IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.974 OF 1999

Anil Gulabdas Shah)
R/232, Harish Villa,)
Juhu Church, Juhu)
Bombay-400 049)
Now residing at 6-F, Dhan-)
Ratna,6th Floor, Bhardawadi,)
Andheri West, Bombay-58.) ..PETITIONER

Versus

1.State of Maharashtra)
through Government Pleader)
office, Bombay High Court,)
Bombay-400 023.)
2.Slum Redevelopoment)

Authority, Mahada Building,)

5th Floor, Bandra East,)

Bombay-50.)

3.Competent Authority,)

Mahada Building, 5th Floor,)

Bandra East, Bombay-50.)

4.Akruti City Ltd.,Akruti Trade)

Centre, MIDC, Road No.7,)

Andheri East,Bombay-400 093)

5.Court Receiver, High Court,)

Bank of India Building,)

2nd Floor, M.G. Road,)

Mumbai-400 023.) ..RESPONDENTS

WITH

WRIT PETITION NO.1113 OF 2000

1.Anil Gulabdas Shah)

2.Harish Gulabdas Shah)

3.Nilam P. Baxi)

4.Varsha M. Daru)

5.Smita S. Desai)

All having address at R/232,)

Harish Villa, Juhu, Bombay-400 049) ..PETITIONERS

Versus

1.State of Maharashtra)

2.Slum Re-Development Authroity)

MHADA Building, Bandra East,)

Bombay-51.)

3.Competent Authority (ENRC))

MHADA Building, Bandra East,)

Bombay-400 051.)

4.M/s.Akruti City Ltd.,)

Mukhyadhyapak Bhuwan, 2nd Floor)

Sion West, Mumbai.) ..RESPONDENTS

Mr. A.G.Shah, petitioner in person.
Mr. Jasbir Saluja, AGP for respondent Nos.1 & 3 in both the petitions.
Mr. Arif Bookwala, Senior Counsel along with Mr. G.D. Utangale, Mr. B.V. Phadnis i/b. Utangale & Co., for respondent No.2-SRA in both the petitions.
Mr.Aspi Chinoy, Senior Counsel with Mr. M.P.S.Rao, Senior Counsel i/by Naik Paranjpe & Co. for respondent no.4 in W.P. No. 974 of 1999.

Mr. Sandeep Parekh a/w Mr. Ashok Paranjape and Mr. Saneet Shukla i/b.Naik Paranjape & Co., for respondent No.4 in W.P. No. 1113 of 2000.

CORAM: B.H. MARLAPALLE &
SMT. ROSHAN DALVI, JJ.

RESERVED ON: AUGUST 17, 2010.

PRONOUNCED ON: NOVEMBER 24, 2010.

JUDGMENT (PER B. H. MARLAPALLE, J.)

1. Both these petitions filed under Article 226 of the Constitution raise a common challenge and, therefore, they have been heard together at all times. They came to be filed on or about 26th March, 1999 and 23rd February, 2000 respectively and the initial challenge was to the Notification dated 16th May, 1999 issued under Section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (for short "the Act") and the Letter of Intent issued on 1st December, 1998 in favour of respondent No.4 which is a builder/developer company. By the Notification dated 16th May, 1998 issued by the State Government through its Housing and Special Assistance an area admeasuring 44330 sq. meters (more

than 11 acres) located in Andheri East and popularly known as Saiwadi has been acquired purportedly to execute the "works of improvement" as envisaged under the Act. Whereas by the second impugned order dated 1st December, 1998 the Letter of Intent has been issued in favour of the respondent No.4 for the entire area of 44330 sq. meters acquired by the notification dated 6th July, 1998 and though initially the F.S.I. granted was 2.07, subsequently it has been increased to 2.5 and it has been the contention of the petitioner that in fact it was 2.7 which was the F.S.I. allowed in favour of the respondent No.4 on the entire land i.e. 44330 sq. meters and permissible under D.C.R. (33.10) as amended from time to time.

The petitioner had also challenged the constitutional validity of Section 14(1) of the Act but during the course of arguments, the said challenge was given up. By the subsequent amendments, the petitioner has also challenged the order dated 17th August, 2008 passed by the Secretary, Housing and Special Assistance, Government of Maharashtra. In addition, the petitioner has also prayed for being allowed to carry on construction for rehabilitation on the suit property belonging to him.

2. Writ Petition No.974 of 1999 is in respect of C.T.S. No. 449 (Old Survey No.33/5) of village Gundavli (Gaoligalli), Andheri East and Writ Petition No.1113 of 2000 is in respect of Plot C.T.S. No. 429 (Old Survey No.37/13) of the very same village. The area of C.T.S. No.449 is 1168.5 sq. meters whereas initially the area of C.T.S. No.429 is 1,064.3 sq. meters but it appears that on C.T.S. No. 429/1 to 18 some slum came up and they occupy an area of 401.05 sq. meters thus leaving behind the net area of C.T.S. No.429 at 662.8 sq. meters. There is no dispute that both the petitions together are in respect of the plot area of 1168.5 and 662.8 sq. meters which area is covered by both the impugned orders. It is the contention of the petitioner that the acquisition as per the Notification dated 6th July, 1998 is illegal, in violation of the principles of natural justice, contrary to the scheme of the Act and hence void ab initio on several grounds. The Letter of Intent dated 1st December 1998 issued in favour of the respondent No.4 is also alleged to be illegal, in breach of the mandatory requirements of the Act and against the State policy. It is further alleged that by both the impugned orders the petitioner's right to develop the property as permissible under the Act has been taken

away and without due notice to him and his other family members the suit property along with other big chunk of land has been handed over to the respondent No.4 surreptiously and in gross violation of the provisions of the Act. We make it clear that the challenge raised in these petitions with respect to the notification dated 6th July, 1998 as well as the Letter of Intent dated 1st December, 1998 is required to be confined only in respect of the suit property. We are also required to decide some other related issues which may be called public interest issues.

3. The respondents have opposed the petitions and the opposition is vigorous and determined. On behalf of the respondent No.1, Shri Nitish Thakur, Deputy Collector (Encroachment) and Competent Authority has filed reply on 15th November, 1999 and Shri Dilip Shinde, Deputy Secretary, Housing Department has filed another affidavit on or about 14th January, 2010 opposing the petitions. On behalf of the respondent Nos. 2 and 3, Shri Parmanand Nikumbh, Deputy Collector and Slum Rehabilitation Authority has filed affidavit in reply on 14th January, 2010 and Shri Prakash Kashinath Joshi, Desk Officer, Housing Department, has also

filed affidavit dated 16th December, 2002. At the outset it was contended by the respondents that the petitioner has his ownership of 00.01% of the total scheme area and less than 8% of the suit plot area and, therefore, the challenge raised in these petitions is frivolous and on that ground alone (locus standi) the petitions ought to be dismissed. The petitioner, therefore, amended the petitions so as to dispel the misconception about locus standi as raised against him. Hence we deal with the said issue of locus standi at the threshold.

4. **Locus standi of the petitioner:**

The suit land was originally in the ownership of Smt. Aditbai Balkishandas (great grant mother of the petitioner) and she had four sons by name (1) Manmohandas, (2) Bhaidas, (3) Mangaldas and (4) Samaldas. Manmohandas begot two sons I.e. Gansukhlal and Gulabdas, whereas Mangaldas begot four sons vis Krishnalal, Vasantlal, Dhirajlal and Jayantilal., Bhaidas died childless in 1945 and Samaldas, the 4th brother remained unmarried. On the demise of Bhaidas an order came to be passed on 24th May, 1947 called as Taluka Order No.RTSSR/II/16 and on the basis of the same Entry No.940

was taken in the rights register on 20th February, 1950 about 1/3rd share of each three surviving brothers in the suit plots i.e. Survey No. 33/5 (C.T.S.No.449) and Survey No.37/95 (C.T.S. No.429). On 9th September, 1961 all the legal representatives of Mangaldas signed release deed in favour of Gulabdas thereby releasing their 1/3rd share over the suit property in his favour. Samaldas who remained unmarried also nominated Gulabdas as his L.R., and relinquished his 1/3rd share in the suit property in favour of Gulabdas. Thus Gulabdas got 2/3rd share of his uncles Mangaldas and Samaldas. The petitioner is the son of Gulabdas and he has a brother by name Harish, whereas Dhansukhlal has a son by name Mukesh. Thus 1/3rd share of Mansukhlal (grand father of the petitioner) could be shared equally between Dansukhal and Gulabdas and Gulabdas would get 1/6th share of the suit property. It is for these reasons that the petitioner in paragraph 16 (a) of the petition emphatically stated that his father's share came to 83.34% of the suit property and that the remaining 16.66% share of his uncle's branch remained with Mukesh Dhansukhlal Shah, who has authorized the petitioner to raise the challenge as set out in the petition. Thus the petitioner has claimed his father's share in the suit plot 83.34% and he has been authorized by his

cousin who owns remaining 16.66% share. This explanation to deal with the issue of locus standi and as put up by the petitioner has not been challenged by bringing on record any contemporaneous documents to the contrary. We, therefore, reject the arguments that the petitions suffer from lack of locus standi.

5. **How did Respondent No.4 get L.O.I. dated 1st December, 1998.**

It appears that the housing societies which were perhaps chawls in the large strip of land acquired by the impugned Notification dated 6th July, 1998 formed a Samiti called "Saiwadi Lokseva Samiti" in the year 1990 and had taken up the cause for the rehabilitation of the slum dwellers in the Saiwadi area of village Gundavli, Andheri East. Though initially 13 such societies had joined together and approached the respondentNo.4 and its Associates with a proprosal under the S.R.D. Scheme (Slum Redevelopment Scheme) for the plot area admeasuring 21735.50 sq. meters, 4 of these 13 societies subsequently withdrew their consent to join the said scheme and, therefore, M/s.Consol Architects Private Limited, acting on behalf

of the respondent No.4 had submitted a proposal under S.R.D. Scheme in respect of the remaining 9 societies. The proposal submitted by the said Architects on 23rd May, 1994 was accepted by the Rehabilitation Authority and on 26th April, 1995 a Letter of Intent (LOI) was granted for F.S.I. of 2.5 in respect of the plot area admeasuring 10371.92 sq. meters in favour of the respondent No.4 (the first LOI). After the Act was amended with effect from 24/10/1995 so as to provide for the rehabilitation of the slum dwellers, meetings were held in the chamber of the Minister for Housing on 5th March, 1997 and 7th January, 1998 and it was decided to acquire the total area occupied by the Saiwadi slum dwellers of Gundavli village, some portion of which was already occupied by the slums and covered by the Letters of Intent referred to hereinabove. The architects of respondent No.4 submitted a fresh proposal on 7th March, 1998 so as to include the Government land C.T.S. No.447, two private lands purchased by the developers from C.T.S. No.440 (Part) and 445 as well as the lands belonging to the Arch Bishop, but under the possession of the Municipal Corporation. This proposal was accepted and a second LOI was issued on 30th April, 1998 by the SRA in favour of respondent No.4 through its architects and for a total plot

area of 17,796.63 sq. meters and it was also approved for grant of FSI of 2.419. It permitted a total built up area on the plot i.e. rehab plus sale of 38614.70 sq. meters. On 16th May, 1998 it was suddenly decided to add the suit plots' land in the said proposal for acquisition and on the very same day directions were issued to the Competent Authority to submit a proposal for acquisition of the total land admeasuring 44330 sq. meters, excluding the government land located in C.T.S. No.447. After it was claimed to have been acquired by the impugned Notification dated 6th July, 1998 the respondent no.4 submitted yet another proposal on 17/10/1998 and thus the third LOI dated 1st December, 1998 was issued by the SRA in favour of respondent No.4 through its Architects and for the proposed slum rehabilitation scheme and this third LOI replaced the earlier two LOIs. However, the first phase of the project was started by respondent no.4 after the first LOI was issued on 26/4/1995. The second and third LOIs were for the rehabilitation of slum dwellers and not for the redevelopment of the slum area, like the first LOI.

6. **Petitioner's case:**

Some of the suit land was reserved by the Municipal

Corporation of Greater Mumbai for municipal housing society under the development plan approved by the State Government under the M.R.T.P. Act, 1966. However, a portion of both the plots was encroached upon by slum dwellers. One Asharam Tiwari had encroached upon the plot in C.T.S.No.449 and constructed three chawls in the year 1973. The petitioner's father had taken up the issue with the Municipal Corporation for this unauthorized construction and on 17th March, 1976 the Corporation had informed him in writing that it had initiated action for demolition. In the meanwhile Shri Gulabdas Shah – the father expired on 5th November, 1977. The Corporation started issuing tax bills and from the Deputy Collector's office the owners had received N.A. cess bills. The slum dwellers were not remitting any of these taxes and it was under these circumstances that the petitioner filed Short Cause Suit No.4109 of 1980 on or about 28th July, 1980 in the City Civil Court at Mumbai. While the said suit was pending his application for appointment of Court Receiver was allowed and the Court Receiver took possession of the suit property (CTS No.449) on 20th August, 1980. While the said suit was pending the petitioner received a copy of Notice of Motion No.849 of 1999 filed by respondent No.4 and prayed for directions to discharge the

Court Receiver and hand over the possession of the suit property to the applicant i.e. the present respondent No.4. This Notice of Motion was filed on or about 15th February, 1999 and from the affidavit in support thereof filed by respondentNo.4 the petitioner came to know about the Notification dated 16th May, 1998 issued by the State Government under Section 14 of the Act and the said Notification was published in the government gazette on 6th July, 1998. He came to know that the respondent No.4 had undertaken the slum rehabilitation scheme on the entire plot area including the suit plots and, therefore, he approached this Court with the instant petitions. After filing the petitions, it appears that he also approached the office of the Lokayukta of Maharashtra State and the Deputy Collector (Encroachment) and a notice was issued on 3rd June, 1999 by the Section Officer from the said office. The petitioner had contended that the suit plots were his ancestral properties and were reserved for public purpose in the development plan and, therefore, his father could not develop the same. The Corporation did not take any steps for acquisition of the suit plots and a portion came to be encroached by the slum dwellers. He also referred to S.C. Suit No.4109 of 1980 and the appointment of Court Receiver who had already taken possession

of the suit plot (C.T.S. No.449) on 20th August, 1980 along with the structures standing thereon. He claimed that the suit property is valued about Rs.3.00 crores (1831.3 sq. meters)and that the acquisition notification was issued at the behest of the respondent No.4. He prayed for directions to cancel the Letter of Intent granted in favour of the respondentNo.4 and for release of the suit plot from the said L.O.I. The Additional Collector (Encroachment) filed reply before the Lokayukta on 19th July, 1999 and pointed out that pursuant to the impugned Notification gazetted on 6th July, 1998 an award under Section 17 of the Act came to be passed and before passing of the said award the petitioner had taken objections in writing and, therefore, the suit land was not included in the award passed for the total area convered by the third LOI.

7. **Orders passed by this Court in these Petitions:**

On 10th February, 2000 a Division Bench of this Court passed an order and noted in para 1 as under:-

> "1. Principal point amongst others raised by Mr. Dhakephalkar and the other Counsel for the petitioners

> in these three petitions, is with respect to the non-compliance with Section 14 of the Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (the Act for short) and the speed with which the further decisions were taken within a span of less than two months(indicating an ulterior interest) concerning the lands which are claimed to be owned by the petitioners. The first notification uner Section 14 of the Act was issued concerning these lands on 16th May, 1998 whereas the final decision was arrived at on 6th July, 1998. Mr. Dhakephalkar submits that when a F.S.I. of 2.7 was being offered the owners could have themselves offered to develop the property to whom the notice is required to be given under Section 14 of the Act."

Since the above referred issues went to the root of the matter the Division Bench noted that it would be desirable for respondent No.4 to stay their hands with respect to the suit properties and more particularly C.T.S. No.429 and 449.

On 20th April, 2000 another Division Bench continued the interim order passed on 10th February, 2000 i.e. marking of the suit plot from the total plot area of 44330 sq. meters separately. This order came to be vacated on 28th February, 2003 by allowing Notice of

Motion No.183 of 2002 in Writ Petition No.974 of 1999 and Notice of Motion No.184 of 2002 in Writ Petition No.1113 of 2000.

Though the interim order was vacated, even as per the affidavit filed on behalf of respondent No.4, on the suit plot there is one building under construction and has come upto 3 slabs and there is no further construction as of now. 90% of the rehabilitation scheme executed is on the larger plot area and it consists of 10 buildings so as to rehabilitate about 1600 hutment dwellers. The petitioner has placed before us photographs of the present state of the building under construction in the suit plot and it cannot be disputed that it is not beyond the three level slabs. The respondent No.4 by its additional affidavit dated 23rd June, 2010 has placed on record a copy of the notification dated 24th August, 1999 and published in the Government Gazette on 25th August, 1999 issued by the Chief Executive Officer of the SRA in exercise of his powers under Section 3C(1) of the Act declaring the areas mentioned in the Schedule given in the notification as “Slum Rehabilitation Areas”. At serial No.14 of the said notification is the area of village Guntavali (Saiwadi) admeasuring 44330 sq. meters, which includes the suit plots.

The Scheme of the Act

8. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 received the ascent of the President of India on 3rd April, 1971 and it was brought into force from 3rd September, 1971 for the areas within the limits of the Municipal Corporation of Greater Mumbai and for the cities of Pune, Solapur, Nagpur and Aurangabad. It was originally an Act for improvement, clearance and redevelopment of the slum areas. It has been amended at 15 times beginning from 26th April, 1973 and ending on 19th May, 2005. In the original Act there were in all 7 Chapters with 48 Sections. The first Chapter was preview. The second Chapter for Slum Areas, the third Chapter for Slum Improvement, the fourth one for Slum Clearance and Redevelopment and the 5th one for the Acquisition of Land. Chapter VI provided for the Protection of the Occupiers in Slum Area from Eviction and Distress Warrant, whereas Chapter VII was for Miscellaneous Provisions. Thus originally the Act was meant for slum improvement, clearance and redevelopment. However, Maharashtra Ordinance No.XIV of 1995 was issued so as to

add Chapter 1A and titled as “Slum Rehabilitation Scheme” and it was brought into force with effect from 24th October, 1995. The ordinance was repealed by Act No.4 of 1996. Chapter 1-B was inserted by Maharashtra Ordinance No.XXVII of 2001 and was brought into force with effect from 18th May, 2001. The said ordinance was repealed by Maharashtra Act 10 of 2002. The said Chapter has been titled as “Protected Occupiers Relocation and Rehabilitation”. Chapter 1-C has been inserted in the Act with effect from 23rd October, 2003 and pursuant to Ordinance No.X of 2003 which was repealed by Maharashtra Act No.1 of 2005. The said Chapter is titled as “Special Provisions for in SITU Rehabilitation Housing Schemes for Protected Occupiers in Slum Areas”. For the present consideration Chapter 1-A is relevant and it provides for slum rehabilitation scheme and it has been brought into force with effect from 24th October, 1995. Thus when the first LOI dated 26th April, 1995 for the total plot area admeasuring 10371.92 sq. meters was issued in favour of the respondent No.4, Chapter 1-A was not in the statute book and, therefore, what was submitted on behalf of the respondent No.4 was only the slum redevelopment scheme and not the slum rehabilitation scheme. It is for the first time that on 7th

March, 1998 on behalf of respondent No.4, a proposal was submitted for the slum rehabilitation scheme as contemplated under Chapter 1-A of the Act and it was also contended that about 74% of the slum dwellers from the concerned area had consented for the same. The first LOI for slum rehabilitation scheme was granted in favour of the respondent No.4 on 30th April, 1998 for an area admeasuring 17796.63 sq.mtrs. including the plot of land owned by the Government i.e. C.T.S. No.447 and the FSI granted was 2.419.

9. Some of the relevant definitions from the Act are reproduced as under:-

> (b) "building" includes a house, out-house, stable, shed, hut and other enclosure or structure, whether of masonry bricks, wood, mud, metal or any other material whatsoever, whether used as human dwelling or otherwise; and also includes verandahs, fixed platforms, plinths, door-steps, electric meters, walls including compound walls and fencing and the like, but does not include plant or machinery comprised in a building.

(c) “Competent Authority” means a person or body appointed to be the Competent Authority under section 3.

(d) “land” includes building and also benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth.

(e) “occupier” includes -

(i) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable.

(ii) an owner in occupation of, or otherwise using, his land or building.

(iii) a rent-free tenant of any land or building.

(iv) a license in occupation of any land or building; and

(v) any person who is liable to pay to the owner damages for the use and occupation of any land or building.

(f) “owner”, when used with reference to any building or land, means the person who receives or is entitled to

receive the rent of the building or land, if the building or land were let, and includes -

(i) an agent or trustee who receives such rent on account of the owner;

(ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any building or land devoted to religious or charitable purpose;

(iii) a receiver, sequestrator or manager appointed by a court of competent jurisdiction to have the charge of or to exercise the rights of owner of the said building or land, and

(iv) a mortgagee-in-possession;

[but does not include, a slumlord;]

(ga) “slum area” means any area declared as such by the Competent Authority under sub-section (1) of section 4.

(h) “Slum clearance” means the clearance of any slum area by the demolition and removal of building therefrom.

(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.

(i) “Tribunal” or “Special Tribunal” means a Tribunal or Special Tribunal which the State Government is hereby empowered to constitute consisting of, -

(a) the President, being a person who, -

(i) is or has been a District Judge or has practised as a Pleader or Advocate or both for not less than eight years and is holding or has held the post not below the rank of the Joint Secretary in the Law and Judiciary Department; or

(ii) is holding or has held any judicial office for not less than eight years; or

(iii) is practising or has practised as an Advocate for not less than eight years; and

(b) two members, -

(i) one of whom shall be a person who is holding or has held the post not below the rank of the Deputy Director of Town Planning; and

(ii) the other shall be a person who is holding or has held the post not below the rank of the Superintending Engineer to /Government;

(j) “works of improvement” includes in relation to any building in a slum area the execution of any one or more of the following works, namely:-

(i) repairs which are necessary:
(ii) structural alterations;
(iii) provision of light points, water taps and bathing places;
(iv) construction of drains, open or covered;
(v) provision for latrines, including conversion of dry latrines into flush latrines;
(vi) provision of additional or improved fixtures or fittings;
(vii) opening up or paving of courtyards;
(viii) construction of passages or roads;

> (ix) any other work including the demolition of any building or any part thereof which in the opinion of the Competent Authority is necessary for executing any of the works specified above.

9A. Sections 3A to 3W are under the newly added Chapter 1-A of the Act and Section 3A provides for appointment of Slum Rehabilitation Authority by the State Government by notification in the official gazette. The powers, duties and functions of the Slum Rehabilitation Authority have been set out in sub-section (3) of Section 3A of the Act. As per Section 3B the State Government or the SRA 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 the rehabilitation of slums and hutment colonies in such areas. Such a scheme is required to be published in the official gazette as the Provisional Slum Rehabilitation Scheme for the information of general public so as to invite objections and suggestions giving reasonable period of not less than 30 days in respect of the said scheme. These objections and suggestions are required to be considered by the Chief Executive Officer of S.R.A. and thereafter the final scheme is required to be

published in the official gazette and to be called as the Slum Rehabilitation Scheme. Section 3C states that after the publication of the Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied that circumstances 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 shall also be given wide publicity in such manner as may be specified by the S.R.A. As noted earlier, in the instant case the declaration of slum rehabilitation area has been published in the official gazette on 25th August, 1999 by the Chief Executive Officer. It is not known whether there was wide publicity to the said order passed by the Chief Executive Officer as per Section 3C (1) of the Act. 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 said Tribunal shall be final, as per Section 3C(2) of the Act.

As per Section 3D the provisions of Chapter II and III of the Act shall be omitted and will not be applicable for the slum

rehabilitation area as declared by an order passed under Section 3C(1) and Section 11 in Chapter IV shall stand omitted, whereas Section 12 shall be amended as stipulated therein. Section 13 shall be substituted as under:-

> "13(l) Notwithstanding anything contained in sub-section (10) of section 12, the Slum Rehabilitation Authority may, after any area is declared as the Slum Rehabilitation Area, if the landholders or occupants of such area do not come forward within a reasonable time, with a scheme for re-development of such land, by order, determine to redevelop such land by entrusting it to any agency for the purpose.
>
> (2) Where on declaration of any area as a Slum Rehabilitation Area, the Slum Rehabilitation Authority, is satisfied that the land in the Slum Rehabilitation Area, has been or is being developed by the owner in contravention of the plans duly approved, or any restrictions or conditions imposed under sub-section (1) of Section (10) of Section 12, or has not been developed within the time, if any, specified under such conditions, it may, by order, determine to develop the land by entrusting it to any agency recognized by it for the purpose.
>
> Provided that, before passing such order, the owner shall

be given a reasonable opportunity of showing cause why such order should not be passed."

Section 14(1) which is under Chapter V (Acquisition of Land) shall stand amended as under for its applicability to the scheme of Chapter 1-A of the Act :-

"(1) Where on any representation to the Chief Executive Officer it appears to the State Government that, in order to enable the slum rehabilitation authority to carry out development under the slum rehabilitation scheme in any slum rehabilitation area it is necessary that any land within adjoining or surrounded by any such area shall be acquired. The State Government may acquire the land by publishing in the official gazette and notice to that effect that the State Government has decided to acquire the land in pursuance of this Section, provided the State Government may delegate its powers under this sub-section to any officer not below the rank of Commissioner".

As per Section 14(1A) the acquisition of the land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.

Section 14(2) states that when a notice as aforesaid is published in the official gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances.

10. The proviso below sub-section (1) of Section 14 in Chapter V, which does not apply to the slum rehabilitation area as declared under Section 3C(1) of the Act, mandates that before publishing the notice under Section 14(1), the State Government or as the case may be, the Collector may call upon by notice to the owner of or any other person who, in his opinion may be interested in such land, to show cause in writing why the land should not be acquired, with reasons therefor, to the Collector within the period specified in the notice and the Collector shall, with all reasonable dispatch, forward any objections so submitted together with his report in respect thereof to the State Government and on considering the report and the objections, if any, the State Government may pass such order as it deems fit. It is, therefore, evident that this requirement of notice to be issued by the Collector to the land owners has been done away

with for the slum rehabilitation area as declared under Section 3-C, but at the same time it is pertinent to note that even the amended Section 14(1), the acquisition of land contemplated is not from the slum rehabilitation area, but any land within the adjoining or surrounded by any such area. Thus the Act does not contemplate acquisition of land under Section 14(1) from the slum rehabilitation area and it contemplates such acquisition only in respect of any land within the adjoining or surrounded by any such area. The petitioner's land is purportedly part of the slum rehabilitation area as declared by the order published in the gazette on 25th August, 1999. It must also be noted at this stage itself that the impugned notification dated 6th July, 1998 speaks for acquisition of the large area of 44330 sq. meters for executing the "works of improvement" and not for acquisition of the land within the adjoining or surrounded in slum rehabilitation area.

11. Section 15(3) and (4) for Chapter I-A of the Act read as under:-

> "15(3) Where the land has been acquired for the Slum Rehabilitation Authority, the State Government shall, after it

has taken possession thereof, by notification in the Official Gazette, upon such conditions as may be agreed upon between Government and Slum Rehabilitation Authority, transfer the land to the Slum Rehabilitation Authority and thereupon the Slum Rehabilitation Authority may entrust, in accordance with the provisions of Section 3B(4), the work of development of such area to any other agency as provided in sub-section (1) of section 13, or to a Co-operative Housing Society of the occupants of such rehabilitation area or occupants of any other area which has been delcared as Slum Rehabilitation Area;

(4) The Slum Rehabilitation Authority may, subject to such terms and conditions as the State Government consideres expedient for securing the purpose of this Act, transfer by way of lease such land to the Co-operative Housing Societies of such occupants."

12. Based on the averments in the petition, as amended from time to time, the affidavits-in-reply filed by the respondents, the documents placed before us by all the sides during the course of final

hearing and the arguments advanced by the parties, the following issues arise for our considerations:-

(i) Whether the State Government was in error and has illegally exercised its power to issue the notification dated 6/7/1998 under Section 14(1) for the "works of improvement" as defined under Section 2(j) of the Act?

(ii) Whether the acquisition of the petitioner's land by the notification dated 6/7/1998 and/or subsequently by the order passed by the Secretary in the Department of Housing Development on 17/8/2000 and by the Principal Secretary on 30/1/2002 is unsustainable in law?

(iii) Whether the LOI dated 1/12/1998, issued in favour of respondent no.4 by respondent nos.2 and 3, suffers from any illegality and is in breach of any provisions of the Act as well as principles of natural justice?

(iv) Whether the suit plots' area (1168.5 + 662.8 sq.mtrs.) has been amalgamated by the competent authority with the total area acquired under the notification dated 6/7/1998 and whether the respondent no.4 has vested right over the suit plots?

(v) Whether the suit lands stood vested with the Government automatically on issuance of the notification dated 6/7/1998 under Section 14(1) of the Act?

The first issue framed above is required to be considered in the public law interest and Issue No. (iii) has been framed by us as a copy of the notification dated 25/8/1999 issued by the Chief Executive Officer under Section 3C(1) of the Act has been placed on record along with the additional affidavit filed on 23/6/2010 on behalf of respondent no.4 and in the earlier affidavits filed on behalf of respondent nos.1 to 3, it was never even suggested that the said notification was issued by the Chief Executive Officer of SRA. On the contrary, it has been the case of the petitioner right from the beginning that the provisions of Section 3B, 3C and 3D as well as other provisions of Chapter I-A were not followed by the said respondents in respect of his land and the respondents to counter these arguments submitted that it was not so necessary and once the land vested with the State Government, Regulation No.33(10) of the D.C. Regulations permitted respondent nos.1 to 3 to proceed further without issuing any notification under Section 3C(1) of the Act.

13. Section 2(j) of the Act has defined the term “works of improvement” and Section 5A has set out what may consist of the “improvement works”. In the instant case, though the petitioner proceeded on the basis that his land was not declared as a slum as required under Section 4(1) of the Act, the notifications brought on record dispel these contentions. The land in CTS No. 429 came to be declared as a slum by the notification dated 15/10/1977 and it was gazetted on 27/10/1977, whereas the land in CTS No. 449 came to be notified as a slum area under Section 4(1) of the Act on 7/12/1995 and was published in the gazette on 4/11/1996. There is no challenge to both these notifications and thus it is finally concluded that the suit plots were declared as slum areas. The petitioner had the remedy of an appeal to the tribunal under Section 4(3) of the Act and that remedy was never invoked. As per Section 5(1) of the Act, where the competent authority is satisfied that any slum area is capable of being improved, so as not to be a source of danger to the health, safety or convenience of the public of that area, it may serve upon the owner or owners and every mortgagee of the properties in that area or any part thereof, a notice informing them of its intention to carry out such

improvement works as in its opinion are necessary and asking each of them to submit his objections or suggestions to the competent authority within thirty days from such notice. A copy of such notice shall also be displayed at some conspicuous places in the area for the information of the occupiers, thereof and for giving them also an opportunity to submit their objections or suggestions, if any. On such display of the notice, the owners, occupiers and all other persons concerned shall be deemed to have been duly informed of the matters stated therein. As per Sub-section (2) of Section 5, after considering the objections and suggestions received within the time aforesaid from the owners, occupiers and other persons concerned, the competent authority may decide and proceed to carry out the improvement works with or without modifications or may postpone them for a certain period or cancel the intention to undertake the works. There is nothing on record, placed before us by the respondent nos. 1 to 3, to show that the requirements of Section 5(1) of the Act were met before the State Government proceeded to purportedly acquire the land under Section 14(1) of the Act for works of improvement. We have made these observations only because it is claimed that the land was acquired for “works of improvement”, and when it comes to the slum rehabilitation

area, Section 5, which falls in Chapter II, is not applicable.

14. Let us see the comparative requirements of "works of improvement" as set out in Section 2(j) and Section 5A of the Act:

Section 2(j)	Section 5A
2. In this Act, unless the context otherwise requires,-- (j) "works of improvement" includes in relation to any building in a slum area the execution of any one or more of the following works, namely:- (i) repairs which are necessary: (ii) structural alterations; (iii) provision of light points, water taps and bathing places; (iv) construction of drains, open or covered; (v) provision for latrines, including conversion of dry latrines into flush laterines; (vi) provision of additional or improved fixtures or fittings; (vii) opening up or paving of courtyards; (viii) construction of passages or roads; (ix) any other work including the demolition of any building or any part thereof which in the opinion of the Competent Authority is necessary for executing any of the works specified above.	5A. For the purpose of this Act, the improvement works may consist of all or any of the following:- (a) laying of watermains, sewers and storm water drains; (b) provision of urinals, latrines, community baths, and water taps; (c) widening, realigning or paving of existing roads, lanes and pathways and constructing new roads, lanes and pathways; (d) providing street lighting; (e) cutting, filling, levelling and landscaping the area; (f) partial development of the area with a view to providing land for unremunerative purposes such as parks, playgrounds, welfare and community centres, schools, dispensaries, hospitals, police stations, fire stations and other amenities run on a non-profit basis; (g) demolition of obstructive or dilapidated buildings or portions of buildings; (h) any other matter for which, in the opinion of the Competent Authority, it is expedient to make provision for preventing the area from being or becoming a source of danger to safety or health or a nuisance.

On the other hand, in the impugned notification dated 6/7/1998, which states that in order to enable the State - Deputy Collector (Encroachment) and Competent Authority, Mumbai Suburban District, the acquisition for the "works of improvement" mentioned in Part-I of the Schedule appended in the notification and Schedule Part – I reads as under:-

(a) Laying of water mains sewer and storm water;

(b) Provision of urinals, latrines, community baths and taps;

(c) Widening, realigning or paving the existing roads, lands and pathways and constructing new road, lanes and pathways;

(d) Providing street lights;

(e) Cutting, filling, leveling and landscaping the areas;

(f) Partial developments of the area with a view of providing land for unremunerative purpose such as parks, playgrounds, welfare and community centre, school, dispensaries, hospitals, police fire station

and other amenities run on a non profit basis;

(g) Demolition of obstruction or dilapidated building or portion or buildings;

(h) Redevelopment of slum existing on the land.

15. At the out-set, let it be noted that Clause (h) of the Schedule Part-I of the notification does not find place in Section 2(j) or Section 5A of the Act. The record indicates that the land acquired by the impugned notification was entirely for the slum rehabilitation and not for slum redevelopment or for works of improvement. In this regard, it would be safe to rely upon the documents submitted by respondent nos.2 and 3 during the course of final arguments, including the applications submitted by respondent no.4 and the notes of scrutiny report of the proposal submitted by the officers of respondent nos.2 and 3. These documents clearly state that after Chapter-I-A was inserted in the Act by Maharashtra 4 of 1996, a meeting was held in the chamber of the Minister for Housing on 5/3/1997 for the proposed rehabilitation of the slum area known as “Saiwadi”. This meeting was followed by another meeting held on 7/1/1998 and thereafter the Saiwadi Punarvikas Yojana Sangh submitted an application dated

19/1/1998 to respondent nos.2 and 3 for rehabilitation of the slum dwellers in the Saiwadi area. On 9/4/1998 the Government of Maharashtra issued a notification and published the Slum Rehabilitation Scheme as required under Section 3B of the Act. By letter dated 10/6/1998 the Deputy Collector (Encroachment) submitted to the Secretary of Housing Development Department, Government of Maharashtra, a proposal for rehabilitation of the slum dwellers in Saiwadi area and for acquisition of the said land under Section 14(1) of the Act and on the basis of the local enquiry made pursuant to the letter dated 16/5/1998. This proposal for acquisition for rehabilitation was submitted on 5/5/1998 and thereafter on 16/5/1998. Prior to that the Deputy Collector, SRA, Bandra approached, vide his letter dated 22/3/1998, the Collector (Encroachment) Andheri, clearly informing that the Saiwadi area land was required for rehabilitation of the slum dwellers and, therefore, acquisition under Section 14 of the Act of the private land which formed a part of the total area proposed for rehabilitation was submitted. Thus from 5/3/1997 onwards, the Government was pushing for rehabilitation scheme and not the redevelopment scheme for the Saiwadi slum dwellers and the Act does not permit “works of improvement” to be read as “rehabilitation”.

"Works of improvement" and "rehabilitation of slum dwellers" cannot go together under the scheme of the Act. Thus the Schedule Part -I incorporated in the impugned notification dated 6th July, 1998 is of no consequence when the land was required and sought to be acquired for the rehabilitation of slum dwellers under Chapter I-A of the Act.

16. Section 4(6) of the Act states that while deciding an appeal filed under Subsection (3) of Section 4, the tribunal shall ignore the works of improvement executed in such slum area by any agency of the Government or any local authority after the declaration thereof as such slum area by the competent authority under Sub-section (1). Under Section 42 of the Act, there is a bar of jurisdiction. No civil court shall have jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under the Act to determine; and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act, save as otherwise expressly provided therein. Thus the only remedy available for the petitioner against the declaration of slum area was an appeal before the tribunal and having missed that opportunity he could not

have filed any civil suit and has, therefore, filed this petition as a last resort. However, the fact remains that the reason for acquisition, namely, "works of improvement" is only a facade and having published the general rehabilitation scheme for the Greater Mumbai area on 9/4/1998 under Section 3B of the Act and the representation dated 19/1/1998 having received from the slum dwellers of Saiwadi area, the deliberations in the meeting held by the Minister for Housing Development, it was decided for the rehabilitation of these slum dwellers and the private land in the area was required to be acquired for the same. At the same time, the record also indicates that though proposals were submitted on 22/3/1998 and 5/5/1998 by the Deputy Collector, SRA, Bandra to the Collector (Encroachment) Andheri for acquisition of the land for the proposed slum rehabilitation of Saiwadi area, the petitioner's land was not part of these proposals in as much as the subject plots were not included. For the first time and surprisingly only in the proposal submitted on 16/5/1998, the land in CTS Nos.429 and 449 was included for the proposed slum rehabilitation scheme to be undertaken. The Assistant Engineer (I)(SRA) in his letter to the Additional Collector (SRA) submitted on 15/5/1998 referred to the CTS numbers from which the land for the proposed slum rehabilitation

scheme for village Gundavali and popularly known as Saiwadi was required to be acquired and the CTS numbers of the suit plots did not find place in this letter. The said letter stated that the slum rehabilitation scheme has been tentatively approved on the plots stated therein and the Architect of respondent no.4 had submitted 1131 agreements made with the slum dwellers of Saiwadi Society. The Architect had also stated that 74.2% of the dwellers had agreed for the slum rehabilitation scheme and their list was enclosed along with the said letter. The scope of the requirement of the said land was never intended to be for "works of improvement". This letter also proves that the suit plots were not proposed to be acquired till 15/5/1998. From the documents submitted by the SRA, the note dated 24/4/1998 and approved on 27/4/1998 by the Chief Executive Officer did not propose the inclusion of the suit plots. Even the letter dated 30/4/1998 i.e. the second LOI issued by the SRA to the architect of respondent no.4 did not include the suit plots. The land for the slum rehabilitation scheme was to be acquired under Section 14(1) as as applicable and amended in Chapter I-A of the Act and not on the basis that the suit plots were part of the slum area declared under Section 4(1) of the said Act. Hence, the impugned notification dated 6/7/1998 for acquisition

of the land for ‘works of improvement” is unsustainable and acquisition for works of improvement was only a facade so as to short-circuit the statutory process for acquisition of the land and more particularly the process set out in Chapter I-A of the said Act. The acquisition of the suit land is vitiated as the landholders’ right under Section 13(1) as amended for Chapter I-A of the Act was taken away. These findings are confined only to the suit plots and not the remaining area.

17. Now coming to the requirement of issuance of notice to the petitioner before the impugned notification dated 6/7/1998 is concerned, the observations made by the Division Bench on 24/4/2000 have, in fact, settled this issue. We reproduce the said observations in para 2 of the order dated 24/4/2000.

> “2. It appears to us that the issue as to whether the petitioners were given a proper notice before making orders under Section 14 of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971 is not free from doubt. Though we are shown the records of the concerned Authority, we are not satisfied therefrom

> that the petitioners and all other persons interested in lands concerned were given a fair notice of hearing, or heard before the notification was made. It is indisputable that once a notification is issued under Section 14, by virtue of sub-section 2 thereof, the land automatically vests in the State Government. This is, doubtless, a drastic consequence, and hence, it is all the more necessary that the persons affected by such a consequence must be given a fair hearing"

In the orders dated 17/8/2000 passed by the Secretary, Housing Development Department, it was clearly observed that the notices in respect of CTS No.429 were addressed to Krishnalal Mangalal Raghav and two others and not to the petitioner or any of his family members and in respect of CTS No.449 the notice was isued only to Dhansuklal Mohandas, though the record placed before us indicates that the owners of CTS No. 449 were shown as some other members of the family. We reproduce the observations made by the Secretary in the said order:

> ".... I have found the notices issued U/s. 14(1) have been wrongly issued for CTS No.429. This action needs to be remedied to cure the acquisition proceedings of any

shortcoming. The notices of acquisition should be issued to persons appearing in the property card and 7/12 extracts. The notice for the acquisition of the property also wrongly mentioned Krishnalal Mangalal Raghav and two others as owners of the property. The notices repeat this error. I find that notices were issued to Dhansuklal Mohandas for CTS No. 449 and to Krishnalal Mangalal Raghav and other two for CTS No. 429. It is true the petitioner should have been taken steps to update the records and bring the Court Receiver and the heirs on record. He has failed to do this. However, notices have not been sent to the persons appearing in the property card, for CTS No. 429 which show Shri Krishnalal Mangaldas Shah, Dhansuklal Shah and Shamaldas Shah as owner. Whereas notices have been sent to Krishnalal Mangalal Raghav and two others. The names of the two others were also not mentioned either in the notification or in the notices that were issued. This was a mistake and this action needs to be remedied. I set aside the acquisition of CTS No. 429. The respondent may reapply to the Competent Authority for acquiring this property. As regards CTS No. 449, I see no reason to interfere with the acquisition, as the notices were sent correctly the publication on the site was also done in compliance with the provision of the law and cannot be faulted. The petitioner failed to prove title as well as the continuance of

the Court Receiver's custody, as the suit filed by him in the City City Court has also abated."

18. The above order passed by the Secretary, Housing Development Department, was a subject matter of challenge in Writ Petition No. 1919 of 2001 and the case was remanded to the Principal Secretary for fresh hearing in respect of CTS No. 429. On 30/1/2002 the Principal Secretary, Housing Department, after hearing the parties, passed a fresh order and he upheld the acquisition of CTS No. 429 under Section 14(1) of the Act as it was in the best interest of the slum dwellers. He also stated that the owner of the property was entitled for compensation on acquisition of the land and the work of rehabilitation had progressed substantially and as undertaken by the developer-respondent no.4. The Principal Secretary also stated that after the scheme was duly approved by the competent authority i.e. the SRA, any variation in the order now would result in difficulties which would go against the slum redevelopment scheme and equity as well as balance of convenience did not lie in favour of the petitioner Shri Anil Shah.

19. It was pointed out by the learned counsel for the respondents that both these orders i.e. the order dated 17/8/2000 passed by the Secretary in respect of the acquisition of CTS No. 449 has been approved and upheld by this court in the order dated 30/4/2001. We have perused the said order and this court observed that the claim of the petitioner was confined only to CTS Nos. 429 and 449 which formed a very small part of the project and that the petitioners' share was only 8% and that they had filed a suit. It appears that the full record could not be brought to the attention of this court when this order dated 30/4/2001 was passed and the petitioner being aggrieved by some of the observations made therein, had filed a Review Petition and by the order dated 4/2/2003 this court clarified that the observations made in the order dated 30/4/2001 were only of prima facie opinion and all the parties to the petition were entitled to argue afresh on merits at the final hearing of the petition, despite the observations made in the order under review.

We have noticed that the record which has come before us during the course of final hearing was not placed before the earlier Division Benches in its totality and more particularly the notification

published on 25/8/1999 regarding the slum rehabilitation area under Section 3C(1) of the Act. The ramifications of this notification under Section 3C(1) of the Act are fatal to the acquisition of the suit land as well as the LOI issued in favour of respondent no.4 on 1/12/1998.

20. The reasoning given in the orders passed by the Secretary and the Principal Secretary upholding the acquisition of the suit plots is self contradictory and just because the development work undertaken by the respondent no.4 had progressed and that the owner would be entitled for compensation for the acquired land, it could not be said that the acquisition was legal. Both these authorities did not refer to the fact that the plot in CTS No. 449 was in possession of the Court Receiver and the Court Receiver was never issued any notice. It would be interesting to refer to para 4 of the affidavit-in-reply filed by Mr. Nitish Thakur, Deputy Collector, in this regard.

> "4. I further say that on 13th April, 1999, the petitioner Shri Anil Gulabdas Shah objected that he is one of the heir of the property owner of property bearing CTS No. 429/429-1 to 18 and 449(pt). I further say that a hearing was given by the Competent Authority on 14.5.99 and

20.5.99 to the petitioner but he failed to produce documentary evidence to prove his heirship. I also recorded his statement on 14.5.99 and 20.5.1999. I further say that during the enquiry period, the petitioner orally informed that there is a Suit No.4109/80, pending int heHigh Court and the possession of the said land is under the Court Receiver. I say that till the petitioner referred in the said suit, this office was not aware of the same. Therefore, on 28th May, 1999 and 24th June, 1999 this office wrote a letter to the Hon'ble Court Receiver, High Court, Mumbai, who in turn informed this office on 19th August, 1999 giving the details in respect of the possession of the said land with them. It is pertinent to note that in the affidavit filed by the respondent no.4 in regard to it, the Respondent No.4 has referred that suit was dismissed and the Court Receiver is discharged, but as per the letter of the Court Receiver dated 19th August, 1999, it seems that the Court Receiver is still in possession of the said property thereafter."

Section 36 of the Act prescribes the mode of service of notice and it reads as under:-

36 (1) Every notice, order or direction issued under this

Act shall, save as otherwise expressly provided in this Act, be served,-

(a) by giving or tendering the notice, order or direction or by sending it by registered post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the notice, order or direction on some conspicuous part of his last known place of abode or business, or by giving or tendering the notice, order or direction to some adult member or adult servant of his family or by causing it to be affixed on some conspicuous part of the building or land, if any, to which it relates.

(2) Where the person on whom a notice, order or direction is to be served is a minor, service upon his guardian or upon any adult member or adult servant of his family shall be deemed to be the service upon the minor.

(3) Every notice, order or direction, which by or under this Act is to be served as a public notice, order or direction or as a notice, order or direction which is not required to be served on any individual therein specified shall, save as otherwise expressly provided, be deemed to be sufficiently served if a copy thereof is affixed in such conspicuous part of the office of the Competent Authority or in such other public place during such period, or is published in such local newspaper or in such other manner, as the Competent Authority may direct.

In the instant case, the ownership of CTS No. 429 was shown in the name of some other persons and notices were issued to such aliens and not to the petitioner and other co-sharers. So far as CTS No. 449 was concerned, the Court Receiver was in possession and he had no notice at any point of time before 6/7/1998. Even otherwise, the 7x12 extract placed on record indicated that pursuant to the decree passed in 1949, mutation entry was effected on 20/2/1950 and 1/3rd share of each of the three surviving sons of the original owner was shown in respect of the suit property. The Government record thus indicated that Dhansuklal was not the only owner and notice was admittedly issued only to him on or about 16/5/1998 and the other owners were not the true owners. It was urged before us that even otherwise, consequent to the order passed by this court on 24/4/2000, the petitioner was heard and, therefore, the requirement of principles of natural justice was complied with during the course of hearing before the Secretary as well as the Principal Secretary. It was urged by the respondents that on this ground alone, the acquisition was required to be upheld and there is no reason to hold that the notification dated 6/7/1998 is vitiated in respect of the petitioner's plots. We do not

agree with these submissions and more so because on 9/4/1998 itself the SRA published the general slum rehabilitation scheme under Section 3B(2) of the Act and thus the scheme of Chapter I-A for slum rehabilitation would be applicable from that date. The acquisition of the land of the petitioner would be, therefore, required to be completed as envisaged under Chapter I-A of the Act. As noted earlier, the scheme of Section 14(1) of the Act is different for the acquisition of the slum areas for redevelopment as well as works of improvement on one hand and for the slum rehabilitation scheme on the other. The acquisition in the instant case is for the slum rehabilitation scheme and for the slum rehabilitation area as declared by the notification dated 25/8/1999. Thus the acquisition of the petitioner's land by the impugned notification dated 6/7/1996 is of no consequence. None of these officers examined the core issue as to whether the suit land could be acquired for "works improvement" on the face of the fact that a notification under Section 3C(1) was published on 25/5/1999. They were called upon to hear the petitioner, as a statutory requirement and it was therefore incumbent upon them to examine whether acquisition of the suit land could be done when it was included the slum rehabilitation area declared on 25/8/1998. The Act does not recognize

that the slum land is acquired first and then it is declared as a slum rehabilitation area, when it comes to the private ownership land. Once the notification under Section 3C(1) of the Act is published, it creates some vested rights in favour of the owners of the land covered under the slum rehabilitation area. The owners get the first choice to undertake the rehabilitation scheme and only on their failure to do so within a specified period as required under Section 13 of the Act and as applicable to Chapter I-A, that the State Government can proceed to acquire the land and undertake the rehabilitation scheme or hand it over to any other agency to undertake such a scheme as is clear from the scheme of Section 15(3) as amended under Chapter I-A of the Act.

21. It is pertinent to refer at this stage to the affidavit-in-reply by Shri Prakash Joshi, Desk Officer, in the Ministry of Housing Development on 16/12/2002. In para 9 of the said affidavit it is stated on behalf of the State Government as under:-

> "9. I say that as per amendment of 1996, if the SRA wants to redevelop any property which is a slum, then declaration of the said property as slum area under Section 3(B) of the said Act and procedure under Section 3(C) and

3(D) has to be followed. Since this redevelopment is not by the SRA and the said redevelopment has been proposed by the society on majority of 70% consent, hence procedure under Section 3(C) and (D) is not required to be followed and therefore procedure under Section 14(1) is necessary. I say that the amendment does not take away the authority of the State Government under Section 14(1) in respect of acquisition of the slum area. I say that redevelopment includes work of improvement and therefore the representation is absolutely as per provision of the Act and is required to be upheld. I say that Section 3(c) of the said Act need not be applicable to this scheme in view of the Government Authority under Section 14(1) of the said Act. I say that notice of acquisition under Section 14(1) of the said Act in respect of the acquisition of the property is a notification and not an order and therefore it is not necessary to issue a reasoned order to the petitioner. The only aspect is to be considered as to whether objections have been considered or not and therefore does not require to pass any reasoned order either accepting or rejecting the objection. Therefore, the Notification is absolute within the jurisdiction and as per the said Act....."

These averments have to be outrightly rejected as fallacious in view of the notification dated 25/6/1999 issued under

Section 3C(1) of the Act by the Chief Executive Officer of the SRA and we hasten to add that the submissions so made tend to suppress the material facts. This affidavit of the Desk Officer has also relied upon Regulation No.33(10) of the DCR so as to contend that it was not necessary to notify the slum rehabilitation area under Section 3C even after the general slum rehabilitation scheme was published under Section 3B(2) of the Act on 9/4/1998. Respondent No.4 has also supported this argument and contended that the acquisition under Section 14(1) was final, legal and the suit land stood vested with the State Government and, therefore, the rehabilitation scheme undertaken by it could continue safely and without any illegality by following Regulation No.33(10) of the DCR. This argument has to be discarded. A Division Bench of this court in the case of Om-sai Darshan Co-operative Housing Society and anr. vs. State of Maharashtra and ors. **[2006 (5) ALL MR 323]** has considered the very same issues and turned down the same, after considering the scheme of Chapter I-A of the Act as well as Regulation No. 33(10). The Division Bench in Om-sai Society's case (Supra) had framed the following three questions for considerations:

(i) Whether the issuance of notification under section 3C(1) of the Slum Act is a condition precedent for sanction of slum redevelopment scheme governed by D.C. Regulation 33(10)?

(ii) What is the meaning of the slum rehabilitation area for the purpose of D.C. Regulation 33(10)?

(iii) Whether the Petitioner No.1 – proposed society is entitled to grant of sanction to develop a particular area out of CTS 539/C-1?

The findings on issue No.3 are not relevant for our considerations. The Division Bench noted that when the learned Single Judge decided the case of M/s. Pooja Enterprises vs. The Chief Executive Officer and ors. [2000 (3) ALL MR 65], the amendment made by Maharashtra Act VI of 1997 to section 3C(1) of the Act was not brought to the notice of the learned Judge and by the said amendment, power has been vested with the Chief Executive Officer, SRA to issue the notification and the learned Single Judge had proceeded on the assumption that the power under Section 3B is to be exercised by the SRA and power under Section 3C is to be exercised

by the competent authority. The Division Bench, therefore, stated,

> "..... On a plain reading of section 3C, it is apparent that after publication of general scheme under section 3B, the Chief Executive Officer of the SRA on being satisfied that circumstances exist in respect of any area justifying its declaration as slum rehabilitation area may, by an order published in the Government Gazette declare such area to be slum rehabilitation area. It must be noted here that section 3B(1) provides for preparation of general rehabilitation Scheme for the areas specified in sub-section (1) of section 3A. Sub-section (1) of section 3A provides that the State Government will constitute a Slum Rehabilitation Authority for such area or areas as may be specified in the notification. As pointed out earlier, the SRA was constituted for the area falling within Greater Mumbai. Thus the power under section 3C(1) is to declare any area as slum rehabilitation area under the Slum Rehabilitation Scheme published under section 3B.
>
> In the present case we are dealing with the scheme of slum redevelopment which is governed by Regulation 33(10). A General Scheme under section 3B of the Slum Act can be framed either by the State Government or by SRA with the prior approval of the State Government. However, the scheme under clause 33(10) is to be

> approved in individual cases by the SRA. Clause (II) of Annexure to the said Regulation 33(10), a slum means that area which is either censused or one which is declared and notified under the Slum Act....”

It is thus clear that in Om-sai Society’s case, the Division Bench was dealing with the scheme of slum redevelopment, which is governed by Regulation 33(10) and it was not a scheme for rehabilitation of the slum dwellers. It is pertinent to note that there is a distinction between the terms “slum area” and “slum rehabilitation area”. The first one is notified under Section 4(1) of the Act, whereas the latter one is notified under Section 3C(1) of the Act and after publication of a general slum rehabilitation scheme under Section 3B(2) of the said Act. We are, therefore, satisfied that the respondents, in the instant case, cannot rely upon Regulation 33(10) of the DCR and the averments made in the affidavit of Shri Prakash Joshi, Desk Officer, are without any merits. The decisions of this court (Single Judge) in the case of Satyanarayan R. Dubey and ors. vs. State of Maharashtra and ors. **[2007 (4) AIR Bom R 501]** and S. Ramkrishna Nayak & Ors. vs. State of Maharashtra and anr. **[W.P. (L) No. 1477 of 2006 decided on 13/9/2006]** are not applicable to the facts of this case.

22. No doubt, on acquisition of the land under Section 14(1) vests with the State Government under Section 14(2) of the Act, but in the instant case we have already recorded the finding that the acquisition of the suit plots for "works of improvement" was a facade and the acquisition was only for rehabilitation of slum dwellers. In addition, we have also held that the orders passed by the Secretary as well as the Principal Secretary, Housing Development Department did not consider this aspect i.e. acquisition for works of improvement and though the petitioner was heard by both these authorities, the issue of legality of the notification dated 6/7/1998 qua the petitioner's property was not considered and instead both the officers were overwhelmed by the progress made by respondent no.4 in the development of the project i.e. the slum rehabilitation scheme Saiwadi. As noted earlier, when the initial LOI dated 26/4/1995 was issued for an area admeasuring 10371.92 sq.mtrs. in favour of respondent no.4, it was the proposal under the SRD scheme i.e. slum redevelopment scheme and Chapter I-A was not inserted in the Act at that time. It is only after the meeting held in the chamber of the Minister for Housing on 5/3/1997, the proposal for rehabilitation of the slum dwellers was mooted and

considered and, therefore, when the second proposal was submitted by the respondent no.4 on 7/3/1999 for a larger area i.e. 9+4 Co-operative Societies and to club the plots bearing CTS No.447 and 453 with a total area of 33,338.10 sq.mtrs. that the proposal for slum rehabilitation scheme was considered and accordingly the second LOI dated 30/4/1998 was issued by the SRA in favour of respondent no.4. Clauses 40, 41 and 42 of the said LOI read as under:-

> "40. That you shall pay total amount of Rs.1,39,40,000/- towards deposit to be kept with SRA at the rate of Rs. 20,000/- per tenement and total amount of Rs. 1,90,30,090/- towards infrastructure development charges at the rate of Rs.840/- per sqm. on total built-up area sanctioned for the scheme as and when demanded by C.E.O. (SRA).
>
> 41. That you shall pay development charges as per 124-E of MRTP Act separately for sale built-up area as per provision of MRTP Act.
>
> 42. That this letter of intent is valid for the period of 3 (Three) months from the date of issue."

After the impugned notification dated 6/7/1998 under Section 14(1) of the Act was issued, respondent no.4 submitted its third proposal to the SRA on 17/10/1998 and included the suit plots as well and for a total area of 44,330 sq.mtrs. and even by this time the notification under Section 3C(1) of the Act was not issued either by the State Government or by the SRA and that is how the third LOI and which has been impugned in this petition, was issued in favour of respondent no.4 by the SRA on 1/12/1998 and for undertaking the slum rehabilitation scheme. It was stated in the said LOI that 1605 non residential tenements, 40 commercial tenements, 17 balwadies, 17 welfare centres would be developed and the rehabilitation will be for 21 Co-operative Housing Societies on the built-up area of 44,330 sq.mtrs. with 2.5 FSI. While issuing the LOI dated 1/12/1998 it was necessary for the SRA to verify whether the notification under Section 3C(1) of the Act was issued and the said LOI could not have been issued solely on the basis of the purported acquisition under the notification dated 6/7/1998. When the scheme of the Act has set out various steps for undertaking the projects for rehabilitation of slum dwellers, it is mandatory that all the steps are taken before the letter of intent was issued. It is not known as to why the SRA was in such a

hurry and it did not even think to apply its mind to the requirements of the Act. The whole process appears to have been short-circuited and under the guise of acquiring the land for the "works of improvement". We, therefore, find fault with the LOI dated 1/12/1998 but only in respect of the suit plots. Section 15(3) and (4) as amended for Chapter I-A of the Act, does allow the land to be handed over to a third agency for the rehabilitation of slum dwellers but it could be so done only after the private land owners were called upon to undertake the rehabilitation and that they declined or failed to do so. Hence the LOI dated 1/12/1998, to the extent it covers the suit land, is vitiated and it deserves to be set aside as illegal and void ab initio.

23. Now coming to the issue as to whether respondent no.4 has a vested right over the suit plots, the petitioner, after filing this petition, approached the Lokayukta on or about 15/4/1999 and consequently on receiving the notice from the office of the Lokayukta, the Additional Collector (Encroachment) filed a detailed reply and submitted that the Deputy Collector (Encroachment) and Competent Authority, Andheri had on 16/5/1998 submitted a proposal for acquisition of the land, including the petitioner's land and after issuing

notices, a proposal for acquisition was submitted on 10/6/1998 and 17/6/1998 to the Secretary, Housing Department. The proposal was for rehabilitation of the slum dwellers. On 13/4/1999 the petitioner had appeared before the Deputy Collector (Encroachment) and objected to the acquisition as well as passing of the award. Consequently, the suit plots i.e. CTS Nos.429 and 449 were deleted from the award. It was specifically stated as under :-

> " Moreover, the Applicant in his application has stated that Suit No. 4109/1980 is pending in the Mumbai City Civil Court, in respect of City Survey No. 449. Accordingly, information has been sought by the Deputy Collector (Encroachment), Andheri by his letter Dt. 28/5/1999, from the Court Receiver. The Complainant, while the amount of compensation being determined under Section 17, gave a written letter and stated that he has a right in respect of C.S. Nos.429, 429/1 to 18, 449 out of the acquired land. Pursuant to the said written objection, the Deputy Collector (Encroachment), Andheri, had granted opportunity to the Objector (Intervener) to putforth his objection and as it has come to the notice that the suit in respect of the land bearing C.S.No.449, out of the properties in the Objection application, is pending in the City Civil Court, and as per the objection of the

> Objector, the amount of compensation in respect of C.S. Nos.429, 429/1 to 18 C.S. Nos. 449, has not been fixed (determined) and excluding the said properties, the award for compensation has been declared under Section 17."

24. By letter dated 7/6/1999 addressed to respondent no.4, the Deputy Collector (Encroachment), Andheri, called upon the said respondent to remit an amount of Rs.19,76,080/- towards the award amount and while doing so it was very specifically informed that the compensation for the suit lands was not included in the said amount to be deposited by respondent no.4. In response to the application submitted by respondent no.4 on 26/3/1999, the SRA passed the amalgamation order dated 30/11/2000 and partitioned the land covered by the impugned notification dated 6/7/1998. In the said order dated 30/11/2000, the suit land was not included as is clear from the schedule of property/plots attached thereto. Thus the respondent no.4 was aware as on 7/6/1999 as well as 30/11/2000 that the suit land was not amalgamated with the remaining land covered by the LOI dated 1/12/1998. It is clear from the record that immediately on receipt of the first LOI, the respondent no.4 had undertaken the first phase of construction in respect of the land admeasuring 19,371.92 sq.mtrs. and

it was a scheme for redevelopment. Pursuant to the second LOI dated 30/4/1998, which was for rehabilitation of the slum dwellers and on a total area of 33,338.10 sq.mtrs., four additional societies were to be rehabilitated and the petitioner's plots were not included in the said area. When the third LOI dated 1/12/1998 and which is impugned in this petition, was issued, including the suit plots, the second phase appears to have been undertaken, but respondent no.4 was well aware, all along, that in the amalgamation of the total area, the suit plots were not included. In our opinion, therefore, the respondent no.4 has no vested right over the suit plots. It has not paid compensation for the suit plots nor the suit plots were included in the amalgamation order dated 30/11/2000 and there is nothing on record to show that the said order was subsequently modified so as to include the suit plots.

25. Though, we have held that the impugned notification is unsustainable and the respondent no.4 has no vested right over the suit plots, these findings by themselves do not entitle the petitioner to seek possession of the said plots area. The notifications issued under Section 4(1), declaring the suit plots as slum areas and the notification issued under Section 3C(1) on 25/8/1999 have received finality. Under

Section 3C(2) of the Act, 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. In the instant case, the slum rehabilitation order has been published on 25/8/1999 and the petitioner had the remedy of filing an appeal before the Special Tribunal against the said order under Section 3C(2) of the Act within a period of four weeks of publication of the said order. It has been the consistent stand of the petitioner that such an order was not issued, but the order having been published in the Official Gazette, the petitioner may not have the remedy of appeal as of now and knowing this position in law, he has pressed for the relief that owners of the suit plots must be given an opportunity to develop the slum area and rehabilitate the slum dwellers. Some of the slum dwellers have appeared before us and filed an affidavit supporting the proposal of the petitioner that he ought to be allowed at the first instance to undertake the slum rehabilitation work. Section 13(1), as applicable for Chapter I-A, states that the SRA may, after any area is declared as the Slum Rehabilitation Area, if the landholders or occupants of such area do not come forward within a reasonable time, with a scheme for re-development of such land, by

order, determine to redevelop such land by entrusting it to any agency for the purpose. As per sub-section (2) of Section 13, where on declaration of any area as a Slum Rehabilitation Area the SRA, is satisfied that the land in the Slum Rehabilitation Area, has been or is being developed by the owner in contravention of the plans duly approved, or any restrictions or conditions imposed under sub-section (10) of section 12, or has not been developed within the time, if any, specified under such conditions, it may, by order, determine to develop the land by entrusting it to any agency recognized by it for the purpose. Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why such order should not be passed. Thus, under Section 13 of the Act and as applicable for Chapter I-A therein, the SRA is obliged to offer the suit land first to the petitioner or to the occupants thereon to come forward for redevelopment of the same and only on their failure, the land could be handed over to a third party. This statutory scheme cannot be given go-by. If the land holders or the occupants of the area do not come forward within a reasonable time for redevelopment of the land so as to rehabilitate the slum dwellers or by an order passed by the SRA to determine to develop the land, then only the provisions for acquiring

the land and then to transfer it to any agency under Sections 14 and 15 as applicable to Chapter I-A of the Act will come into play. This process shall have to be followed by respondent nos.1 to 3 in respect of the suit plots which have already been declared as a Slum Rehabilitation Area in terms of the notification dated 25/8/19999. This is how the scheme of the Act, for the purpose of rehabilitation of slum dwellers, ought to be understood and interpreted. The doctrine of expressum facit cessare tacitum, which means express mention of one thing implies the exclusion of other, has been applied by the Supreme Court in various cases to enunciate the principle that expression precludes implication. The Supreme Court held in the case of State of Himachal Pradesh and anr. vs. Kailash Chand Mahajan and ors. **[AIR 1992 SC 1277]** that it is always safer to apply plain and primary rule of construction. The first and primary rule of construction is that intention of the legislature is to be found in the words used by the legislature itself. The true or legal meaning of an enactment is derived by construing the meaning of the word in the light of the discernible purpose or object which comprehends the mischief and its remedy to which an enactment is directed. Hence the alternative prayer for the payment of reasonable compensation cannot be

considered at this stage.

26. The petitioner has made an alternate prayer of reasonable compensation, but in course of arguments he gave up the said prayer and insisted for the suit plots to be offered to the owners for the slum rehabilitation scheme. By relying upon this alternative relief, the learned counsel for the respondents submitted that at the most the land owners could be granted compensation, especially when the award passed under Section 17 of the Act has excluded the suit plots. These submissions appears to be convincing, but cannot be considered in view of the scheme of the Act. Under Section 13 (1) of the Act and as applicable to Chapter I-A therein, the land owners or the slum dwellers' society has to be offered at the first instance to undertake the slum rehabilitation and if they fail to do so within a fixed time, the SRA, can under Section 15(3) of the Act allot the suit plots to some other agency and only in that event there may be a question of offering compensation to the land owners. Such an eventuality has not arisen in the instant case on account of the insistence of the petitioner that he is willing to undertake the rehabilitation project and he has the slum dwellers on the suit property with him. In this regard he has relied upon the affidavits filed by some of the slum dwellers during the

course of the hearing of these petitions. Hence, in our opinion, the alternative relief of granting compensation, to be paid to the land owners, in respect of the suit plots cannot be considered at this stage. At the same time, in the eventuality of the land being required to be handed over under Section 15(3), as amended for Chapter I-A of the Act, the issue of payment of compensation at the market rate may arise.

27. In the premises, these petitions succeed and the same are allowed partly. The impugned notification dated 6th July, 1998 and the LOI dated 1st December 1998, only to the extent of the suit plots area (1168.5 + 662.8 sq.mtrs.), are hereby quashed and set aside. The respondent Nos.1 to 3 shall proceed to comply with Section 13 as applicable to Chapter I-A of the Act, in respect of the suit plots area and in case of failure of the land holders or the occupants to come forward within a reasonable time with a scheme for redevelopment of the plot area for the rehabilitation of the slum dwellers, they may proceed to determine to undertake the rehabilitation on the suit land by entrusting it to any other agency by taking further due steps under the

Act.

(SMT. ROHAN DALVI, J.) (B. H. MARLAPALLE,J.)

At this stage Mr. Chinoy, the learned Senior Counsel, submitted an oral application on behalf of respondent no.4 to suspend the operation of this order for a period of six weeks. None is present for the petitioner. However, having regard to the peculiar facts of this case, it would be appropriate to allow this oral application, but with conditions.

Hence, the operation of the above order stands stayed for a period of six weeks from today on the condition that the respondent no. 4 shall maintain status quo as of now in respect of the construction on the suit plots.

(SMT. ROHAN DALVI,J) (B. H. MARLAPALLE,J.)