/sub-division of plots for the sanction of slum rehabilitation project as well as for planning of Floor Space Index (FSI) thereto. Clause 7.7 and 7.8 in the same Appendix D lend further support to the aforesaid arguments of Mr. Divan.

23. Although it is not directly related to issues under consideration already noticed earlier, Mr. Sundaram has placed reliance on several provisions of Appendix IV noted above which is part of DCR 1991 to highlight that in respect of private plots the owner has been given a recognition and role. The relevant provisions to support the

aforesaid submission are in the introductory para 1 of Appendix IV as well as in schedule annexed to the general slum rehabilitation scheme notified by the Government of Maharashtra in the Gazette dated 09.04.1998. The relevant provisions such as 2(B) and 11(B) & (C) do show that the owner can also be the developer for implementing slum rehabilitation scheme and before carrying out the redevelopment work of the slum located over private lands, the consent of owner is required otherwise in given circumstances the Government will have to acquire such land if slum rehabilitation scheme is to be implemented.

24. Mr. Shishodia, learned senior advocate for the Slum Rehabilitation Authority also placed reliance upon Section 4 of the 1971 Act to submit that slum contemplated under the Act is over an area and not plot and that the plot numbers are relevant only for the limited purpose of identification of the area over which a slum may be found existing. He supported the submission of Mr. Divan by referring to clause 1.3 and 1.15 of Appendix IV of DCR 1991. According to him, the use of the term "....in the same plot as far as possible" in clause 1.3 supports the interpretation advanced by Mr. Divan to the expression "in a viable stretch at one place" in clause 1.15 and these provisions, according to him, go to show that a slum is not plot specific but area specific and hence there is nothing wrong in the action of SRA in treating the contiguous area comprising of municipal plots as well as private plots as a slum area and approving a slum rehabilitation scheme for the same after

ascertaining that consent of at least 70% of the residents of such slum area was available in favour of the rehabilitation scheme.

25. In our considered view, the submissions advanced by Mr. Divan, Mr. Sundaram and Mr. Shishodia deserve to be accepted as having merit. Mr. Atul Chitale, learned senior advocate for the Municipal Corporation has referred to Section 159 of the Maharashtra Regional and Town Planning Act, 1966 for showing that it vests power to make regulations and, therefore, the Development Control Regulations framed under such statutory provision have to be followed by the concerned authorities and such regulations providing for eligibility for redevelopment scheme, definitions of slum, qualification as slum area on account of being censused or declared as such, their treatment as deemed slum rehabilitation areas etc. cannot be ignored by the concerned authorities be it the Municipal Corporation or the SRA until a particular provision is challenged and found to be ultra vires on account of lack of power to frame the regulations or conflict with any superior law. According to Mr. Chitale, in the present case the authorities have acted in accordance with law and, therefore, neither the Committee nor the High Court found it fit to interfere with the approved rehabilitation scheme which will benefit all the slum dwellers of the slum area comprising of lands belonging to the Municipal Corporation as well as private lands and for which consent of more than 70% of such slum dwellers was found available after proper verification.

26. In view of discussions made above and on finding merit in the submissions advanced on behalf of respondents we record our agreement with the views expressed by the High Court that there is no illegality in clubbing of private land and Municipal Corporation land for declaring a contiguous area as a slum area for the purposes of approving a slum rehabilitation scheme for such area. As discussed earlier, we find no merit in the submission on behalf of the appellants that the required particulars were not compiled and were not available in the form of Annexure II for the private lands or it led to illegality and vitiated the approval of the particular slum rehabilitation scheme for the slum area in question. In our view, the authorities had verified the particulars contained in Annexure II and thereafter they were entitled to treat the entire slum area existing over private lands as well as Municipal Corporation lands as one slum area and since consent of 70% or more of slum dwellers of such area was available, the authorities did not commit any illegality so as to vitiate the grant of approval for slum development scheme in question.

27. The appellants have relied upon judgment of Bombay High Court in the case of ***Om Sai Darshan CHS*** v. ***State of Maharashtra*** reported in 2006(5) All.MR 323 in support of the proposition stated in paragraph 15 of that judgment that so far as grant of approval to Annexure II is concerned, the power vests in the competent authority and not in the SRA. There is no quarrel with the aforesaid proposition. In this case the facts reveal that

Annexure II was verified by the competent authority and it found after verification that only 25% of the slum dwellers over private plots had given their consent for the rehabilitation scheme. The opinion regarding adequacy of consent and its legal implications in the context of a larger slum area extending to private as well as municipal lands was beyond the competence of the authority having power to verify the actual state of affairs in respect of particulars of Annexure II. The opinion of the competent verifying or certifying authority that consent was only of 25% slum dwellers was based upon a wrong premise that the slum area was required to be divided in at least 2 parts, based upon ownership of the lands comprising the entire slum area. This view was rightly not accepted by the SRA. When the entire slum area was treated as one slum area on which more than 70% slum dwellers were found to have given their consent, there was no legal impediment in acting upon the particulars already verified as per Annexure II available with the authorities. Hence in the facts of the case the judgment noted above does not help the appellants.

28. Mr. Parikh, has also placed reliance upon a judgment of this Court in the case of ***Pramila Suman Singh*** v. ***State of Maharashtra*** (2009) 2 SCC 729 in support of the proposition that a composite slum area could not be declared as such when it covered private lands as well as Municipal Corporation lands. The facts of that case were quite different and as noted in paragraph 29, the SRA had rejected the plan of the appellant of that case for as many

as five reasons including the reason that appellant had not submitted proper Annexure II. In paragraph 52 this Court had recorded its satisfaction that the appellant had not annexed Annexure II in respect of concerned plot along with her original application and therefore this Court found no legal infirmity in the impugned order of the authority. Clearly the issue decided in that case was quite different and hence the judgment is not of any help to the appellants in this case. It may however be useful to note that in para 50 this Court made observations to the effect that (i) Annexure II may not have any statutory force as it was a requirement under the guidelines and (ii) a conformity with the guidelines is required to be maintained unless the guidelines are found to be *ultra vires*. In the context of facts of the present case it is sufficient to observe that non statutory provisions can hardly be treated as mandatory unless their non observance is shown to have caused legal injury by affecting some valuable rights of the writ petitioners. As discussed earlier no such case could be made out by the appellants so as to require interference on account of alleged shortcomings in preparation or verification of Annexure II.

29. The written submissions raise some other minor issues too but these were not raised before and decided by the High Court. Hence we refrain from going into such issues. It is, however, necessary to record that in the light of statutory provisions brought about through amendments in the 1966 Act and in the Mumbai Municipal Corporation Act, 1888 and in the light of provisions of 1971 Act, the

SRA was competent to approve the Scheme by taking the required ancillary decisions.

30. In course of arguments, it has been shown to us by filing details of petitioners/appellants that out of a total of 97, 60 are eligible and 33 non-eligible. Name of 4 petitioners, i.e., 90, 91, 93 and 97 are not in Annexure II to which several other persons have been added after further verification of later claims, during the pendency of the litigation. It has also been shown through a summary that pending the hearing of this appeal, 26 appellants have settled their dispute and handed over possession of their respective structures. The impugned judgment of the High Court also records in paragraph 25 that out of a total of 443 slum dwellers, 82% slum dwellers had already given consent for redevelopment of the slum and redevelopment is going on by allotment of permanent alternative accommodation to the slum dwellers. Majority of occupants of the municipal plot as noted in the High Court judgment had vacated their structures long back. Photographs produced before us show that redevelopment activity is going on and permanent structures have come up on a large area. Such facts also, in our estimate, were rightly considered by the High Court as relevant for dismissing the writ petitions.

31. In the result, we find no merit in the appeals and the same are dismissed but without any order as to costs.

.....J.

[M.Y. EQBAL]

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
April 01, 2015