IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.658 OF 2017

Indian Cork Mills Private Limited.)
A private limited company)
Having its registered office at)
Saki Vihar Road, Powai,)
Mumbai-400 072)..Petitioner

Vs.

1.The State of Maharashtra, through its Housing)
Department having its office at 6th floor,)
Mantralaya, Mumbai.)

2. The Slum Rehabilitation Authority through the)
Chief Executive Officer.)

3. The Deputy Collector,)
The Slum Rehabilitation Authority)

4. Tarabai Nagar Co-op Hog. Society (Proposed))
(i.e. Tarabai Nagar Sahakari Grihanirman Sanstha)
proposed) A society duly formed to be registered)
under the provisions of Maharashtra Cooperative)
Housing Societies Act, 1960 by all slum dwellers)
Having its office at Tarabai nagar, Tungwa gaon,)
Saki Vihar Road, Mumbai-400 072 through its)
Chief Promoter Abdul Rashid Kadar Khan)
Committee members,(i) Irba Kamble (ii) Rajaram)
Jondhle (iii) Mohammed MK (iv) Ramesh Waghmare)
(v)Omprakash Singh (vi) Mariyam Sayyed)
(vii) Navinder Kaur (viii) Ibrahim Shaikh)
All Indian inhabitants of Mumbai.)...Respondents

with
Chamber Summons No.232 of 2017

Mr.Virag Tulzapurkar, Senior Advocate with Mr.Nikhil Sakhardande, Mr.Vikram Deshmukh, Abinash Pradhav and Ms.Deepu Jojo i/b. M/s.Wadia Ghandy & Co., for the Petitioner.

Mr.Milind Sathe, Senior Advocate with Mr.Girish Utangale, Mr.Bhushan Deshmukh, Mr.Gaurav Srivastav, Chetan Mhatre and Mr.Suyash Gadre i/b. M/s.Utangale & Co., for SRA-Respondent nos.2 and 3.

Mr.Sukanta Karmarkar, AGP for State-Respondent No.1.

Mr.Pravin Samdani, Senior Advocate with Mr.Sanjeev R.Singh, Mr.Amogh A.Singh, Mr.Ritesh A.Singh and Ms.Nilima Hode i/b. Mr.Sanjeev Singh, for Respondent No.4.

Mr.Kalpesh Joshi with Mr.Arvind Shrivastava i/b. M/s.Kalpesh Joshi & Associates, for Applicant in Chamber Summons No.232 of 2017.

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CORAM : SHANTANU KEMKAR &
G. S. KULKARNI JJ.

RESERVED ON : 2nd MAY, 2018

PRONOUNCED ON: 13th JUNE, 2018

JUDGMENT:(Per G.S.Kulkarni.J)

Rule returnable forthwith. Respondents waive service. By consent of the parties and at their request heard finally.

1. The petitioner who is the owner of land bearing CTS No.191 I, 191I/1 to 83 admeasuring 9054 sq.meters at Village Tungwa, Taluka Kurla, Mumbai (for short 'the said land'), has filed this proceeding under Article 226 of the Constitution, challenging the notice/notification dated

22 December 2016 issued by respondent no.1-State of Maharashtra (for short 'the State Government') under sub-section (1) of Section 14 read with paragraph (A) of sub-clause (i) of clause (c) of Section 3D of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "**the Slum Act"**), declaring acquisition of the said land of the petitioner, for the purpose namely to enable the Slum Rehabilitation Authority (for short **"the SRA"**) to carry out development under a Slum Rehabilitation Scheme, on the said land, which has been declared as a *'slum rehabilitation area'* under Section 3C(1) of the Slum Act. Consequent to the impugned notification Respondent no.3-Deputy Collector Slum Rehabilitation Authority by a communication dated 7 January 2017 has called upon the petitioner to furnish details of the amount of rent which the petitioner has collected since last five years, to be furnished, for determination of the acquisition compensation, failing which it would be presumed that the petitioner has nothing to say. This communication is also impugned by the petitioner.

2. In recent times in all urban areas we see large scale building activities, city of Mumbai is not an exception and in fact would be the epicenter of such activity, with skyscrapers being built wherever land is available and the city has to grow only vertically. Apart from slums on

public lands there are as well slums on large private lands. Thus large part of the development activity is also the development of slums and slum rehabilitation areas. What would be the nature of the statutory rights of private owners of land, in re-development of such slum areas under the Slum Act? Whether the owner of the land would have a preferential right to undertake re-development or the only method to redevelop such areas would be to resort to compulsory acquisition of such private land are the question as posed in this petition.

3. Principally the following questions would require determination in this petition :-

(i) Whether the petitioner who is owner of the land which is declared as a slum rehabilitation area under section 3C(1) of the Slum Act would have a preferential right under section 3B(4)(c) and (e) read with section 13 (1) falling under Chapter I–A of the Slum Act, as inserted by Maharashtra Act 4 of 1996 to undertake redevelopment the slum rehabilitation area ?

(ii) If the owner of the land has such rights under the provisions as referred in (i) above, whether the failure of the authorities to recognize and enforce such rights of the owner of the land, would render illegal, the acquisition of land under section 14 (1) of the Slum Act ?

4. We narrate the conspectus of facts to aid the discussion :-

The petitioner is the owner of the land in question since the year 1970. It is not in dispute that the land was encroached by hutment dwellers. In the year 1979, the State Government vide notification dated 18 September 1979 issued under Section 4 of the Slum Act, declared part of the land admeasuring 3045.03 sq.meters as a 'slum.' Thereafter the SRA exercising powers under Section 3C(1) of the Slum Act by a notification dated 11 March 2011 published in the official gazette, declared the entire area of the petitioner's said land admeasuring 9054 sq.meters as a '*slum rehabilitation area*'. Consequent to this notification the SRA appears to have taken steps, to acquire the said land purportedly on a proposal of the respondent no. 4 which is a housing society formed by the slum dwellers/occupants of the land.

5. The petitioner as was not fully aware of all the official details for the SRA to initiate acquisition proceedings, the petitioner on 17 June 2016 made an application under the Right to Information Act, seeking information/documents in relation to the acquisition proposal. In response thereto in September, 2016 the petitioner received relevant information, which revealed that the hutment dwellers residing on the land had

registered society named as Tarabai Nagar Co-operative Hsg. Society (Proposed)/ Tara Nagar Welfare Society-Respondent no.4 (for short **'the said society**') for implementation of a slum rehabilitation scheme on the said land. The society had submitted a proposal dated 28 February 2012 to the State Government seeking acquisition of the said land for the purpose of implementation of the slum rehabilitation scheme. On the said proposal a notice dated 17 May 2012 was purportedly addressed to the petitioner inviting objections to acquisition. The petitioner has stated that this notice was never received by the petitioner. Thereafter by a letter dated 4 August 2012 a report was made by the Additional Collector (slum rehabilitation) to the State Government recommending acquisition, however the said letter was silent on any stand of the petitioner on the acquisition. Further by a letter dated 18 October 2012, the State Government called upon the Chief Executive Officer of the S.R.A. to submit its report qua the acquisition of the said land as per the requirement of Section 14(1) of the Slums Act.

6. It is the petitioner's case that without any intimation to the petitioner the Slum Rehabilitation Authority by its letter dated 29 November 2012 informed the State Government that there was no objection in acquiring the said land and the State Government may

consider the proposal of acquisition of the said land. The SRA had also confirmed that no proposal for implementation of any slum rehabilitation scheme on the said land had been submitted to the SRA by any party. The petitioner has stated that, however, the State Government in its Housing Department, by its letter dated 9 April 2013 addressed to the Chief Executive Officer of the SRA, inquired that though the SRA has confirmed that there was no objection to acquire the land, however, the SRA had failed to clarify as to whether the landlord/petitioner was given an opportunity to submit its say/statement in regard to the said acquisition. The State Government accordingly called upon the SRA to ensure that the landlord/petitioner was given an opportunity to submit its statement on the acquisition of the said land and called upon the SRA to submit its report considering the say of the petitioner. Accordingly, on 8 August 2013, the Chief Executive Officer of the SRA issued a notice to the petitioner/owner, as also to the Chief Promoter of the Society, informing of a hearing as fixed on 26 August 2013 and that the parties will have to show cause as to why the said land be not acquired at the behest of the society and a report to that effect to be forwarded to the State Government. Responding to the said notice, the petitioner addressed a letter dated 23 August 2013 objecting to the acquisition proposal of the State Government *inter alia* stating that the petitioner was willing to

develop the said land and undertake rehabilitation of the slum dwellers. The petitioner also objected and expressed its opposition to introduce any third party for development of the petitioner's land.

7. Accordingly a hearing took place before the SRA on 26 August 2013 in which the representative of the Society made its submissions as also the representative of the petitioner recorded its objection on the said land acquisition proposal. The hearing was further adjourned to 16 September 2013.

8. On 12 September 2013, before the next hearing the petitioner addressed a letter to the Deputy Collector- SRA, recording that the petitioner in its capacity as the owner of the land was not made aware of the proposal to acquire the land initiated at the behest of the society, and that it so became aware only on receipt of the aforesaid notice dated 8 August 2013 of the SRA. The petitioner placed on record that the petitioner was interested in re-developing the said land and rehabilitate the slum dwellers. The petitioner further recorded that it had come to its knowledge that several builders were trying to intrude qua the re-development said land. The petitioner also recorded that the petitioner was taking care of the land and of the slum dwellers since many years.

9. On 16 September, 2013, being the adjourned date of hearing before the Chief Executive officer, the representative of the Society again made submissions asserting acquisition of the land, however, the petitioner opposed the acquisition proposal reiterating that the petitioner was willing to develop the land and rehabilitate the hutment dwellers on the land. The petitioner stated that it was its legal right and entitlement to redevelop the land. The Chief Executive Officer of the SRA, reserved orders on the said hearing.

10. The petitioner thereafter addressed a letter dated 8 October 2013 to the Chairman of the Society recording its willingness to develop the said land by implementing the slum rehabilitation scheme. The petitioner assured the society that it would provide appropriate rehabilitation to its members and requested the society to submit proof of residence of all its members so as to enable the petitioner to initiate the process of implementation of slum rehabilitation scheme. To facilitate the process of obtaining the required consent of the hutment dwellers, the petitioner also appointed a representative to look after the legal matters for development of the said land. The society positively responded to the petitioner's letter. The Society by its letter dated 10 October 2013

acknowledging initiatives of the petitioner, confirmed its full trust and support from majority of its members to the petitioner. This letter was signed by twenty three members of the society. Thereafter, the society by another letter dated 16 October 2013 requested the petitioner to give some time to the society on the redevelopment steps, as the committee members were yet to be elected and the society was in the process of conducting elections.

11. It is the petitioner's case that from the documents received by the petitioner under Right to Information Act, it was also revealed that at the relevant time, one Mr. Anuj Desai, Director of Concrete Lifestyle & Infrastructure Pvt. Ltd., had filed an affidavit dated 11 December 2007, before the Additional Collector (Encroachment and Removal) as the alleged constituted attorney of the petitioner,in relation to the proposal for acquisition of the said land. The petitioner states that it had neither given any authority to Mr.Anuj Desai to act or appear for the petitioner nor the petitioner had any knowledge as to the identity of this person. This according to the petitioner would show that the application of the society for acquisition of the land was motivated by a third party- developer namely Concrete Lifestyle & Infrastructure Pvt. Ltd. The petitioner, therefore, by its Advocate's letter dated 18 October 2013 called upon Mr.

Anuj Desai to withdraw the said affidavit filed by him. The petitioner also by its letter dated 22 October 2013 addressed to the Deputy Collector of SRA placed on record the illegality of Mr.Anuj Desai interalia stating that the petitioner had not executed any power of attorney in favour of Mr.Anuj Desai and called upon the Deputy Collector-SRA, not to rely on any representation made by Mr.Anuj Desai or Concrete Lifestyle & Infrastructure Pvt. Ltd. It is the petitioner's contention that the entire acquisition process was thus vitiated by false/ fraudulent documents and representations as made to the authorities.

12. The Chief Executive Officer of the SRA thereafter submitted a report dated 21 December 2013 to the Principal Secretary- Housing Department of the State Government, inter alia recording that the society had submitted a proposal for acquisition of the said land which was objected by the petitioner on the ground that the petitioner itself would implement the slum rehabilitation scheme. The SRA however stated that since the petitioner had not submitted any proposal/scheme for slum rehabilitation, the State Government nonetheless consider the Society's proposal for acquisition of land, considering that the hutment dwellers seeking rehabilitation, are protected slum dwellers and are legally authorized for rehabilitation. By another letter dated 9 January 2014 of

the SRA to the Deputy Secretary-Housing Department, it was again stated by the SRA, that for the rehabilitation of the slum dwellers on the said land, no scheme was received by the SRA from any developer. Thereafter the State Government by its letter dated April, 2014 called from the SRA, further information/documents in relation to the acquisition proposal, which was complied by the SRA by its letter dated 12 May 2014.

13. Further the SRA under its letter dated 29 November 2014 addressed to the State Government, submitted its additional report on the status of the said land and confirmed that a slum rehabilitation scheme, under Rule 33(10) of the Development Control Regulations,1991 (**for short** '**DCR**') can be implemented on the said land. The SRA again requested the State Government to consider the proposal for acquisition of the land. By another letter dated 3 January 2015, the State Government requested the SRA to submit petitioner's documents, objecting to the acquisition of the land. Immediately, on the same day the SRA submitted the documents as required by the State Government.

14. As no response was forthcoming from the SRA/State Government, on the petitioner's intention and assertion to undertake the slum rehabilitation scheme, the petitioner by its letter dated 25 February 2015 re-informed the State Government and the SRA of its intention to re-

develop the said land under the Slums Act read with the DCR 33(10). The petitioner also recorded that certain third parties who have no right and interest whatsoever on the said land are attempting to intrude/usurp the petitioner's rights on the said land. Similar letter was addressed to the Housing Minister of the State.

15. However as a matter of further development, the Housing Department of the State Government by its letter dated 16 April 2015 addressed to the SRA, recorded that the proposal for acquisition of the said land was submitted for approval to the Hon'ble Minister for Housing. The SRA was also asked to respond to the letter dated 25 February 2015 of the petitioner, which according to the petitioner, was not responded by the SRA. As none of the petitioner's letters by which the petitioner had expressed its willingness to redevelop the land in question and implement the slum rehabilitation scheme were taken cognizance by any of the authorities, the petitioner again by its letter dated 6 May 2015 addressed to the SRA reiterated its willingness to redevelop the land under Regulation 33(10) of DCR and rehabilitate the slum dwellers and thus requested the SRA to issue necessary directions to enable the petitioner to carry out survey and demarcation on the said land to enable it to submit its proposal for redevelopment of the said land.

16. As regards the proposal to acquire the said land, the SRA thereafter by its letter dated 15 May 2015 addressed to the State Government recorded, that in the hearing held by it, the petitioner had expressed its willingness to undertake the slum rehabilitation scheme and had reiterated the said request by its several letters. The SRA recorded that the petitioner had also requested an opportunity to submit a scheme under its letter dated 6 May 2015. It was recorded that, whether one more opportunity be granted to the owners be considered at the level of Government. According to the petitioner, the SRA thus categorically concluded that the petitioner was entitled to a preferential right to develop the said land under Section 3B(4)(e) of the Slum Act and an opportunity was thus required to be given to the petitioner to submit a slum rehabilitation scheme before deciding finally on the acquisition proposal under the Slum Act. The petitioner has also referred to an internal noting dated 14 May 2015 on this letter of the SRA dated 15 May 2015. It is thus the petitioner's case that considering this clear letter of the SRA, an opportunity ought to have been granted to the petitioner to submit a slum rehabilitation scheme before deciding the proposal for acquisition of land. It is petitioner's case that except for the documents received by the petitioner under the Right to Information Act, none of

these internal correspondence between the SRA and the State was known to the petitioner.

17. The petitioner says that there was another internal noting dated 18 May 2015 of the SRA and its officers by which it was approved that the petitioner-landlord is entitled as a right to develop the land under Section 3B(4)(e) of the Slums Act. The petitioner says that in view of this noting, an opportunity ought to have been granted to the petitioner to submit a slum rehabilitation scheme before deciding finally on the acquisition proposal under the Slums Act.

18. The petitioner, hence, again addressed letters dated 15 July 2015 and 16 July 2015 to the State Government and the SRA respectively reiterating its stand to redevelop the scheme as also to rehabilitate the slum dwellers. The State Government was requested that appropriate directions be issued to the SRA to stay the acquisition proceedings and in the meantime, the petitioner would submit a slum rehabilitation scheme. The SRA was also requested to allow the petitioner to submit a proposal to take further steps and not to accept or process the slum rehabilitation scheme from any third party. The petitioner submitted that as held in the decision of the Division Bench of this Court in **Anil Gulabdas Shah Vs.**

State of Maharashtra[1], the petitioner had a preferential right to redevelop the said land and a thus a reasonable time ought to be granted to the petitioner being the owner of the land, to submit a scheme for redevelopment.

19. In response to the SRA's letter dated 15 May 2015, the State Government by its letter dated 12 October 2015 recorded that, qua the acquisition proposal in regard to the said land, an opportunity of a hearing was required to be granted to the petitioner and only then the proposal should have been submitted for implementation of the slum rehabilitation scheme. The State Government accordingly called upon the SRA to take appropriate steps at its level and suggested that the matter may also be referred to the High-Power Committee.

20. The case of the petitioner on the above backdrop is that till October, 2015, both the State Government as also the SRA were of the view that an opportunity should be given to the petitioner to submit a slum rehabilitation scheme to redevelop the said land before deciding the proposal for acquisition of the land.

21. The petitioner further refers to a noting dated 16 April 2016

1 2011(1) Mh.L.J. 797

by which according to the petitioner the Deputy Collector-SRA and other officers of the SRA, approved that as per the decisions of this Court as referred therein, the landlord has a preferential right to redevelop the land, and thus an opportunity ought to have been given to the petitioner to submit its proposal for slum rehabilitation scheme, before taking any final decision is taken in regard to its acquisition. The petitioner contends that however, the Chief Executive Officer contrary to the said clear stand on record, as also discarding his own earlier stand, had taken a contrary position that the petitioner had not submitted any proposal for slum rehabilitation scheme, and asserted that it would not be proper to give a chance to the petitioner to submit a rehabilitation scheme. This according to the petitioner was clear from the internal noting dated 16 April 2016.

22. The petitioner says that the SRA however, contrary to the above clear position as borne out by the documents, by its letter dated 12 September 2016 informed the State Government, that though the authorised representative of the petitioner was present at the hearing held on 26 August 2013 and 16 September 2013 respectively, however the petitioner had not submitted any proposal for slum rehabilitation and hence it would not be proper to give a chance to the petitioner to submit a slum rehabilitation scheme. This according to the petitioner was contrary

to the opinion of the State as reflected in the letter dated 12 October 2015 addressed to the SRA.

23. The petitioner says that the State Government contrary to the record accepted the SRA's stand and issued the impugned notification dated 22 December 2016 under Section 14(1) of the Slums Act, deciding to acquire the said land. According to the petitioner, the impugned notification is issued without the petitioner being granted a reasonable opportunity to submit a proposal for redevelopment of the said land and recognize the petitioner's preferential right to so develop its land. In consequence to the said notification/ notice issued by the State Government to acquire the said land, the SRA by its letter dated 7 January 2017 addressed to the petitioner and the Society, called upon to submit documents of rent collected in last five years from the hutment dwellers and to confirm the loss/ compensation in respect of the said land and also called upon the petitioner to remain present for hearing on 19 January 2017.

24. The petitioner on the above backdrop is before the Court inter alia seeking the following reliefs:-

> "(a) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ, order or direction in the nature of certiorari calling for the records and proceedings in respect of the

Impugned Notice dated 22nd December,2016 (Exhibits GG and GG-1 hereto) and Impugned Letter dated 7th January 2017 (Exhibits HH and HH-1 hereto) and after going through the legality, validity and propriety of the same be pleased to quash and set aside the same;

(b) This Hon'ble Court be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India directing Respondent No.2 to permit the Petitioner to submit application/proposal for implementation of a slum rehabilitation scheme and further to consider and process the same for implementation of a slum rehabilitation scheme on the said Land under Regulation 33(10) of DCR and to issue the necessary approvals in respect thereof within a period of 2 (two) weeks or such time as the Hon'ble Court deems fit and proper;

(c) That this Hon'ble Court be pleased to issue a writ of mandamus any other writ, order or direction in the nature of mandamus directing the Respondents to allow the Petitioner to redevelop the said Land in accordance with law and not to entrust to or allow the work of redevelopment of or implementation of any slum rehabilitation scheme on the said Land by any third party /developer.

(d) That this Hon'ble Court be pleased to issue a writ of mandamus any other writ, order or direction in the nature of mandamus directing the Respondents to not in any manner act upon or implement the impugned notice dated 22nd December 2016 (Exhibits GG and GG-1 hereto) and Impugned Letter dated 7th January,2017 (Exhibits HH and HH-1 hereto);

(e) That this Hon'ble Court be pleased to issue a writ of mandamus any other writ, order or direction restraining the Respondents from passing any award for acquisition of the said Land or determining the compensation (allegedly) payable to the Petitioner in lieu of the alleged acquisition of the said Land;"

25. The petitioner has placed on record a further affidavit dated 6 December 2017, inter alia reiterating that the impugned notification dated 22 December 2016 under Section 14(1) of the Slum Act, is issued without offering the petitioner a prior and reasonable opportunity to exercise preferential right to redevelop the said land which

could have enabled the petitioner to submit a proposal/scheme under the Slum Act. The petitioner says that the preferential right of the owner to redevelop and implement the slum rehabilitation scheme, is a necessary ingredient of modified Section 13(1) of the Slum Act, and thus the SRA ought to have called upon the petitioner to submit a proposal for redevelopment and slum rehabilitation and only on the petitioner failing to do so within a reasonable time, the authorities could resort to take appropriate steps under the Slum Act. It is stated that none of this established long standing procedures have been followed in the petitioner's case although followed in many similar cases. To support this contention, petitioner has placed reliance on copies of letters addressed by the SRA calling upon the owners to exercise their rights under the modified section 13(1) and submit a proposal for redevelopment, which the petitioner contends would show that it is an established policy and procedure followed by the SRA. It is stated that the petitioner having addressed several letters to the respondent recording that the petitioner is ready and willing to undertake re-development of the said land under its preferential right under modified section 13(1), there was no response from the SRA or the State Government to these letters of the petitioner. The petitioner says that the respondent-SRA had failed to produce any letter and/or notice calling upon the petitioner to submit a

proposal/scheme under the modified Section 13(1) of the Slums Act. It is stated that in the affidavit as filed on behalf of the SRA, there is no reference or even a whisper to the aforesaid practice being followed by the SRA prior to acquisition and/or no explanation is offered as to why such established procedure was not followed in the present case. It is submitted that the action of the SRA in not treating the petitioner's repeated applications for redeveloping the said land and failing to call upon the petitioner to submit a proposal within a reasonable time, is arbitrary and deliberate attempt to depriving the petitioner of its proprietary right in breach of the statutory provision. It is thus the contention of the petitioner that the impugned notice issued by the State under Section 14(1) of the Slum Act is without following due procedure of law and contrary to the provisions of the Slum Act.

26. The State Government (Respondent no.1) has filed an affidavit-in-opposition of Mr.Manohar R.Parkar, Under Secretary of the Housing Department. At the outset, it needs to be noted that there is a complete misunderstanding of the deponent qua the reliefs as prayed in the petition, when in paragraph 2 of the affidavit the State contends that the petitioner has challenged constitutional validity of Sections 14 and 17 of the Slums Act and that the constitutional validity has been upheld in

the decision of this Court in "***Sara Harry D'Mello Vs. State of Maharashtra & Ors***"[2]. The affidavit further states that as per the amended provision Section 14(1) read with Section 3D(c)(i) of the Slums Act on a representation received from the Chief Executive Officer of SRA, to enable the SRA to execute any work of improvement or to redevelop any slum area or any structure in such area, the State Government is empowered to acquire the land by publishing a notice in the official gazette. It is stated that the Chief Executive Officer, Slum Rehabilitation Authority had declared 9054 sq.mtrs. area of CTS No.119(I), 119(I/1 to 83), Village Tungwa, Saki Naka, Vihar Road, Tarabai Nagar, Mumbai Suburban District as a "slum rehabilitation area" as per Section 3C(1) of the Slums Act, by a notification dated 11 March 2011 as published in the Government Gazette dated 16 March 2011. It is stated that this notification was not challenged by the petitioner and hence had attained finality. It is stated that accordingly the Chief Executive Officer, SRA had submitted its representation/ report on 21 December 2013 to the State requesting to acquire the said land admeasuring 9054 sq.mtrs., under Section 14(1) of the Slum Act. It is stated that as mentioned in the report of the Chief Executive Officer of the SRA, proper procedure was followed by publishing a notice in the newspapers calling objections and suggestions from the land owners and giving hearing etc. It is stated that

2 2013(4) Mh.L.J. 348

the State Government had accordingly issued the impugned notification under Section 14(1) of the Slums Act, as published in the official gazette dated 22 December 2016 declaring acquisition of the said land, which for the last about thirty five years was encroached by the slum dwellers and the petitioner had failed to develop the said land and thus had lost the opportunity to implement the slum rehabilitation scheme on the said property by their own conduct. It is stated that the State Government had acquired the said land after following due procedure in law. The impugned notification/notice of the State Government dated 22 December 2016 issued under Section 14(1) of the Slum Act is thus legal and valid.

27. The SRA (respondent nos.2 and 3) has filed an affidavit-in -opposition, of Mr.Eknath Navale, Deputy Collector of SRA. The first contention of the SRA is of the petition being not maintainable, as according to the SRA by virtue of notice/notification dated 22 December 2016 issued under Section 14(1) of the Slums Act as published in the Government Gazette, the land stood vested in the State Government free from all encumbrances and the petitioner would be entitled, only to receive compensation. The affidavit further states that the land is duly acquired by the State Government by following due process of law and after giving complete opportunity to the petitioner. It is stated that the

acquisition is deemed to be in public interest as it is for redevelopment of the slum area. It is stated that as the petitioner also has an alternate remedy of an appeal under Section 17(6) of the Slums Act. It is contended that the petitioner was well aware that in the year 1979 and in the year 2011 the said land was notified and declared as a 'slum' under Section 4 and a slum rehabilitation area under Section 3C respectively, under the Slums Act and that the occupants/slum dwellers had formed a co-operative society (respondent no.4). It is stated that there are 499 slum dwellers occupying the land and the petitioner being the owner had failed and neglected to provide basic amenities and sanitation and safety of the occupants. The society had made representations to the Competent Authority for acquisition of the said land and for a slum rehabilitation scheme to be implemented for their benefit. It is stated that accordingly, an inquiry was conducted by the earlier Competent Authority and an inquiry report dated 4 August 2012 was submitted to the State to acquire the said land. The affidavit further states that on 11 March 2011 the land was declared as 'slum rehabilitation area' under Section 3C of the Slums Act and the same was published in the official gazette of the State Government as per the notification dated 16 March 2011. It is stated that in pursuance of a representation from the Society of slum dwellers, as received by the Competent Authority and Additional Collector

(Encroachment/removal), Eastern Suburb, Mumbai, requesting to acquire the said land, a show cause notice dated 17 May 2012 was issued by the Competent Authority under Section 14(1) of the Slum Act calling upon the petitioner to show cause as to why the land should not be acquired. Further a notice dated 8 June 2012 was issued by the Competent Authority and the Additional Collector (Encroachment/ removal) to the petitioner, as also to the society under Section 14(1) of the Slums Act, requesting them to attend the hearing on 29 June 2012 in regard to the proposed acquisition of the said land. It is stated that accordingly a hearing was granted to the parties on 29 June 2012 as also on 10 July 2012. The parties had stated that there are litigations pending on some part of the subject land and this litigation was inter se between the parties and the State Government was not concerned with the said litigation. It is stated that in pursuance of the amendment to the Slum Act by the Maharashtra Act No.XI of 2012 dated 19 March 2012, the State can consider the representation submitted by the competent Authority as submitted by the Chief Executive Officer of the SRA, to carry out development under the Slum Rehabilitation Scheme including the joining of surrounding area. It is stated that in such a case, the State can acquire the land under Section 3D(c)(i) of the Slum Act. It is stated that the State Government accordingly had directed the Chief Executive Officer of SRA

to forward a proposal for acquisition of the land. It is stated that in the present case, the SRA has followed the due process of law as contemplated under Section 14(1) of the Slum Act and based on the representation of the Society the then Competent Authority on 4 August 2012 submitted its enquiry report to the State Government to acquire the said land along with the slum plan and joint measurement of the slum land. It is sated that after following this procedure a notice dated 8 August 2013 was issued by the SRA under Section 14(1) of the Slum Act and the same was served upon the petitioner as also on the society and the other concerned parties to attend the hearing on 26 August 2013. Accordingly, hearing had taken place on 26 August 2013 and 16 September 2013, and at the said hearing the petitioner had promised to implement the scheme by itself on the said land. It is stated that however as at no point of time a scheme for redevelopment was submitted by the petitioner with the SRA and consequent to such non participation of the petitioner-owner, a proposal was put up to the State Government on 21 December 2013 for acquisition of the said land in the interest and welfare slum dwellers and based on the said report the State Government had acquired the said land under the Slums Act by following the proper procedure. It is submitted that this Court has already upheld the constitutional validity of Sections 14 and 17 of the Slums Act and that the Court should not interfere with

the acquisition notification.

28. Respondent no.4-Society initially was not a party, its application to intervene being allowed, it was so impleaded, by an order dated 7 April 2017. The Society has also filed an affidavit-in-opposition. There are various objections to the petition, as raised by the society. It is contended that the petitioner has not challenged before the appropriate authority, the declaration of the said land as a slum rehabilitation area. It is contended that one Mohammad Yusuf Trust is also asserting ownership of the land and has approached the Maharashtra Slum Areas (LC & R) and Special Tribunal, Bandra, challenging the said notification dated 16 March 2011 issued under Section 3C(1) of the Slum Act and in that appeal the petitioner had preferred an application in which one K.Raheja Corp.Pvt.Ltd. has also intervened. It is stated that the said proceedings are still sub-judice. Having not challenged the said notification dated 11 March 2011, the petitioner cannot challenge the notice/notification dated 22 December 2016 issued under Section 14(1) of the Slums Act acquiring the said land. It is next contended that the petitioner has not made any attempt to redevelop the said land from the year 1979 when the portion of the property admeasuring 3045.03 sq.meters was declared and notified as slum by a notification dated 18 January 1979 and on one or the other

pretext had delayed the development of the land. Only to delay the slum rehabilitation scheme, the petitioner is now intending to redevelop the said land. It is contended that the impugned notice dated 22 December 2016 is in fact a notification issued under Section 14(1) of the Slums Act by which the said land admeasuring 9054 sq.meters has been acquired, however, deliberately it has been referred to as a notice by the petitioner. That the impugned notification dated 22 December 2016 has been issued by the State after hearing the parties at length and after following the provisions of the Slums Act. The Chief Executive Officer of SRA had considered the entire case of the petitioner and had furnished a report dated 12 September 2016. That this report specifically refers to the opportunity being granted to the petitioner prior to the acquisition of the land. The petitioner, however, had not submitted a slum rehabilitation scheme and therefore, the proposal for acquisition of the said land was further processed. To support these contentions reliance is also placed on the report dated 4 August 2012 of the Additional Collector (Encroachment and Removal), Eastern Suburban, report dated 3 October 2012 of the Government (Housing Board Department, SRA-2) and report dated 21 December 2013 of the Chief Executive Officer, SRA. This affidavit of the society also sets out the chronology of dates which according to the society has led to the issuance of the impugned notice/notification dated

22 December 2016. The case of the society is that the society had submitted its proposal for acquisition of the said land so as to develop the same as a Slum Rehabilitation Scheme and out of 499 slum dwellers 92% slum dwellers had granted their consent in favour of respondent no.4-society. It is stated that in this regard, report dated 3 January 2015 of the Chief Executive Officer of the SRA was clear. The society next contends that in pursuance of the amendment to the Slums Act by Maharashtra Act no.XI of 2012 if the Chief Executive Officer submits a report in order to carry out the development under the Slum Rehabilitation Scheme including the adjoining or surrounding area, the Government is empowered to acquire the land under Section 3D(c)(i) of the Slum Act on the basis of such representation of the Chief Executive Officer of the SRA. It is contended that accordingly the Chief Executive Officer, SRA, had submitted his report dated 21 December 2013, to the State Government for acquisition of the said land and the State Government being satisfied had issued the impugned notice/notification dated 22 December 2016 acquiring the land by virtue of which the land stands vested with the State Government. It is stated that the State Government is having complete control over the said land. It is thus submitted that the action of the State in acquiring the land in question is legal and valid, the petitioner having neglected the land and the slum dwellers, residing on the said land.

29. Respondent no.4-Society has placed on record a rejoinder affidavit to the additional affidavit dated 6 December 2017 filed on behalf of the petitioner interalia denying the contentions of the petitioner. The Society reiterates that Section 14 is an independent provision for acquisition and there is no pre-condition the compliance of which is required including Section 13 as modified under Chapter IA. It is stated that in view of the law laid down by the Supreme Court in **Murlidhar Teckchand Gandhi vs. State of Maharashtra**[3] it has been held that Section 14 is an independent provision and the same is not conditional upon compliance of Section 13 as being asserted by the petitioner. It is stated that after the additional affidavit dated 6 December 2017 of the petitioner was tendered, the representatives of the society made inquiries in the office of SRA and the following facts were revealed:

(a) In the 13th meeting of the SRA held on 1 December 2014 with the Chief Minister, it was noticed that several slums were not being cleared by several trusts/private lands and accordingly the SRA was told to take action under section 3A of Chapter 1-A. The said section provides for general power of the SRA.

(b) Pursuant thereto a public notice dated 5 October 2015 was issued by CEO, SRA for general privately owned lands in exercise of power

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under 1 and 2 of Section 3A.

(c) The notices on which the reliance are placed by the petitioner being Exhibits A to D are in pursuance of the aforesaid meeting and in exercise of powers under section 3A of Chapter 1-A. By these notices, the owners are told to clear the slum within three months failing which acquisition proceedings would commence.

(d) In respect of the lands which are referred to in the notices at Exhibits A to D of the petitioner's additional affidavit, there is no Section 3C notification to invoke the applicability of modified provisions under Section 3D of Chapter I-A. Thus, these are not the instances where it can be said that the preferential right was recognized under Section 13(1).

Submissions on behalf of the petitioner:-

30. It is on the backdrop of the above rival pleas, we have heard the learned Counsel for the parties. Mr.Tulazapurkar, learned Senior Counsel for the petitioner in support of the petition has made the following submissions:-

(i) The land in question is a “slum rehabilitation area” in view of notification dated 16 March 2011 issued under Section 3C(1) of the Slums Act. On issuance of such declaration the amended provisions of the Slums Act falling under Chapter I-A have become applicable to the said land, by

virtue of which, the petitioner being the owner of the said land acquires a preferential right to redevelop the land as per the provisions of Section 3B(4)(e) and modified Section 13(1) of the Slums Act. The impugned notification acquiring the said land is thus issued in breach of the provisions contained in Section 3B(4)(e) and the modified Section 13(1) of the Slums Act which recognize preferential rights of an owner to redevelop the slum rehabilitation area.

(ii) Once a notification under Section 3C(1) is published, it creates a vested right in favour of the owner of the land to have a first choice to undertake a slum rehabilitation scheme and only on failure to do so during any period if any so prescribed under Section 3B(4)(e) and modified Section 13, the State Government can proceed to acquire the land and not otherwise.

(iii) Under the amended Section 13 of the Slums Act, the SRA is obliged to offer the land to the owners to come forward for redevelopment of the same and only on their failure, the land can be handed over to a third party. Thus the notice of acquisition of the said land has been issued in breach of preferential right of the petitioner to develop the land and thus the acquisition is vitiated on this ground as it suffers from lack of authority and power to acquire. This submission is supported relying on the decision of the Division Bench in ***Anil Gulabdas Shah Vs. State of***

***Maharashtra* (supra).**

(iv) The various objections of the petitioner to the acquisition of the land have not been dealt and disposed of by the State in issuing the impugned notice dated 22 December 2016. On this count alone, the acquisition notice ought to be quashed and set aside for want of due process of law not being followed. There is thus also a breach of principles of natural justice.

(v) That there is a preferential right to develop the land has also been accepted by the S.R.A. which is clear from the circular dated **9 November 2015** issued by the S.R.A. which accepts that there exists a preferential right of the owner to redevelop a slum rehabilitation area.

(vi) The S.R.A.'s contention based on Regulation 33(10) also cannot be accepted as the contention is based on deeming fiction as contained in the said D.C. Regulation. It is submitted that in fact, preferential right as conferred on the owner of the land has come into existence for the first time only on 11 March 2011 i.e. the date on which the declaration under Section 3C(1) was issued. It is submitted that until the issuance of the section 3C(1) declaration, no preferential rights enured to the benefit of the petitioner. Thus, the SRA based on a deeming fiction contained in a subordinate legislation [DCR 33(10)] cannot contend that the time to submit the scheme or evince an intention to redevelop the said land

commenced in 1997.

(vii) The contention of the SRA on DCR 33(10) also cannot be accepted for the reason that the said regulation cannot be relied upon for considering rights guaranteed under a different statute namely the Slum Act. This on the premise that the provisions of one statutory enactment cannot be considered or referred to interpret the provisions of another and/or different statute. The legal principle that cannot be overlooked is that a deeming fiction cannot be extended beyond what it was intended for. Deeming fiction in DCR 33(10) can apply to a situation where a right is claimed under the said Regulation 33(10) itself. This contention is supported relying on the decision of the Supreme Court in case of **State of Karnataka & Ors. vs. State of Tamil Nadu & Ors.**[4].

(viii) The legal concept of "Slum Rehabilitation Area" is principally governed and legislated upon under the Slum Act being the principal legislation concerned with the concept of slum rehabilitation area. The DCR contains certain other rights and for the purposes of those rights contain a deeming fiction of slum rehabilitation area. It is impermissible to rely upon a deeming fiction contained in another statute to interpret the principal legislation as both the statutes confer different rights and neither of them can be relied upon to interpret the scope and extent of a rights granted by the other.

4 (2017) 3 SCC 362

(ix) The contention of the SRA that even though the notification under Section 4(1) of the Slum Act was in respect of part of the land, the entire land had trappings of a slum and thus nothing prevented the petitioner from submitting a scheme in respect of the entire land also cannot be accepted. It is submitted that the said contention is erroneous as for Regulation 33(10) to apply, there must be a notification declaring the land in question as a slum under Section 4 or under Section 3C (1) of the Slum Act, as clear from the plain reading of D.C.R. 33(10). This also for the reason that the declaration under Section 4(1) of the Slum Act does not bring into existence any preferential right to develop in favour of the owner. The preferential right comes into existence only on the issuance of a notification under Section 3C (1) of the Slum Act.

(x) If the declaration under Section 4(1) of the Slum Act was adequate to consider the said land as a slum rehabilitation area for the purposes of the regulation 33(10), there was no necessity, at all, for incorporation of Chapter I-A to the Slum Act and the consequent modified legislative scheme. The interpretation propounded by the SRA would render Chapter I-A, otiose and redundant which cannot be the legislative intent.

(xi) Once a notification under Section 3C (1) is issued, there is a significantly and materially different legislative scheme which applies and

operates. The other provisions of Slum Act as specified under Section 3D are either omitted or substituted and/ or modified are required to be applied and given effect to. By virtue of this modified provisions, preferential right is created in favour of an owner only on the issuance of the notification under Section 3C (1) and not under Section 4(1) of the Slum Act. Different legal consequences entail on the issuance of a notification under Section 3C (1) which is necessarily that the declaration under Section 4(1) stands overridden. A declaration under Section 4(1) of the Slum Act and a declaration under Section 3C (1) of the Slum Act are mutually exclusive and cannot co-exist. It thus cannot be contended that the petitioner was under an obligation to submit a scheme under Regulation 33(10) despite there being no notification either under Section 4(1) or Section 3C (1) of the Slum Act in respect of 6000 sq. mtrs. of the said land (66% of the land). In any event the provisions of Regulation 33(10) being subordinate/delegation legislation cannot be relied upon to interpret the provisions of the Slum Act.

(xii) The submission on behalf of the SRA that an objection to a show cause notice for acquisition can be made only by filing a scheme for redevelopment also cannot be accepted. According to the petitioner, Section 14 of the Slum Act does not specify the form or manner in which an objection can be made and therefore, there is no requirement to add

words into the same. It cannot be expected that every person interested is required to submit a scheme. It would be an absurd interpretation to contend that merely because the scheme is not submitted, the interested person's right to object in that case must be lost. This cannot be the intention of the legislature. An interpretation which takes away any person's valuable right has to be avoided. There may be multiple and valid reasons why an owner is not in a position to submit a scheme immediately. The petitioner submits that there may be litigation pending with regards to the owner of the property. In such situations, taking away a valuable right of an owner to object is unreasonable. Further the provision does not require such a course of action.

(xiii) The contention of the SRA that the scheme is the only method in which an objection can be raised to an acquisition and such a scheme (obviously a valid scheme) if submitted, nothing further requires to be heard and decided in the acquisition proceedings, obviously cannot be the legislative intent. Once a show cause notice is contemplated, the same will have to culminate into a decision after a hearing to the concerned parties. It is submitted that in the facts of the present case, the proceedings commenced with a show cause notice dated 8 August 2013 issued under the proviso to Section 14 (1) of the Slum Act by which the petitioner was called upon to submit its objections to the acquisition of the

said land. In answer to the said show cause notice and even thereafter, the petitioner expressed its willingness to develop/ rehabilitate the said land on numerous occasions however, the SRA instead of following the normal procedure of issuance of a show cause notice, calling upon the petitioner to submit a scheme, as followed in other cases, heard the objections of the petitioner to the show cause notice under Section 14(1) on 16 September 2013. Thereafter the State Government passed an order on 17 November 2016 expressing its decision to acquire the land after a period of more than three years from the above show cause notice and despite receiving numerous representations from the petitioner to develop the said land. It is submitted that in fact, after hearing the objections, there ought to have been a due consideration of the objections as required by the statute, before any further action/direction of acquiring the said land is taken and an order has to be passed and communicated to the party. Until then, the party cannot be faulted for any inaction on its part because there cannot be a presumption that the objections will always be rejected. Objection of an interested person if accepted, cannot result in closure of the acquisition proceeding and no acquisition notification can ensue thereafter. Objection is to be treated as rejected on its making. It would amount to premeditating the issue which is antithesis to the requirement of fair play and transparency. The petitioner in support of his

submission, relied on the decision in case of **Oryx Fisheries Pvt. Ltd. V/s. Union of India**[5].

(xiv) The Honourable Minister /State Government, passed an order on 17 November, 2016 as per the proviso to section 14 (1) of the Slum Act expressing its decision to acquire the land. This decision of the State Government was not communicated to the petitioner at any point of time and was noticed for the first time only during the course of the hearing of this petition. As the said order of the State Government was not communicated to the petitioner, there is no valid order which exists in law applying the well settled principle that an order which is not communicated does not exist. The decision of the Supreme Court in **Bachhitar Singh Vs. State of Punjab & Anr.**[6] and **State of W.B. Vs. M.R. Mondol & Anr.**[7], lays down as a well settled principle of law that the decisions of the authorities must be communicated to the persons likely to be affected by it. In absence of such communication, the same would not assume the character of a binding order. Thus, the order dated 17 November 2017 is *non-est*.

(xv) Even assuming that an order rejecting the objection of the petitioner exists and even assuming that the lack of communication does not affect its existence, the said order is bad in law as it is an order

5 (2010) 13 SCC 427
6 AIR 1963 SC 395
7 (2001) 8 SCC 443

without any valid reason. It is submitted that though communication of reasons may not be necessary, however, existence of reasons is imperative. This submission is supported by relying on the decision of this Court in **Sara Harry D' Mello Vs. State of Maharashtra & Ors.**(supra).

(xvi) The only presumption which has been drawn is that the petitioner did not submit a scheme for redevelopment/rehabilitation of the land which is also untenable being contrary to the law laid down by this Court in **Anil Gulabdas Shah** (supra) which holds that an owner has a preferential right to develop the Slum Rehabilitation Area. Further the accepted practice of offering the land to the owner and calling upon him to submit a scheme has not been followed in the present case and thus, the order dated 17 November 2017 is bad in law on account of absence of any reasons.

(xvii) That when Section 13 of the Slum Act uses the words 'reasonable time' to come forward with a scheme, it is mandatory to ascertain and fix a commencing point from which such reasonable time shall run. It is submitted that 'reasonable time' would begin to run from (a) the SRA offering the land (as is the practice) or; (b) communication of the order passed after the hearing is conducted in respect of the objections raised by an interested person to the acquisition of the land, as it would be only on such communication that an interested owner would get

knowledge of the objections and his preferential right to develop being rejected. None of these requirements has been observed in the present case. It is submitted that this position is clear from the observations of the Division Bench in the case of **Anil Gulabdas Shah** (supra) that the SRA is required to offer the land to the owner for redevelopment/rehabilitation.

(xviii) It has been a consistent practice of SRA following the dicta in **Anil Gulabdas Shah** (supra) to do so by issuance of a show cause notice calling upon the owner to indicate whether the owner would implement the Slum Rehabilitation Scheme under modified Section 13(1) of the Slum Act. Reliance is placed on the notices (Exhibit A to D) of the affidavit of rejoinder of the petitioner which are issued by the SRA to owners of the land recognizing their preferential rights. It is thus submitted that law as laid down by the Division Bench in **Anil Gulabdas Shah** (supra) has been accepted, followed and implemented by the SRA. This conduct and understanding namely offering the land to owners, is clearly in the nature of *contemporanea expositio* necessary to be considered while interpreting the provisions. This submission is supported by the petitioner relying on the decision in case of **K.P. Varghese v/s. Income Tax Officer**[8]. It is submitted that nothing has happened in the present case, though internally, the petitioner's preferential rights to develop the

8 (1981) 4 SCC 173

said land has been acknowledged and accepted by the respondents which is clear from the documents i.e. Exhibit Y at pages 125 and 131, Exhibit AA at pages 138 to 141, Exhibit DD at page 146, Exhibit EE at page 150. Decisions in **Pratapsinh Vallabhdas V/s. State of Maharashtra & Ors.**[9], **Twin & Deccan Builders V/s. State of Maharashtra & Ors.**[10] **and decision of this Court in Murlidhar Teckchand Gandhi V/s. State of Maharashtra & Ors.**[11] as relied on behalf of the respondents are not applicable in the facts of the case as in none of the said decisions the land in question was declared as a "Slum Rehabilitation Area" as defined in Section 3C of the Slum Act and therefore, none of these judgments are dealt with the preferential right of the owner to develop the land under Section 3B(4)(e) read with modified Section 13(1) of the Slum Act as in each of the cases, the land was declared as a slum under Section 4 of the Slum Act whereas the land of the petitioner was notified under Section 3C(1) of the Slum Act. Apart from this, in each of the decisions, there were several opportunities which were given to the owner to show cause against the acquisition, make representations and opportunities of personal hearing were also given which is not so in the petitioner's case. In these decisions, there was gross delay and latches on the part of owner to come forward and re-develop or submit the scheme.

9 2016 SCC Online Bom 11532
10 (2016) 1 Bom CR 328
11 2016(2) Bom CR 539

(xix) The decision of the Division Bench of this Court in **Anil Gulabdas Shah** (supra) is good law. It has not been set aside by the Supreme Court in **Murlidhar Teckchand Gandhi & Ors. V/s. State of Maharashtra** (supra)**.** The Supreme Court has not even made a reference to the decision of this Court in **Anil Gulabdas Shah** (supra) in **Murlidhar Teckchand Gandhi**'s decision. **This submission is being supported by relying on the decisions in Regional Manager & Anr. V/s. Pawan Kumar Dubey[12], Union of India v/s. Chajju Ram & Ors.[13].**

(xx) The expression "landholders" appearing in the modified section 13(1) of the Slum Act necessarily would include within its ambit an owner, because it is only on the ground of a right that the owner can be subjected to restrictions contained in modified Section 13(2) of the Slum Act. Reliance is placed on the definition of an 'owner' under Section 2 (f) of the Slum Act as also decision in **Richpal Singh & Anr. Vs. Desh Raj Singh & Ors.[14].**

(xxi) That Section 13 of the Slum Act as modified is not an enabling provision and that it does not contemplate any preferential rights cannot be accepted. Such an interpretation would be contrary to the provision and the law laid down by the Division Bench of this Court in case of Anil Gulabdas Shah (supra).

12 (1976) 3 SCC
13 (2003) 5 SCC 568
14 (1981) 4 SCC 194

(xxii) The contention of the Society that the Society being an occupant which had submitted a scheme prior to the petitioner, the preferential right in favour of the petitioner does not survive is untenable as it is a settled principle of law that when a scheme is submitted, it is required to be complete in all aspects. It is not permissible to improve upon and fill in deficiencies in a scheme as time progresses. In supporting this submission, reliance is placed on the decision of Division Bench in **Atesham Ahmed Khan & Ors. Vs. Lakadawala Developers Pvt. Ltd.& Ors.**[15]. It is submitted that the society's scheme is admittedly not complete which is evident from the affidavit in reply dated 9 November 2017 filed by the society in the Chamber Summons No.232 of 2017.

(xxiii) The contention of the society that once a notification is issued under Section 14 of the Slum Act, the property vests in the State and in that event, the only right of the owner is to receive compensation also is erroneous in as much as the same is contrary to law or in violation of a statutory right vested in the petitioner. It is submitted that the similar argument as made by the State Government was rejected in decision of **RBI Employees' Snehdhara Co-op. Housing Society Ltd. vs. State of Maharashtra**[16]. It is submitted that a Court can always set aside acquisition if the same does not conform to law.

15 2011 (3) Mh. L.J. 604
16 2015 (2) Mh.L.J. 899

(xiv) The contention of the society that Section 14 of the Slum Act is an independent provision and is not dependent upon any other provisions of the statute relying on the decision of the Supreme Court in ***Murlidhar Teckchand Gandhi & Ors.*** (supra) cannot be accepted considering the factual situation in the said case, which is completely different from the present case.

(xxv) In any event the petitioner has submitted scheme in July 2017 which is supported by 313 members out of 499. It is submitted that in view of circular No.144A dated 9 November 2015, it is not necessary that 70% consent is required as a condition precedent for an owner to develop the land. Hence, the condition of 70% consent is not applicable at this stage. It is thus submitted that the petition deserves to be allowed.

Submissions on behalf of SRA:-

31. Mr.Sathe, learned Senior Counsel for the SRA in supporting the impugned notice/notification dated 22 December 2016 would submit that by virtue of notification dated 22 December 2016 issued by the State under Section 14(1) of the Slums Act, the land stood vested in the State Government and thus the contention of the petitioner that under Section 14 as amended by Chapter I-A, the petitioner has priority to redevelop the land in question, in view of the decision of this Division Bench in ***Anil***

Gulabdas Shah (supra), cannot be accepted. It is submitted that the owner may have right to submit his claim in respect of the land which is declared as slum under Section 4 or Section 3C of the Slum Act or which is otherwise a slum within the meaning DCR 33(10) read with Appendix IV, however, if a scheme for rehabilitation of the slum dwellers is not submitted by the land owners and the occupants of the slum have moved a proposal through the Chief Officer of SRA, then there is no requirement in law to wait for the owner to redevelop the land and to submit a proposal. The requirement in law is that a scheme is required to be submitted within a reasonable time. It is submitted that the petitioner at no point of time had submitted a scheme though the petitioner had number of occasions to do so. Firstly, the petitioner could have submitted a scheme after 1997 after coming into force DCR 33(10) which confers such right upon the occupiers or owner with 70% consent of the occupiers. Secondly, when the entire area of the land was slum although not declared in its entirety under Section 4 of the Slums Act as 3045 sq.meters was so declared in the year 1997, however the entire land qualified as slum as defined under DCR 33(10)and Appendix IV. It is submitted that surely the petitioner could have submitted a scheme after declaration under Section 3C was made on 11 March 2011. Fourthly, the petitioner could have submitted a scheme even after the notice of

acquisition under Section 14(1) which was first issued to the petitioner on 17 May 2012. Mr.Sathe, learned Senior Counsel for SRA submits that in declaring the land as slum under Section 4 as well as under Section 3C of the Slum Act proper procedure was followed, which included notice of hearing to the owners. It is submitted that further there is a right of appeal under Section 3C(2) for a person who is aggrieved by such notification. It is submitted that it was imperative for the petitioner to challenge the notification declaring the said land as a slum by preferring an appeal as provided under the said provision.

32. Mr.Sathe, learned Senior Counsel for the SRA would next submit that the failure of the petitioner to submit a scheme was fatal. It is submitted that a proposal for redevelopment of slum is required to be in the form of scheme which is compliant with the provision of DCR 33(10) and Appendix IV and valid as per the decision of the Supreme Court in the case "***Pramila Suman Singh Vs. State of Maharashtra***"[17]. It is submitted that such scheme would be on the basis of first come first serve principle as laid in the decision of this Court in the case "***Awdhesh Tiwari vs. CEO***"[18]. Mr.Sathe referring to the decision of this Court in the case of "***Murlidhar Tekchand Gandhi Vs. State of Maharashtra*** (supra),

17 2009(2) SCC 729
18 2006(5) BCR 772

Pratapsinh Shoorji Vallabhdas Vs. State of Maharashtra[19], ***Twin & Deccan Builders vs. State of Maharashtra***[20] would submit that the petitioner's contention that the owners have priority to submit a scheme even after acquisition of land cannot be accepted and such contention stands rejected as seen from the said decisions. It is submitted that these decisions have also considered the decision of this Court in Anil Gulabdas Shah (supra), and have not treated the said judgment as a mandate considering to grant an inviolable right upon the owner to submit a scheme even after the acquisition is complete.

33. Mr.Sathe submits that the petitioner's conduct of merely writing letters and asserting that the petitioner being owner was willing to develop the land and not submit a scheme cannot be construed to be readiness on their part to develop the land. It is submitted that SRA need not invite owner to make an offer as sought to be contended by the petitioner relying on the decision in the case Anil Gulabdas Shah (supra) that such an assertion of the petitioner is erroneous and would be required to be negated considering the decisions in Pramila Suman Singh Vs. State of Maharashtra (supra), Murlidhar Tekchand Gandhi Vs. State of Maharashtra (supra), Pratapsinh Shoorji Vallabhdas Vs. State of

19 Judgment dt.16/9/2016 in O.S.Writ Petition No.2110 of 2014
20 Writ Petition No.747 of 2012, order dated 31/07/2015

Maharashtra (supra) and Nenshi Monji Vs. State of Maharashtra[21]

34. Mr.Sathe would next submit that the petitioner had ample opportunity before the acquisition proposal was sanctioned and procedure under Section 14(1) of the Slums Act as amended under Chapter I-A was duly complied with. It is submitted that however, the petitioner having not submitted a valid proposal, the petitioner cannot assert any right to challenge the acquisition.

35. Mr. Sathe would next submit that the petitioner's assertion about non compliance of the provisions of 13(1) as falling under Chapter I-A of the Slum Act is misconceived considering the decision of the Supreme Court in **Murlidhar Tekchand Gandhi** (supra), which holds that the acquisition under Section 14 is independent and is not dependent at all on compliance of Chapter IA, IB, IC or Chapter II, III or IV. Mr.Sathe referring to the decision in **Satyanarayan R. Dubey vs. State of Maharashtra**[22]**, S.Ramkrishna Nayak Vs. State of Maharashtra**[23]**, *S.*Ramkrishna Nayak Vs. State of Maharashtra**[24] submits that the remedy of the petitioner on acquisition is only to claim monetary compensation for acquisition, as the validity of the statutory provision

21 2015(5) Mah.L.J. 397
22 (2007)2 Bom.C.R. 87
23 Writ Petition (Lodg) No.1477 of 2006, order dt.13/9/2006
24 Appeal no.793 of 2006

relating to acquisition and compensation has already been upheld by this Court in **Sara Harry Demello Vs. State of Maharashtra** (supra) and as held in several other decisions. It is submitted that all the said judgments and more particularly the decisions of the Supreme Court in **Murlidhar Tekchand Gandhi Vs. State of Maharashtra** (supra) and **Pratapsinh Shoorji Vallabhdas Vs. State of Maharashtra** *(supra)* clearly hold that the acquisition of lands encroached with slums and clearing them and developing them to provide hygienic and sanitary and standard living conditions for slum dwellers is larger public interest and for the benefit of the society. It is submitted that in balancing the larger public interest and to redevelop the slum scheme, on the land which the petitioner has neglected, public interest ought to prevail. The writ petition therefore needs to fail.

Submissions on behalf of respondent No.4-Society:-

36. Mr.Samdani, learned Senior Counsel for the society has supported the contentions of the SRA. It is submitted that from the year 1979 the petitioner had an opportunity to clear the slum when a declaration was made in respect of part of the property under Section 4 of the Slum Act. Thereafter, again from 1997 when DCR 33(10) was brought into force, no steps were taken by the petitioner to redevelop the

slum. In supporting this submission, reliance is placed on "***Om Sai Darshan Co-op. Hsg. Society V. State of Maharashtra***"[25]. It is submitted that the petitioner allowed a declaration to be made under Section 3C dated 11 March 2011, which had attained finality as it was not challenged. Even after issuance of the said notification, the petitioner did not take any steps to clear the slum till the impugned notice/notification was issued on 22 December 2016. It is submitted that necessary steps to redevelop the land can be taken only by presenting a scheme under Regulation 33(10) of the DCR with a pre-condition of the consent of 70% of the slum dwellers. This submission is supported by placing reliance on the decision in the case ***Nenshi Moanji Vs. State of Maharashtra***(supra). It is submitted that merely addressing communications that the petitioners were desirous to develop the said land was no good so as to contend that the petitioner as an owner has pre-emptive right to redevelop the land. This contention is supported by placing reliance on a decision in ***Pratapsinh Shoorji Vallabhdas Vs. State of Maharashtra*** (supra).

37. Mr.Samdani would next submit that reliance of the petitioner on the reports of the SRA to contend that the petitioner was entitled to an opportunity to redevelop the said land under Section 13(1) as falling under Chapter I-A of the Slum Act, cannot be accepted merely because the

25 2006 Vol.108(3) Bom.L.R. 2219

authority had granted such opportunity in some cases. It is submitted that Section 13(1) is not attracted in the present case and in any event interpretation of the statute by the authority is not binding on the Court. It is next submitted that the petitioner did not challenge the Section 4 notification as also there was no challenge to the notification under Section 3C of Chapter IA and thus in view of law laid down in the decision in "**Apurva Natvarlal Parikh Vs.The Slum Rehabilitation Authority & Ors.***"*[26], the petitioner is not entitled to challenge the acquisition.

38. In regard to the application of Section 13 under Chapter I-A, Mr. Samdani submits that it is only an enabling provision which enables the slum rehabilitation authority to entrust the redevelopment to any other agency. It is submitted that this provision operates only if the "landholders"or the "occupants" do not come forward within a "reasonable time" with a "scheme for redevelopment". It is submitted that since the society which is formed by the occupants, was always ready with a scheme which was with the consent of 92% of slum dwellers, the provisions of Section 13(1) were not attracted for appointing "any other agency". It is submitted that there is nothing in the modified Section 14 as falling under Chapter IA which makes it conditional upon compliance of Section 13. The scheme of Chapter I-A is more favourable to make it

26 Writ Petition No.1965 of 2013, order dt.15.4.2013

unconditional and independent as compared to unmodified Section 14. It is submitted that Section 14 is an independent provision for acquisition of the land. The contention and challenge of the petitioner that before issuance of a notification under Section 14 (1), the petitioner has pre-emptory right under Section 13(1) to re-develop the land and rehabilitate the slum dwellers cannot be accepted in view of the law laid down by the Supreme Court in "**Murlidhar Teckchand Gandhi V/s. State of Maharashtra & Ors.**" (supra). The contention of the petitioner that there are no reasons recorded by the State in passing the order under Section 14 dated 22 December 2016 cannot be accepted, as there is already a formal order on record for issuance of a notification. This established that a proper procedure was followed by the State considering the law as laid down in **Sara Harry D'Mello Vs. State of Maharashtra & Ors.** (supra).

39. Mr.Samdani submits that reliance of the petitioner on the decision in **Anil Gulabdas Shah** (supra) is misplaced as the said decision was set aside by the Supreme Court by consent of the parties. It is submitted that the Division Bench in the case **Pratapsinh Shoorji Vallabhdas Vs. State of Maharashtra**(supra) had upheld the correctness of acquisition after noticing the judgment in the case **Anil Gulabdas Shah** (supra) and has held that mere writing of communications without

presenting a scheme, no right can be claimed. It is submitted that in view of the law laid down by the Supreme Court in **Murlidhar Teckchand Gandhi V/s. State of Maharashtra & Ors.** (supra), it cannot be argued that the compliance of Section 13 is a pre-condition for acquisition under Section 14. It is submitted that statutorily there is no distinction in Section 14 under Chapter V and modified Section 14 under Chapter IA.

40. Mr.Samdani would submit that prior to the decision of the Supreme Court in **Murlidhar Teckchand Gandhi V/s. State of Maharashtra & Ors.** (supra) following the decisions in "**Ramkali S.Kushawaha & Ors. Vs. Deputy Collector (ENC) & Ors.**[27]**, Maruti Mane & Anr. Vs. Ramkali S.Kushawaha & Ors.**[28], the Court had taken a view that compliance of Sections 5, 12, 13 was a pre-condition to the acquisition under Section 14, in the absence of Section 3C notification under Chapter IA of the Slum Act. It is submitted that the law as laid down in these decision is no longer good law in view of the decision of the Supreme Court in **Murlidhar Teckchand Gandhi V/s. State of Maharashtra & Ors.** *(supra)*. Mr.Samdani would submit that Chapter I-A does away with several provisions before acquisition under Section 14. It is submitted that there is a material difference between Section 13(1)

27 (2004)3 Bom.C.R. 14
28 Appeal no.324 of 20014 in WP 608/04.

under Chapter IV and Section 13(1) under Chapter I-A. This is for the reason that in the unmodified section the commencement of development is contemplated by the "owner" and the competent authority can determine "to develop it by itself at its cost", while under the modified provision there is a clear departure and it provides for 'landholders' or 'occupants' and any other agency. Thus, there is no material difference in the language of section 14 under Chapter V or under Chapter I-A except the change in the authority i.e. from Competent Authority to Chief Execution Officer.

41. Mr.Samdani would submit that on issuance of a notification under Section 14 the land has vested in the State and the only right the owner has, is a right of compensation. It is submitted that acquisition under Section 14 cannot be equated with the acquisition under the Land Acquisition Act. As the acquisition under the Slum Act is the acquisition under the Special Statute, it is welfare legislation to improve the standard and quality of living of the slum dwellers and is in larger public interest. In supporting this submission Mr.Samdani relied on the case **Satyanarayan Dube vs. State of Maharashtra** (supra), S.**Ramkrishna Nayak Vs. State of Maharashtra** (supra), **Girnar Vs. State of**

Maharashtra[29], Manohar Joshi Vs. State of Maharashtra[30]

Reasons and Conclusion

41A. Having heard the learned Counsel for the parties as also having perused the record, we undertake the following discussion.

Statutory Ambit:

42. It would be apposite to consider the statutory background in which the controversy in the petition would fall. There are too many causes which are attributable for creation of slums in urban areas. Rapid growth of industries resulted in mass migration of population from rural areas to the urban centres. This for the reason that places outside the urban areas were not proving sufficient and fulfilling the requirements of the means of livelihood, which were primarily depending on agriculture and other allied activities. This resulted into overcrowding of the urban areas coupled with lack of housing facilities, which created development of large slums in the urban centers and heavily so in and around Greater Mumbai as also other urban areas in Maharashtra. The development in urban activities and business did not find a corresponding development in the housing sector, much less a provision for a decent housing for such large migrant population. Also lack of planning by the concerned authorities to cater to the housing requirements, the neglect of the

29 (2011)3 SCC 1
30 (2012)3 SCC 619

authorities to safeguard open public lands from encroachment as also the apathy of the private landlords to prevent encroachment and/or to neglect the appropriate use of land so as to prevent them being converted as slums by the occupants, added to the urban problems. Consequently in the absence of affordable public and private housing, large population was compelled to reside in slums in unhealthy and unhygienic conditions. It is difficult to visualize the number of slums which are created on public and private lands in the city of Mumbai, where land is limited. As the history unfolds the problems are not recent. They are further aggravated and have become complex and more particularly due to variety of interests playing active roles in slum projects, rehabilitation projects in anticipation of monetary gains. This has been the general scenario in such litigation, with which the Court is frequently confronted.

43. We have one of the most ideal Constitution providing for a variety of fundamental and other legal rights guaranteed to our citizens. Part III of the Constitution guarantees fundamental rights, under which Article 21 confers right to livelihood, which has been interpreted to mean, that a person is entitled to live a life of dignity and not just an animal life. Further the Directive Principles of State Policy as contained in Part IV of the Constitution, under Article 38 and 39 provide for the welfare of the

people and the policy to be followed by the State. Article 43 and 47 are also relevant when it comes to the obligations of the State to secure adequate standard of living and improvement of public health.

44. Undoubtedly, slums had created menace to the safety, health and morals of the inhabitants. There were multiple municipal laws in operation, there was no uniformity in the provisions of these enactments as also the provisions were not sufficient to improve the situation. It is for this reason the legislature thought it appropriate to enact a special law to deal with the improvement clearance and development of slum areas. The Slum Act was accordingly enacted interalia to make better provision for the improvement and clearance of slum areas in the State, for redevelopment as also for the protection of occupiers from eviction and distress warrants. The Slum Act was brought into force with effect from 11 August 1971. This legislation casts onerous duties on the authorities. How far the same are discharged and whether at all effectively to achieve the object of the legislation, are larger issues which all the concerned need to ponder.

45. In order that the contentions which are presented with some perspicacity are apprehended in its proper prospective, a conspectus of the essential provisions of the Slum Act is necessary. The terms 'Chief

Executive Officer', Competent Authority', 'occupier', 'owner', 'slum clearance', 'slum rehabilitation area', 'Slum Rehabilitation Scheme' 'Slum Rehabilitation Work', 'works of improvement' as defined under Section 2 (ba), (c) (e), (f), (h-b), (h-d), (h-e), (h-j) respectively would read thus:-

> **"Section 2(b)(a) 'Chief Executive Officer'** means a Chief Executive Officer of the Slum Rehabilitation Authority appointed under sub-section (2) of Section 3A;
>
> **Section 2(c) 'Competent Authority'** means a person or body appointed to be the Competent Authority under Section 3
>
> **Section 2*(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 licensee 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 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-b) **"Slum Rehabilitation Area"** means a slum rehabilitation area, declared as such under sub-section (l) of section 3C by the Competent

Authority in pursuance of the Slum Rehabilitation scheme notified under section 3B."

… … …

(h-d) **"Slum Rehabilitation Scheme"** means the slum Rehabilitation Scheme notified under Section 3B;

(h-e) "**Slum Rehabilitation Work**" means the work relating to demolition of any structure or any part thereof in slum area or in Slum Rehabilitation Area, and construction of a new building thereon;

… …. ...

(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."

46. By Maharashtra Ordinance No.14 of 1995 Chapter I-A titled as "Slum Rehabilitation Scheme" came to be incorporated. The Ordinance was brought into effect from 24 October 1995, which was repealed by Maharashtra Act No.IV of 1996. The following is the Statement of object and reasons of Maharashtra Act no.4 of 1996.

"**STATEMENT OF OBJECTS AND REASONS**

By the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment) Act, 1995 (Mah.IV of 1996) the Government of Maharashtra has amended the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971, with a view to provide for appointment of Slum Rehabilitation Authorities to look after every aspect of the problem of slum rehabilitation within the area of its operation including framing of the Slum Rehabilitation scheme participation of the

> slum dwellers and developers for implementation of the Scheme, and implementation of the Scheme by the Authority in the event of non-participation of the slum dwellers and the allotment of houses constructed under the Scheme to the slum dwellers, free of cost.
>
> 2. Although the Slum Rehabilitation Authority for Brihan Mumbai has been appointed and has started functioning Government considers it expedient to make every Slum Rehabilitation Authority a body corporate, so as to enable every Slum Rehabilitation Authority to function more effectively and expeditiously.
>
> 3. Hence, this Bill."

47. By the said amending Act No. 4 of 1996 Chapter I-A came to be inserted providing for a "Slum Rehabilitation Scheme." Sections 3-A to 3-W were inserted. Some of the relevant provisions can be discussed. Section 3-A provides for appointment of a Slum Rehabilitation Authority, for implementing a slum rehabilitation scheme. Section 3B provides for preparation of a general slum rehabilitation scheme for areas specified under sub-section (1) of Section 3A. Section 3C provides for declaration of a slum rehabilitation area. Section 13 which dealt with the '*power of the competent authority to redevelop clearance area*' came to be substituted in its application to Chapter I-A to provide for '*Power of Slum Rehabilitation Authority to develop Slum Rehabilitation Area*". Section 14 which deals with the "*power of the State Government to acquire land*" also came to be amended in its application to Chapter I-A, to enable '*the slum rehabilitation authority to carry out developments under the slum rehabilitation scheme in any slum rehabilitation area.*' section 23 and

section 24 and 47 also came to be substituted and further section 3-E to 3-W came to be inserted.

48. It is not in dispute that the provisions of the amended Chapter I-A of the Slum Act are applicable to the present case in view of the notification dated 11 March 2011 issued by the SRA declaring the subject land as a 'slum rehabilitation area' under section 3-C (1) of the Slums Act. As the parties have extensively advanced submissions on this provision as contained in this chapter, it would be appropriate to note some of the provisions in Chapter I-A which reads thus:-

> **Section 3A:** *Slum Rehabilitation Authority for implementing Slum Rehabilitation Scheme.*
> (1) Notwithstanding anything contained in the foregoing provision, the State Government may, by notification in the Official Gazettee, appoint an authority to be called the Slum Rehabilitation Authority for such area or areas as may be specified in the notification; and different authorities may be appointed for different areas.
>
> ***Section 3B***: ***Slum Rehabilitation Schemes***
> (1) The State Government, or the Slum Rehabilitation Authority concerned with the previous sanction of the State Government, shall, prepare a general Slum Rehabilitation Scheme for the areas specified under sub-section (1) of Section 3A, for Rehabilitation of slums and hutment colonies in such areas.
> (2) The General Slum Rehabilitation Scheme prepared under sub-section (1) shall be published in the Official Gazette, by the State Government or the concerned Slum Rehabilitation Authority, as the case may be, as the Provisional Slum Rehabilitation Scheme for the area specified under section 3A(1), for the information of general public, inviting objections and suggestions, giving reasonable period of not less than thirty-days for submission of objections and suggestions, if any, in respect of the said Scheme.
> (3) The Chief Executive Officer of the Slum Rehabilitation Authority shall, consider the objections and suggestions, if any,

received within the specified period in respect of the said Provisional Scheme and after considering the same, and after carrying out such modifications as deemed fit or necessary, finally publish the said scheme, with the approval of the State Government or, as the case may be, the Slum Rehabilitation Authority in the Official Gazette, as the Slum Rehabilitation Scheme.

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

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

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

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

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

(e) scheme for development of the slum rehabilitation areas under the Slum Rehabilitation Scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the option available to the Slum Rehabilitation Authority for taking up such development in the event of non-participation of the landholders or occupants;

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

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

Section 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 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.

Section 3D. Application of other chapters of this Act to Slum Rehabilitation area with modification.

On publication of the Slum Rehabilitation scheme under sub-section (1)of section 3B, the provisions of other Chapters; of this Act shall apply to any area declared as the slum rehabilitation area subject to the following modifications namely
(a) Chapters II and III shall be omitted.
(b) in Chapter IV
(i) Section 11 shall be omitted.
(ii) in section 12-
(A) for sub-section (1), the following sub-section shall be substituted namely:
"(1) As soon as may be after the Chief Executive Officer has declared any slum area to be a slum rehabilitation area, he shall make a clearance order in relation to that area ordering the demolition of each of the buildings specified therein and requiring each such building to be vacated within such time as may be specified in the clearance order."
(B) sub-sections (2) and (3) shall be omitted.
(C) for sub section (4) the following sub-section shall be substituted namely-
(4) Any person aggrieved by the clearanace order may, within four weeks of the publications of such order prefer an appeal to the Special Tribunal; and the decision of the Special Tribunal shall be final."
(D) in sub section (5) for the word "Tribunal" in both the places where it occurs the words "Special Tribunal" shall be substituted.
(E) in sub-section (7), for the words "Competent Authority" the words "Chief Executive Officer" shall be substituted.
(F) In sub-section (8) for the words "Competent Authority" the words "Chief Executive officer" shall be substituted;
(G) In sub-section (9) the words "Competent Authority" wherever they occur the words "Chief Executive Officer" shall be substituted;
(H)In sub-section (10)-
(a) for the words "Competent Authority" the words "Slum Rehabilitation Authority" shall be substituted;

(b) In the proviso-

(i) for the words "Competent Authority" the words "Chief Executive Officer" shall be substituted.
(ii) for the word "Tribunal" the words "Special Tribunal" shall be substituted.
(iii) for section 13, the following section shall be substituted namely-

Section 13 Power of Slum Rehabilitation Authority to develop Slum Rehabilitation Area

13 (1) Notwithstanding anything contained in sub section (1) 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 redevelopment of such land by order determine to redevelop such land by entrusting it to any agency for the purpose.

(2) Whereon 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 (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."

49. As noted above, for the implementation of the slum rehabilitation scheme by the aforesaid amending Act Section 14 falling in Chapter V of the Slums Act which stipulates the power of the State Government to acquire land also came to be amended in the following terms in its application to Chapter I-A :-

"**3D (c) in Chapter V**:-

(i) In section 14, in sub-section (1),-

(A) for the portion beginning with the words "Where on any representation" and ending with the words "clearance area", the following portion shall be substituted, namely:-

"Where on any representation from 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";

(B) after the proviso, the following proviso shall be added namely:-

"Provided further that, the State Government may delegate its powers under this sub-section to any officer not below the rank of Commissioner.";

(ii) in section 15,-

(A) for sub-section (3), the following sub-section shall be substituted, namely:-

"(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 declared as Slum Rehabilitation Area."

(B) for sub-section (4), the following sub-section shall be substituted, namely:-

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

50. Section 14 as it originally stood outside the amendment under Chapter I-A, reads as under :

CHAPTER V
ACQUISITION OF LAND

Section 14: Power of State Government to acquire land

(1) Where on any representation from the competent authority it appears to the State Government that, in order to enable the Authority to execute any work of improvement or to redevelop any slum area or any structure in such area, it is necessary that such area, or any land, within adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the Official Gazette, a notice to that effect that the

> State Government has decided to acquire the land in pursuance of this section:
>
> (Provided that, before publishing such notice, the State Government, or as the case may be the competent Authority may call upon by notice the owner of, or any other person who in its or 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 competent authority within the period specified in the notice; and the competent authority shall, with all reasonable despatch, 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.
>
> (1A). The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.
> (2) 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. ”

51. A cumulative reading of the above provisions makes it clear that the object and intention of the legislature in amending the Slums Act by Act No.IV of 1996 was to achieve the object of the Slum Rehabilitation Authority to look into every aspect of the problems of slum rehabilitation and as permissible under the provisions of the Act achieve rehabilitation of the slum-dwellers with utmost expediency. It is for this purpose section 3B provides for preparation of a 'general slum rehabilitation scheme' by a notification to be issued for areas as specified in sub-section (4) of section 3B, for rehabilitation of slums, hutments colonies in such areas. Sub-section 4 of section 3-B provides that slum rehabilitation scheme so notified under sub-section (3) shall generally lay down the parameters for declaration of any area as slum rehabilitation area and indicate the

manner in which rehabilitation of the area declared as a slum rehabilitation area shall be carried out and in particular as provided in clauses (a) to (g). What is important is that when a slum rehabilitation scheme is so notified under sub-section 3B, it is incumbent for the authority to provide a scheme for development of a slum rehabilitation area under the slum rehabilitation scheme by the landholders and occupants by themselves or through a developer as provided in sub-clause (e) of clause 4 which reads thus :

> **Section 3B(4)(e)** "Scheme for development of the slum rehabilitation area under the slum rehabilitation scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the option available to the slum rehabilitation authority for taking up such development in the event of non-participation of the landholders or occupants.

52. The next provision being Section 3C is material in the context of the present case, in view of the declaration of the said land, as a slum rehabilitation area under this provision, by the notification dated 11 March 2011. This provision postulates that after publication of the Slum Rehabilitation Scheme, the Chief Executive officer on being satisfied that, 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 slum rehabilitation area by an order, to be called as a 'slum rehabilitation order. Further any person aggrieved by a slum rehabilitation order, would be entitled to prefer an appeal within four

weeks of publication of such order to be filed before a Special Tribunal, whose decision on the appeal shall be final as prescribed by sub-section (2) of section 3C.

Thus, the relevant statutory scheme depicted by the above provisions appears to be quite clear which may be summarized provision wise hereunder :

Section 3A: Appointment of an authority to be called as slum rehabilitation authority' for such areas or areas as may be specified in the notification and different authorities may be appointed for different area.

Section 3B: Preparation of a general slum rehabilitation scheme by the State Government or SRA for rehabilitation of slum and hutment colonies in such areas. As per sub-section 4 the slum rehabilitation scheme so notified under sub-section (3) shall generally lay down the parameters for declaration any areas as slum rehabilitation area and indicate the manner in which rehabilitation of the area declared as a slum rehabilitation area shall be carried out, which shall provide for all or any of the matters under clause (a) to clause (g) of sub-section (4). Clause (e) permits rehabilitation to be undertaken under a scheme for development of the slum rehabilitation area under the slum rehabilitation scheme by the “landholders and occupants by themselves or through a developer; and the terms and conditions of the such development and

the option available to the SRA for taking up such development in the event of non–participation of the landholders or occupants.

Section 3C : After publication of slum rehabilitation scheme as per section 3-B, 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 declare such area to be a slum rehabilitation area by an order to be published in the official gazette. A remedy of an appeal is made available to the person aggrieved by such order (slum rehabilitation order) before the Special Tribunal whose decision shall be final.

Section 3-D: provides for application for such other chapters of the slum Act to "slum rehabilitation area:" (as notified under section 3C) with modification as provided therein,

53. As clearly seen from these amended provisions, the modification of the statutory scheme is significant, qua the 'slum rehabilitation area', as declared under section 3C. The application of chapter II and III stand omitted. In chapter IV, section 11 stands omitted. Section 12 which in its original form provides for a "Clearance Order" to be passed by the Competent Authority, as a sequel to the power being exercised by the Competent Authority, to declare a 'slum area' to be a

clearance area. This provisions stands substituted to provide that as soon as the Chief Executive Officer has declared any slum area to be a slum rehabilitation area under Section 3C, the Chief Executive officer shall make a clearance order in relation to that area, ordering the demolition of each of the buildings specified therein and requiring each such buildings to be vacated as per the clearance order. Sub-Section (4) of this provision provides for an appeal to be filed before the special tribunal by a person who is aggrieved by the clearance order.

54. Section 13 as substituted is an extensive provision providing for the power of the SRA to develop slum rehabilitation area. Sub-section (1) of section 13 that provides in the event the landholders or occupants of such area, do not come forward within a reasonable time, with a scheme for re-development of such land, then in such event the SRA is empowered to pass an order and determine to re-develop such land by entrusting it to any agency. Similarly sub-section (2) provides that if the redevelopment is being undertaken by the owner in contravention of the plans duly approved or any restrictions or conditions imposed under sub section (10) of Section 12 or the same is not developed in time, if any specified under such conditions, the SRA may, by order determine to develop the land by entrusting it to any agency recognized by it, however

subject to a prior opportunity to the owner of showing cause against such order to be passed.

55. Section 14 as modified applies for acquisition for land to enable the SRA to carry out development under the Slum Rehabilitation Scheme in any slum rehabilitation area. Similarly section 15 which deals with the power of the Collector to require person in possession of land to surrender or deliver possession to him stands modified to the extent sub-section (3) stands substituted in its application to transfer the land acquired to the SRA.

56. A combined reading of the various provisions as falling under Chapter I-A as incorporated by the said amendment clearly demonstrates a distinct and independent legislative scheme when it comes to land which has been declared as a slum rehabilitation area under Section 3C of the Slum Act.

57. As the focus of the arguments of the learned counsel for the parties is primarily on Section 13 as falling under Chapter I-A, we discuss the specific effect and the purport of this provision. Section 13 as falling in Chapter I-A begins with the words *"notwithstanding anything contained in*

sub-section 10 of section 12." As noted above section 12 (1) as substituted for the purposes of Chapter I-A provides for a 'clearance order' to be passed by the Chief Executive Officer after the Chief Executive Officer has declared any slum area to be a slum rehabilitation area. Sub section (10) of section 12 which stands not disturbed by the amendment as brought about under Chapter I-A, recognizes the right of the owner of the land to which the clearance order applies, to redevelop the land in accordance with plans approved by the competent authority and subject to such restrictions and conditions including the condition with regard to the time within which the redevelopment shall be completed. Thus the consequence brought about by section 13 as falling in chapter I-A, is two-fold firstly it recognizes the pre-emptory right of the owner to redevelop the land as provided under sub-section (10) of Section 12 and secondly without disturbing the general right to redevelop the land it nevertheless provides that if the landholders or occupants of the of such area do not come forward, within a reasonable time with a scheme for re-development of such land, then the SRA by an order determine to redevelop the land (which is declared as a slum rehabilitation area) by entrusting it to any agency. However, this only on the condition as specifically postulated by sub-section (1) and sub section (2) namely if the landholders and occupants do not come forward within a reasonable time, with a scheme

for re-development of such land. In fact sub-section (2) of section 13 is a complete legislative recognition of what is stipulated by the provisions of section 3B(4)(e) read with section 12(10) and section 13 sub-section (1) namely that for a slum rehabilitation scheme, notified under section 3B the scheme would contemplate development of slum rehabilitation area by the landholders and occupants by themselves or through a developer and the terms and conditions of such development (sub-clause (e) of section 3B (4)). Thus, once the land is declared as a slum rehabilitation area, the said statutory scheme/provisions as discussed, above recognizes the participation of owners/landholders and occupants in the redevelopment of such land. It can certainly be said that once such a right as created by law (section 3B(4)(c) and (e) and section 13 (1)) an opportunity in that terms is required to be granted to the owners, occupants and/or landholders, without which the provision as made in the statute for such rights would be meaningless. When the provisions uses the word '*do not come forward within a reasonable time*' would surely mean that the SRA is required to set down the time limit by calling upon the landholder to come forward with a scheme so as to undertake redevelopment. In the present case neither the SRA or the State Government put the petitioner to such a notice, nor the petitioner was put to a notice that a scheme not been submitted by it would be a

circumstance which would be taken against him to acquire the land, which was the only reason for which the land is acquired. Such notice in our opinion was imperative as there was no reason for the petitioner to be aware considering the plain reading of section 14(1) of the Slum Act that this would be the primary reason for which the land of the petitioner would be acquired, namely non coming forward with a scheme, though there was complete willingness of the petitioner to undertake redevelopment as echoed in several letters, which had fallen to the deaf ears of the authorities.

58. While referring to Section 13(1) we have referred to the land owners as a category along with landholders and occupants, as we are of the clear opinion that when section 13 (1) as falling under Chapter I-A of the Slums Act uses the word “landholder” it would include within its meaning the owner of the land. This is for the reason that it cannot be said that the owner cannot be a 'landholder.' There is no legislative intent to exclude the owner of the land when the words 'landholder' and 'occupant' are used. (See: **Richpal Singh vs Deshraj Singh**(supra)**)** It is only that on the grant of a right that the owner can be subjected to restrictions as contained in section 13 (2) of the Slums Act. Hence, we are not inclined to accept the argument as made on behalf of the Society that the principle of

ejusdem generis be applied in interpreting the words 'landholders' and 'occupants' as referred in Section 13(1) to exclude owners of land.

59. That a preferential right for redevelopment is so vested in the owners/landholders and/or occupants is further clear in view of a conditional power/authority created with the SRA to undertake redevelopment of the slum rehabilitation area in a two-fold manner firstly by exercising power under sub-section (1) or (2) of Section 13 which is to re-develop the land by entrusting it to any agency on a failure of the landholder or the occupant in not coming forward within a reasonable time with a scheme for re-development; and when application of Section 13(1) and (2) do not fetch any result by re-developing or carrying out development under the slum rehabilitation scheme in any slum rehabilitation area by resorting to acquisition of the land under section 14 as applicable with modification under Chapter I-A. It is thus clear that the object and purpose which the provisions of Section 3B(4)(e), Section 13(1) and (2), Section 12(10) and Section 14 (as modified by under Chapter I-A) is to achieve and bring about an effective redevelopment of slum rehabilitation area.

Thus, from the legislative scheme of the amended provisions it can be clearly inferred that the rights so conferred under these

provisions on the owner/landholder/occupant cannot be usurped directly by putting into operation the acquisition machinery, simply because such power exist on the statute book. The exercise of such power within the scheme of Chapter I-A is required to be resorted by due adherence to the said provisions which have created and recognized the legitimate rights in the owners, landholders and occupants to undertake re-development. The power to acquire land is also required to be exercised in a fair manner and certainly in the context of the present statutory scheme, when the object and purpose for which acquisition is to be undertaken can be achieved by other methods and for which the statute has made the requisite provision for achievement of such purpose.

60. Thus while considering the action of acquisition of land, under the powers as conferred on the State government under section 14 in its application to Chapter I-A (being exercised in relation to the land which is notified as a slum rehabilitation area under section 3-C), the decision to acquire cannot be read beyond the context of the applicability of the provisions of Section 3A,3B,3C, Section 12, Section 13 and Section 14, as falling under Chapter I-A of the Slum Act. The reason being the decision to acquire the land would have a direct nexus and relation to the conferring of an opportunity on such persons to first undertake re-

development of land as Section 3(B)(4) (c)and(e) read with section 13(1) and (2) as also sub-section 10 of section 12 (if so made applicable, though this sub-section stands outside Chapter I-A) and on a failure to avail this opportunity by the landholders or owners or occupants to abide their obligations under the said statutory provisions, resort to acquisition of land under section 14. This statutory consequence is clear from a plain reading of the substituted sub-section (1) of section 14 which requires that the State Government is so satisfied on a representation being so made to it by the competent authority, that a situation has arisen that it would be incumbent for the authority to execute any work of improvement or re-development of any slum area or any structure in area or any such land and for the said purpose the land should be acquired. In such a situation the State Government may acquire the land by publishing a notice to the effect that the State Government has decided to acquire the land. However, before such power is exercised to acquire such land, the proviso to sub-section (1) to section 14 prescribes that before such notice is published in the official gazette deciding to acquire the land the State Government or the competent authority by notice may call upon the owner or any other person interested in such land to show cause in writing to the competent authority, as to why the land should not be acquired, and the competent authority shall forward such objection of the

owner together with the report to the State Government. The State Government considering the "report", and the "objections" if any, is required to pass 'such order' as it deems fit. The proviso assumes significance firstly it postulates an opportunity to the landowner or any other person interested to show cause as to why the land ought not to be acquired and once such objections, are registered with the competent authority, an obligation on the competent authority to consider the objections, make a report in respect of the said objections and further forward the objections and report for consideration of the State Government for the State Government to objectively take a decision and pass such appropriate order. It clearly appears that to some extent section 14 (1) read with the proviso is akin to the provisions of section 5A of the Land Acquisition Act, 1894. Thus, necessarily there is a requirement for compelling factors and/or reasons to exist on record which would unequivocally compel the State Government to exercise its power of eminent domain and decide to acquire the land. This necessarily would include application of mind to the entitlement of the owner of the land, occupier or landholder to redevelop the land as recognized by section 3B(4) (c) and (e) read with section 12(10) if so made applicable, read with section 13 (1)and (2).Considering this statutory scheme, the decision of the competent authority or of the State Government cannot be oblivious

and/or de' hors the ascertainment as to whether such specific obligations were imposed on the landholders/landowners or occupants and if so created whether they were at all discharged by such persons.

61. The acquisition of the land under the Slums Act is a part of the legislative scheme as postulated by the Act, namely to improve the conditions of those dwelling in slums and redevelopment of the slums areas. This being the basic object of the legislation, the intention of the legislature in providing for participation of the landlord in redevelopment of the slums as reflected in the provisions of Section 3B(4)(e) and Section 13(1) and (2) of the Act cannot be overlooked. Such participation surely has to be, before the land is acquired as different consequence follow after acquisition of the land (See Section 15). An acquisition of land overlooking and/or obliterating the effect of these provisions cannot be said to be an acquisition conforming to the legislative scheme. It cannot be that the intention of the legislature would be that the said provisions as falling in Chapter I-A remain only paper provisions and/or become redundant, when it is a question of an acquisition for the purpose of redevelopment of a "slum rehabilitation area". In such a situation the endeavour of the Court would be to adopt the principles of a harmonious and purposive interpretation of these provisions and make these provisions meaningful so that the acquisition of land conforms to the

legislative scheme and its mandate.

62. As seen from the provisions of Chapter I-A it cannot be a statutory requirement that in every case, of some lapse or in relation to a deficit in discharge of obligations of redevelopment by the owners/landholders or occupants of the slum areas or some non-compliance under a slum clearance order, land acquisition is the only and only recourse to be taken by the competent authority and/or the State Government, without affording a prior opportunity and compelling such persons to rectify the situation by exercising the plentiful powers which are available for that purpose with the SRA under the Slum Act so as to bring about a redevelopment.

In our opinion considering the in-built mechanism which is available under the clear provisions of section 3B (4) (c) and (e), Section 13 (1) and (2) of the Slum Act, which empower the SRA to develop the land by entrusting it to any agency recognized by it, any interpretation of the compulsory acquisition provision (Section 14), oblivious to the due consideration of these specific provisions of the Act, which enable the SRA to bring about a re-development of the slum rehabilitation areas without acquisition of the land, would amount to defeating such specific provisions and creating unwarranted concentration of coercive and arbitrary power

of acquisition with the SRA.

Thus section 14 which confers power on the State Government to acquire the land and the legislature having amended the same in its application to Chapter I-A, having due regard to the provisions of Section 3B, 3C which concern the 'slum rehabilitation scheme' and 'slum rehabilitation area', the decision to acquire such land cannot be read outside the consequences which are brought about by the said provisions the Act, as falling under chapter I-A. The rights so created interalia on the landowners and the obligation so conferred on the SRA under the provisions as falling in Chapter I-A, in our opinion, would have a direct relation to the decision to acquire the land. This more particularly in view of the proviso to section 14(1) which stands undisturbed by the amendment as inserted by Chapter I-A, creating a statutory obligation on the competent authority to consider the reasons as may be put forward by the owner of the land against acquisition and prepare a report and forward the same to the State Government. In our opinion a bonafide willingness on the part of the land owner/land holders or occupant to redevelop the land and for such reason the land be not acquired is a legitimate objection which the owner of the land can raise and such objection would certainly fall within the contemplation of the proviso to section 14 (1), as required to be considered by the State Government

before a decision to acquire is taken. Thereafter the State Government is required to 'pass an order' on these objections. In the present facts the rigour of this provisions appears to have been appropriately recognized by the SRA when the SRA by its letter/report dated 4 August 2012 had asked the State Government to take a decision at its level, as to whether the petitioner be permitted to undertake redevelopment. This is also reflected from the various documents which the petitioner has obtained under the Right to Information Act and as placed on record whereby the State Government as also the SRA had taken a clear view of the matter that the petitioner would have a preferential right under Section 3B(4)(e) of the Slum Act to undertake redevelopment before the acquisition proceedings are initiated. This is clear, firstly from perusal of the note dated 14 May 2015 which is signed by Nayab Tahasildar (Slum Rehabilitation Authority), the Dy.Collector (SRA), and the Secretary and the Chief Executive Officer (SRA) who in clear terms record that the petitioner has preferential rights to undertake redevelopment of the land. The relevant extract of the note reads thus:

> "The land bearing C.T.S. No.119 I, 119 I/1 to 83, admeasuring 9054 sq.mtr., situated at Village Tungva, Kurla has been declared as "Slum Rehabilitation Area/Zone" on 11/03/2011. On the property to be acquired, M/s.Indian Cork Mills Pvt.Ltd., has been reflected as the landlords. In earlier hearing held in this office, the argument was done on behalf of the Landlords that we can submit the scheme as landlords. *As per the provisions under Section 3(b)(4)(e) of the Maharashtra Slum Area (Improvement, Clearance & Redevelopment) Act,1971, the Landlord has a first right to develop the Slum Rehabilitation Area/Zone.* Considering the provisions

> under the Act, it is deemed proper to give one opportunity to the landlords to submit the rehabilitation scheme before taking any final decision in the matter of land acquisition."
>
> (emphasis supplied)

There are four other documents which are placed on record namely a letter dated 15 May 2015 of the Chief Executive Officer-SRA to the Principal Secretary, Housing Department, a note dated 18 May 2015 of the Housing Department, a letter dated 12 October 2015 of the Deputy Secretary, Government of Maharashtra to the Chief Executive Officer of SRA and a note dated 5 April 2016 of the Deputy Collector -SRA, all these documents, the copies of which the petitioner has received under the Right to Information Act, clearly records that the petitioner would have a preferential right to undertake redevelopment of the land in question under Section 3B(4)(e) of the Act. All these documents thus reflect the official opinion of the different authorities in dealing with the issues falling under Section 3B(4)(e) of the Slum Act. This also clearly indicates that not only the SRA but also the State Government was of the opinion that the petitioner is required to be granted an opportunity to undertake redevelopment. However, as the record reveals, no such opportunity was granted by any of the authorities to the petitioner. Though repeatedly the above documents noted the preferential rights of the petitioner to undertake redevelopment, however, the petitioner was never called upon to undertake redevelopment and put to a notice that if he fails to do so,

the land would be required to be acquired. The record indicates that the SRA subsequently however took a contrary position, that it was a petitioner who had not submitted any scheme, albeit not being called upon to do so, and the acquisition of the land was resorted overlooking the purport of the above official documents.

63. Now coming to the facts of the present case in some detail. It is not in dispute that the petitioner had raised an objection to the acquisition of the land in reply to the notice dated 8.8.2013 inter-alia stating that it would undertake redevelopment of the land in question. Thereafter, again the petitioner by its letter dated 26.8.2013, 12.9.2013, 25.2.2015, 6.5.2015, 15.7.2015, 16.7.2015 categorically informed the authorities that it would undertake redevelopment of the slum area in question. We find that there is nothing on record which would even remotely indicate that either the SRA or the State Government had applied its mind to this willingness of the petitioner much less take a decision on such pleas. As noted above, Section 3B(4)(c) and(e)read with section 13(1) would create a legal right in the petitioners to redevelop the land in question. One cannot lose sight of the fact that what would be achieved the SRA/State Government would be to redevelop the land even on its acquisition. Thus in our clear opinion there is patent non-

application of mind on the part of the SRA/State Government to the said legal rights which are created in the petitioners as owners of the land and to the repeated willingness on the part of the petitioner to enforce the legal right so as to undertake redevelopment of the slum area. There cannot a land acquisition under the said provisions oblivious to these basic tenets and a a decision to acquire the said land overlooking these primary considerations, would undoubtedly vitiate the decision to acquire the land.

64. We also have grave doubts about the bonafides of the proposal as submitted by the Society. As noted above, the petitioner has categorically averred that as part of the proposal of one Mr.Anuj Desai had executed an affidavit claiming to be the Constituted Attorney of the petitioner/owner. The petitioner having received this knowledge has addressed a legal notice to Mr.Anuj Desai who represented one M/s Concrete Lifestyle Pvt Ltd, informing of civil and criminal action to be initiated against him for making a bogus representation. The petitioner has clearly averred that no power of attorney was granted by the petitioner in favour of Mr.Anuj Desai and that thus the proposal to acquire the land was at the behest of a developer who is acting under the guise of the society. This affidavit of Mr.Anuj Desai is extracted hereunder :-

AFFIDAVIT

"I Shri Anuj Desai residing at Dadi House,Ground floor Next to Alfa House, Irla Vile Parle (W) Mumbai. C.A. to owner of the above mentioned property solemnly affirm and say as under:

I hereby say that there is no litigation pending in any court of law in respect of the above property and the title of the above property is clear and marketable at present.

Dated: 11.day of December 2007".

Before Addl.Collector (Enc & Rem)
Kalanagar Bandra Mumbai.

(emphasis supplied)

A perusal of the affidavit clearly indicates that the same is placed on record of the SRA by Mr. Anuj Desai as a constituted attorney of the petitioner/owner when no such power of attorney was executed by the petitioner in favour of either Mr. Anuj Desai or M/s Concrete Lifestyle Pvt Ltd. The specific averments as made in the petition interalia that submitting such affidavit as a part of the acquisition proposal as filed by the Society amounted to a fraud and misrepresentation have not been dealt and denied by any of the respondents. Even for this reason we are of the clear opinion that the acquisition proposal as filed by the Society was not bonafide. Thus there is much substance in the contention as urged on behalf of the petitioner that the third parties are taking active role by creating such a false and bogus documents. The authorities are definitely not under any obligation to act on such documents without verifying its authenticity. We note this conduct not only the society but also the authorities in not taking any action on such irregularities though brought

to their notice and nonetheless proceeding with acquisition of the land. Thus, it is quite clear that the respondents were proceeding under a non-existent consent of the petitioner-landlord. Once such a document was on record the whole complexion of the acquisition proposal was different namely that there was a consent of the owners for such development scheme of the society for which the acquisition proposal was made, when in reality there was none. What surprises to us is that the society's development proposal for which they seek acquisition at the threshold is backed by a developer. When the statutory scheme of Section 15(3) as falling under Chapter I-A is otherwise, namely that after the acquisition is complete and possession of the land is taken over, the land would be transferred to the SRA and only then the SRA may hand over the same to any agency as per Section 3B(4) of the Slum Act. Thus appointment of a developer before hand to submit a proposal is not in contemplation of the acquisition scheme under Chapter I-A.

65. We may observe that although by a notification dated 18 January 1979 an area admeasuring 3054.3 sq.meters was declared as a slum under section 4 of the Slums Act and thereafter by a notification dated 11 March 2011 as issued under Section 3C(1) of the Slum Act the land came to be notified as a slum rehabilitation area, however, the record

indicates that at no point of time, either the petitioner or any other person relevant for the purposes of section 13(1) was called upon by either the SRA or the State Government to undertake redevelopment of land so as to come to a conclusion, that as per provisions of section 13(1), none of these persons had come forward within a reasonable time to redevelop such land. To come to such conclusion it would be the basic requirement that the owner or occupant or landholder is given a notice to submit a scheme for redevelopment of the land so that, the reasonable time to be considered as per the provisions of section 13(1) can be ascertained, and an order to that effect can be passed under the said provision, to redevelop such land by the SRA by entrusting it to any other agency. There is also nothing on record to indicate such satisfaction of the authority under sub-section (1) of Section 13 read with proviso to section 14 of the Slums Act was achieved, when there was ample material to indicate that the petitioner had time and again represented its willingness to undertake redevelopment of the said land. What is significant is that right from the inception namely from the first report dated 4 August, 2012 of the Additional Collector as made to the State Government, the only consideration which appears to have weighed with the Additional collector is that the petitioner has not submitted a slum rehabilitation scheme in regard to the development of the said land as seen from

paragraph four of the said report and comments that an appropriate decision in regard to acquisition be taken at the level of the Government. The State Government also did not take a decision on the willingness of the petitioner to undertake a redevelopment scheme.

66. At this stage, we may note that there is no express provision in Chapter IA of the Slums Act, which stipulates a time limit, within which the landholder/ landowner or the occupants are required to submit a scheme and undertake redevelopment of the slum area after the land is notified as a slum rehabilitation area. Unless there is such statutory prescription of the time limit, then as to what shall be a reasonable period in a given case for such persons to initiate/submit a redevelopment scheme, would be required to be considered in the facts and circumstances of each case depending on whether the SRA had called upon such persons to undertake re-development and there is a failure on the part of such persons to undertake the same within a reasonable time. The law nowhere provides an automatic mandatory obligation on any person to undertake a redevelopment scheme on the declaration of such area as a slum or a slum rehabilitation area and in our opinion rightly so. In the present case this issue would also go to the root of the matter as the decision to acquire has been taken by the State Government for the sole

and the only reason that the petitioner had not submitted a scheme for the redevelopment of the land, which in fact is a reason available for the SRA to pass an order under section 13(1) of the Act (as falling under Chapter I-A) to appoint an agency and entrust the re-development to such agency.

67. Thus in our opinion the SRA recommended acquisition of the land, oblivious of not only the rights as conferred by Section 3B(4)(e) and 13 (1) of the Slum Act on the petitioner, but also overlooking the powers which are conferred on the SRA under these provisions which would also bring about a result of redevelopment of the land for which the land acquisition is intended. There are no reasons as forthcoming from the record as to how and in what manner and by applying what standards the SRA or the State Government, in the present facts reached to a conclusion that the powers under section 14 are required exercised to acquire the land, as the petitioner had not submitted a scheme for redevelopment or there is a gross delay on the part of the petitioner in submitting a scheme for re-development. Thus, the satisfaction to be arrived by the SRA/State Government, under section 14 (1) being objective would surely require appropriate reasons on record indicating as to what was the reasonable time which was made available by the SRA to the landowners or occupants to undertake redevelopment invoking section 13(1) of the Slum

Act. In any event, proviso to section 13 contemplates that before an order is passed under section 13 (1) or section 13 (2) the owner shall be given a reasonable opportunity for showing cause as to why such order should not be passed. It is clear that in the facts of the present case, no such order is passed under the proviso to section 13 of the Act. Thus unless it is determined for reasons to be recorded in writing, as to how it is an unreasonable delay in submitting a scheme, this conclusion to be the basis of acquisition, cannot satisfy the test of fairness and reasonableness, and more particularly when the SRA/State Government is depriving the person of the valuable constitutional right to property guaranteed under Article 300-A of the Constitution.

68. The record indicates that the initial approach of the State Government can be said to be fair and as per the requirement of law as we have noted above, when precisely recognizing the petitioner's rights as owners of the land, the State Government by its letter 9 April 2013 addressed to the Chief Executive Officer-SRA sought for a clarification as to whether the Chief Executive Officer before forwarding the proposal of the society vide his letter dated 29th November 2012, had heard the petitioner or whether the petitioner was granted an opportunity to submit its explanation in regard to the acquisition. This showed that the SRA had

earlier recommended the proposal by its report dated 4 August 2012 with undue haste and without due consideration of the rights of the petitioner to record their grievances on the issue of acquisition but at the same time leaving it to the State Government to take a decision as to whether the petitioner/owner should be permitted to redevelop the land. The SRA in fact at this stage ought to have tested the petitioner's willingness and an opportunity to redevelop the land should have been granted to the petitioner. Further, this report dated 4.8.2012 of the Additional Collector, SRA to the Housing Department of the State Government also was conspicuously silent on the SRA granting any hearing to the petitioner or communicating to the State Government the intention of the petitioner to redevelop the land. As this report was not accepted by the State Government by its said letter dated 9 April 2013 addressed to the SRA, the SRA had issued a show cause notice dated 8 August 2013 to the petitioner. Notably even the second report of the SRA dated 29 December 2013 which is stated to be prepared after a hearing was granted to the petitioner on the show cause notice dated 8 August 2013, is also mechanical to say the least, which re-iterates the same contents as in the earlier report dated 4 August 2012 namely that the petitioner had not submitted any scheme for redevelopment of the said land. The specific contention as urged by the petitioner that it intends to re-develop the land

and rehabilitate the slum dwellers, and that the petitioner would oppose any third party to participate in the redevelopment of the land find no consideration in the said report. There are also no reasons as set out in the report which would indicate the rejection of the petitioner's persistent plea that it was ready and willing to undertake redevelopment. Thus, the report dated 29 December 2013 was no different from the report dated 4 August 2012.

69. Considering the scheme of the Act and more particularly Chapter I-A as noted above, it cannot be said that the SRA was powerless to call upon the petitioners to submit a scheme and to undertake immediate redevelopment of the land after it was declared as a 'slum rehabilitation area vide notification dated 11th March 2011. Further, it is also not a case that the SRA invoked the provisions of section 13(1) to redevelop the land on account of failure of the petitioner to undertake redevelopment within a reasonable time. Ultimately the aim and object of section 13(1) is to bring about redevelopment for rehabilitation of the slum dwellers by the SRA itself determining to redevelop such land by appointing any agency recognized by it. The purpose for acquisition of land under section 14 is no different which is also to execute any work of improvement or to redevelop any slum area.

70. We may also observe that the acquisition under the Slum Act has a different complexion and colour form a regular acquisition for a public project under the normal law dealing with acquisition, or acquisition undertaken by the town planning authorities under the local laws for planned development of the municipal areas. One cannot be oblivious of the interest of third parties in undertaking redevelopment of slums, because of the commercial benefits such projects would provide, and such third parties can still play a crucial role to bring about an acquisition, from acting behind the scene. When it comes to grant of development rights we may refer to section 3B(f) of the Slums Act which postulates that the slum rehabilitation scheme so notified under sub-section 3 of section 3B shall make a provision for sanctioning and transfer of developments right if any to be made available with the developer for development of the slum rehabilitation area under the slum rehabilitation scheme. Thus different from the usual acquisitions it is but obvious, that third parties namely the developers/builders etc., would be legitimately interested to undertake redevelopment of the slum areas (which would also include land belonging to private owners). Also special benefits are available in undertaking constructions in the redevelopment scheme by utilizing the additional FSI available after utilizing the FSI necessary for rehabilitation of the slum dwellers for undertaking development of slums

under the Development Control Rules (DCR) applicable for Greater Mumbai, a provision has been made in Regulation 33 (10) to that effect. These regulations are framed not under the Slums Act but under section 158 of the Maharashtra Town Planning Act, 1966 which provides for the power of the State Legislature to frame rules. The redevelopment of the slum land under regulation 33 (10) of the Development Control Regulations (for short **'DCR'**) provides for a "rehabilitation" and a "free sale component" as an incentive to redevelop the slum lands. The benefits of FSI under Rule 3 of Appendix IV reads thus :

> **"3. Rehabilitation and Free sale Component**
>
> 3.1 : FSI for rehabilitation of eligible slum/pavement-dwellers includes the FSI for the rehab component and for the free sale component. The ratio between the two components shall be as laid down herein below.
>
> 3.2 : Built-up area for rehabilitation component shall mean total construction area of rehabilitation component, excluding what is set down in 35 (2) of D.C. Regulations, 1991 but including areas under passages, balwadis, welfare centres, society office, religious structures (other social infrastructure like school, Dispensary, Gymnasium by Public Authority or Charitable Trust) 5 per cent incentive commercial areas for the co-operative society and the further 5 per cent incentive commercial for the NGO (Government/Public Authority/Government Company) wherever eligible.
>
> 3.3: In island city, if rehab component is 10 sq.metres of built-up area, then an additional 7.5 sq. metres built-up area will be permitted so that this additional 7.5 sq.metres can be utilized for disposal in the open market and the rehab component subsidised.
>
> 3.4. In suburbs and extended suburbs, if rehab component is 10sq.meters of built-up area, then an additional 10 sq.metres of built up area will be permitted so that this additional 10 sq.metres can be utilized for disposal in the open market and the rehab component subsidised.

3.5. In difficult areas, which shall comprise Dharavi now and such areas as may be notified by the Slum Rehabilitation Authority hereafter if the rehab component is 10 sq.meters of built-up area then an additional 13.33 sq.metres of built up area will be permitted and this area of additional 13.33 sq.metres can be utilized for disposal in the open market and the rehabilitation component subsidized.

3.6: Provision in 3.3 to 3.5 hereinabove shall also apply to the sites where the Slum Rehabilitation Project of eligible pavement dwellers will be implemented.

3.7 FSI to be sanctioned or a Slum Rehabilitation Project on a site may exceed 2.5.

3.8 Maximum FSI permissible for Consumption on the plot; Even though the sanctioned FSI may be more than 2.5 FSI, the maximum FSI that can be utilized on any slum site for the project shall not exceed 2.5 and the difference between sanctioned higher FSI and 2.5, if any, will be made available in the form of Transferable Development Rights (TDR) in accordance with the provisions of Appendix VII-B. The computation of FSI shall be done for both the rehab and free sale components in the normal manner, that is giving the benefit of what is set down in DC Regulation No.35 (2). While the areas referred in sub-regulations No.6.10 and 8.2 of this Appendix shall not be included for computation of FSI., the said areas shall be included for computation of the rehab component of 10sq.mts in sub-regulations 3.3 to3.5 hereinabove:

(Provided that if the existing tenement density is more than 650 per hectare, Government in Urban Development Department may allow FSI consumption in situ to be exceeded up to the sanctioned FSI but not exceeding 3.00 FSI. In such cases the difference between sanctioned higher FSI and 3.00 if any will be made available in the form of Transferable Development Rights (TDR) in accordance with the provisions of Appendix VII-B).

3.9: Notwithstanding the provisions in 3.8 above, on account of constraints such as height restrictions, uneconomical site conditions etc. if the full 2.5 FSI cannot be used on the same site, TDR may be allowed as may be necessary even without consuming FSI up to 2.5 on the same site. However, TDR may be allowed only when the frame work for one complete building in Rehab Component is constructed or when 10% of the Rehab component has been constructed on site and the said TDR will not exceed 50 per cent of the construction of Rehab component at any point of time till the total component has been completed. On completion of the total Rehab component, balance TDR will be allowed."

71. No doubt the above rules conferring FSI benefits are a laudable piece of legislation which enables the authorities to eradicate the slums in urban areas, however when such redevelopment involves third parties to be appointed and approved by the authorities to undertake the redevelopment, commercial interest become dominant. Such interest are bound be varied depending on the quantum of the area and the location of the slums. Thus the authorities in discharging their public duties under the Slum Act are required to satisfy a dual test namely of balancing the public interest and at the same time taking care of the legitimate private interest so that the scheme becomes viable. This includes appointment of such private parties to undertake development who possess technical ability coupled with substantial ability to undertake such schemes. We can surely take judicial notice of the litigation which has reached this court where, slum projects are languishing for want of such parties not completing the projects or abandoning the projects and variety of complications arising from such half executed projects. We have felt the need to record this for the reason that, many of such projects may pertain to lands which are acquired under the Slum Act. Thus if the land owner is himself interested to develop the land and that law confers such rights on the landowner/landholder or the occupant then it would surely be in the fitness of things that such legal rights are first recognized before the other

powers are invoked. There can be nothing illegitimate in the landowner himself being granted an opportunity of redeveloping his land under slums, instead of another developer doing it and only on his persistent failure the authority can certainly resort to acquire the land.

72. We may also note that neither the SRA nor the State Government has pointed out any specific provision as made in the slum rehabilitation scheme, qua the land in question as per requirement of section 3B(4) (a) to (g). Further we are also not shown any express obligation so conferred on the land owners as per the specific requirement of Section 3B(4)(e). We have also not been shown any order passed by the competent authority under the provisions of modified section 12 (1) falling under chapter I-A of the slums Act to undertake redevelopment. All the above factors are eminently relevant for a decision to be taken by the State Government to acquire the land under section 14 (1) of the Slums Act as necessarily the proviso to this section provides application of mind to these issues by the State Government and pass an order to that effect. Needless to observe that on first principles exercise of powers under section 14 (1) cannot be a mere formality but, such an exercise is required to be undertaken for reasons which are acceptable in law and clearly available on record. We may point out that neither the show cause notice

issued to the petitioner nor the acquisition notification indicate any reasons. The cryptic file noting/order dated 17 November 2016 passed by the Hon'ble Minister for Housing, on the basis of which the impugned acquisition notice/notification dated 22 December 2016 has been issued under section 14(1) of the Act also contains no reasons when the law requires (Section 14(1) Proviso) an order to be passed after considering the report of the competent authority and the objections as raised by the owners or those interested in the land. In this context we may refer to the decision of the Division Bench of this Court in the case of ***Sara D'Mello*** (supra) wherein the Division Bench taking into consideration that since the reasons for acquisition of the land were borne out by the show cause notice the final notification under Section 14(1) need not contain reasons. Thus the Court would be concerned with the basic requirement as whether the show cause notice or the record indicated a valid and acceptable purpose of acquisition. In the present case the petitioner would be right to contend that at no point of time the reasons for acquisition were made known to the petitioner.

73. Now coming to the objections as raised on behalf of the respondents. Firstly, in regard to the objections which are raised on behalf of the SRA, that the SRA had adopted proper procedure to acquire the

said land and as the land as stood vested in the State Government by the issuance of the impugned notification dated 22 December 2016 under section 14(1) of the Act, hence no interference is called for in this petition, cannot be accepted. This contention as urged on behalf of the SRA overlooks that the exercise of powers to acquire land is not sacrosanct. Such power needs to be exercised in a manner known to law and in accordance with law. The justification for exercise of such powers is required to be borne out by the record. It cannot be that the SRA or the State Government at its pleasure select any of such lands and subject them to acquisition defeating the other provisions of the Slum Act. The power of acquisition is required to be exercised as permissible under the statutory scheme and subject to absolute reasons available on record that the other methods and means as provided under the statute have failed to fetch any result so as to bring about the redevelopment of such lands, more particularly when such safeguards /provisions are made in the statute as in the Slum Act. If such test is not satisfied then it can certainly be said that the right to acquisition can be selectively exercised and not conforming to the legitimate requirement of non-discrimination and equal protection as envisaged by Article 14 of the Constitution.

74. The Slum Act lays down a statutory scheme/policy under its

different provisions and more particularly as contained in the provisions as falling under Chapter I-A as discussed above. If the State Government and the SRA have exercised powers in issuing of the impugned acquisition notification, contrary to the said statutory scheme/policy and for reasons which cannot be considered to be acceptable, when so tested, considering the provisions of the Act, as noted above, then in our opinion there is no impediment for the writ court to interfere in the decision to acquire the land. We say so, as more particularly when the provisions of the Slums Act specifically confer a legal right on the owners to redevelop the land as permissible under DCR 33 (10) and which opportunity was sought to be availed by the petitioner as permissible under Section 3B(4)(e) read with Section 13(1) of the Slum Act, then the authorities ought to have permitted the petitioner to utilize the said opportunity as created by law.

75. The submission as made on behalf of the SRA that under regulation 33 (10) of the DCR read with Appendix IV a scheme for redevelopment of the slum was not submitted by the petitioner and more particularly when a notification under section 4 of the Slum Act qua 3045 sq meters was issued in the year 1979 followed by the declaration under 3C as made on 11th March 2011 for the entire land, also cannot be accepted. As observed above, a perusal of the provisions of DCR 33 (10)

read with appendix IV or the provisions of Slums Act nowhere contemplates any time limit within which the owner occupier or landholders are required to submit a slum redevelopment scheme on the issuance of a declaration under section 3C or even under section 4 of the slums Act. Moreover, as seen from the declaration under Section 3C dated 11th March 2011 issued by the SRA notifying the 9054 sq.meters as the slum rehabilitation area, it is clear from the following wordings of the said notification, that the effect is merely that the land has become available for development under DCR 33 (10):-

> "And in view of the said provision of section 3C(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, I S.S.Zende, the Chief executive officer, slum rehabilitation authority hereby declare the area shown in schedule as "slum rehabilitation area". On the said area, the Slum Rehabilitation Scheme is proposed to submit as per Greater Bombay Development Control Rules 1991, regulation 33 (10):..."

76. We may observe that as per Rule 1 of Appendix IV redevelopment/construction of hutment /dwellers owners, can be undertaken through agencies such as MHADA, MIDC,MMRDA etc. non-government organizations, anywhere within the limits of Brihan Mumbai. Thus, it is not a case that there is an absolute obligation on the owner to undertake redevelopment and to submit a rehabilitation scheme within a prescribed time schedule and thus the contention as urged on behalf of the SRA that the petitioner had not submitted a slum rehabilitation

scheme and it was thus imperative for the SRA and the State Government to acquire the land cannot be accepted. In our opinion, the respondents to support the contention that the petitioner has not come forward to redevelop the land and thus acquisition as undertaken is proper, have placed reliance on the decisions of this Court in **Avdesh Tiwari vs Chief Executive Officer (supra)**, **Murlidhar Tekchand Gandhi vs State of Maharashtra (supra), Pratap Singh Surji Vallabhdas vs State of Maharashtra (supra), Twin Deccan Builders vs State of Maharashtra** (supra). In our opinion, the reliance on these decisions is not well founded, principally for the reason that the none of the decisions concerned acquisition of land which was declared as a slum rehabilitation area under section 3-C of the Slum Act as also several opportunities were made available to the land owners in the said cases to redevelop the land.

77. We are thus in agreement with the view taken by the Division Bench in **Anil Gulabdas Shah** (supra) which was a case where the Court was concerned with the application of the amended provisions namely Chapter I-A of the Act where the Court has held that under section 13 of the Act as falling under amended chapter I-1 the SRA is obliged to first offer the land to the land owner or to the occupants thereon to come forward to redevelop the same and only on their failure the land could be

given to the third party. In this case land was declared as a slum rehabilitation area under Section 3C of the Slum Act and consequently the provisions of Chapter I-A of the Act were made applicable. Further a proposal submitted by the developer of the slum dwellers was accepted by SRA and a letter of intent was also issued in favour of the developer in pursuance of which the developer had commenced the development. Despite this overwhelming fact, it is held by the Division Bench that just because the redevelopment work had progressed and the owner would become entitled to compensation, it could not be held that the acquisition was legal. The Division Bench held that it was obliged to first offer the land to the owner for development under Section 3B(4)(e) and modified Section 13(1) of the Slums Act. The relevant observations of the Division Bench can be reads thus :

> " 20. … … ... 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 respondent 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 this submission 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 area 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 sum land is acquired first and then it is declared as a slum rehabilitation area, when it comes to 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 to over 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.

22**.....**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 by Chapter I-A of the Act, does allow the land to be handed over to a third agency for the rehabilitation of slums dwellers but it could be so done only after the private land owners were called upon to undertake 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.

… …

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 Gazetee 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 in 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 the 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 a 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 25.8.1999. This is how the scheme of the Act for the purpose of rehabilitation of slum dwellers ought to be understood and interpreted. … … …

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 (I) 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……..”
>
> (emphasis supplied)

Thus, our observations in interpreting provisions of Section 13 of the Act and the statutory scheme falling under chapter I-A find clear support in the above observation of the Division Bench. Thus the contention on behalf of the SRA that petitioner was merely writing letters cannot be accepted in the absence of the SRA first offering the land to be redeveloped by the petitioner. The SRA was certainly under obligation to call upon the petitioner for development of the slum to redevelop the slums on the land in question which it had failed to do and more particularly considering the mandate of the directions as contained in paragraph 25 of the said decision as applicable to all slum rehabilitation schemes.

78. We are also not persuaded to accept the contention as urged

on behalf of the society that the decision in **Anil Gulabdas Shah (supra)** stands set aside in view of consent terms dated 3 January 2012 arrived between the parties before the Supreme Court. It is a settled principle of law that when the Court passes an order, by consent of the parties the Court does not adjudicate upon the rights of the parties nor does it lay down any principle. Thus it cannot be said that the statement of law as declared by the Division Bench of this court in interpreting the provisions of section 3B and section 13 falling under Chapter I-A in **Anil Gulabdas Shah** (supra),in any manner stands diluted by the consent order between the parties. The Supreme Court in **Municipal Corporation of Delhi vs Gurnam Kaur**[31] in considering the issue as to which order can be treated as precedent held that orders made by consent of the parties cannot be treated as a precedent. The Court in para 10,11 and 12 observed thus:

> "10. It is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi.The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in **Jamna Das** case could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das case was made not only with the consent of the parties but there was an interplay of various factors and the Court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. The court no

31 (1989)1 SCC 101

doubt made incidental observation to the Directive Principles of State Policy enshrined in Article 38 (2) of the Constitution and said:

Article 38 (2) of the Constitution mandates the State to strive to minimise, amongst others, the in-equalities in facilities and opportunities amongst individuals. One who tries to survive by one's own labour has to be encouraged because for want of opportunity destitution may disturb the conscience of the society. Here are persons carrying on some paltry trade in an open space in the scorching heat of Delhi sun freezing cold or torrential rain. They are being denied continuance at that place under the spacious plea that they constitute an obstruction to easy access to hospitals. A little more space in the access to the hospital may be welcomed but not at the cost of someone being deprived of his very source of livelihood so as to swell the rank of the fast growing unemployed. As far as possible this should be avoided which we propose to do by this short order.

This indeed was a very noble sentiment but incapable of being implemented in a fast growing city like the Metropolitan City of Delhi where public streets are overcrowded and the pavement squatters create a hazard to the vehicular traffic and cause obstruction to the pedestrians on the pavement.

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows no argument was addressed to the Court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J.Fitzgerald, editor of the Salmond on Jurisprudence 12th edn explains the concept of sub silentio at p 153 in these words :

A decision passes sub silentio in the technical sense that has come to the attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of

> one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.
>
> 12. In Gerard vs Worth of Paris Ltd (k) the only point argued was on the question of priority of the claimant's debt, and on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co (London) Ltd vs Bremith Ltd., the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R. said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless since it was decided "without argument", without reference to the crucial words of the rule, and without any citation of authority" it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be re-opened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent can be treated as an ex cathedra statement having the weight of authority."

79. We are also not in agreement with the contention of the Society that the judgment of the Division Bench in **Anil Gulabdas Shah** (supra) has merged in the consent orders passed by the Supreme Court considering the well settled position in law as laid down in the decision in S.**Shanmugavel Nadar Vs. State of T.N. & Anr.**[32] The Court in para 15 observed thus :

32 AIR 2002 SC 3484

> "15. A situation near similar to the one posed before us, has been dealt in Salmond's Jurisprudence (Twelfth Edition at pp 149-150) under the caption-"Circumstances destroying or weakening the binding force of precedent: (perhaps) affirmation or reversal on a different ground". It sometimes happens that a decision is affirmed or reversed on appeal on a different point. As an example, suppose that a case is decided in the Court of Appeal on ground A, and then goes on appeal to the House of Lords, which decides it on ground B, nothing being said upon A. What, in such circumstances, is the authority of the decision on ground A in the Court of Appeal ? Is the decision binding on the High Court, and on the Court of Appeal itself in subsequent cases ? The learned author notes the difficulty in the question being positively answered and then states : (i) the High Court may, for example, shift the ground of its decision because it thinks that this is the easiest way to decide the case, the point decided in the Court below being of some complexity. It is certainly possible to find cases in the reports where judgments affirmed on a different point have been regarded as authoritative for what they decided; (ii) the true view is that a decision either affirmed or reversed on another point is deprived of any absolute binding force it might otherwise have had; but it remains an authority which may be followed by a Court that thinks that particular point to have been rightly decided."

80. We are also cannot accept the submissions of Mr.Sathe as also of Mr.Samdani that the provisions of chapter I-A are irrelevant considering the applicability of section 14 for acquisition of the land for development of a slum rehabilitation scheme in any slum rehabilitation area. This for two-fold reasons: firstly, it is not in dispute that the acquisition under the present case is of the land notified as slum rehabilitation area under section 3-C (1) of the Act and further that when such acquisition is to enable the SRA to carry out the development under the slum rehabilitation scheme then necessarily the amended provisions of section 14 as falling under Chapter I-A have become applicable; This is clearly

recognized by the following wordings of the impugned acquisition notification dated 22 December 2016:

> "And whereas, as required by the first proviso to sub-section (1) of section 14 of Chapter V read with Paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of the said Act, on representation from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, and after considering his report for the acquisition of said land it appears to the State Government that in order to enable the Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme in the slum rehabilitation area mentioned in said Schedule, the said land should be acquired;
>
> Now, therefore, in exercise of the powers conferred by sub-section (1) of section 14 read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of the said Act, the Government of Maharashtra hereby declares, by this notice, that it has decided to acquire the said land." (emphasis supplied)

81. Thus, when essentially the acquisition is an acquisition falling under chapter I-A of the slums Act the amended Section 14 (as falling under chapter I-A) would apply with some difference in as much as the amending Act, substitute sub-section (1) of section 14 in the following terms :

> *"(i)* In section 14, in sub-section (1),-
>
> (A) for the portion beginning with the words "Where on any representation" and ending with the words "clearance area" the following portion shall be substituted, namely:-
>
> "Where on any representation from 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."

Thus, considering the legislative scheme of Chapter I-A, section 14(1) as modified has been incorporated to enable acquisition of the category of land falling under the said Chapter.

82. The contention as urged on behalf of the SRA as also the Society that in the context of acquisition in the present case the provisions of Section 3B(4)(e) read with Section 13(1) and (2) of the Slum Act need not be considered as exercise of the power to acquire land as conferred under Section 14 is an independent power. There can be no quarrel on the submission that the power to acquire the land under Slums and those declared as slum rehabilitation areas needs to be exercised only under Section 14. However in our opinion, the acquisition of land which is declared as a slum rehabilitation area under Section 3C, cannot be undertaken defeating the preferential rights conferred on the owner to undertake a redevelopment under the provisions of section 3B(4)(e) and section 13 (1) of the Slum Act as held by this Court in **Anil Gulabdas Shah** (supra). The respondents to support this submission have also relied on decision of the Supreme Court in **Murlidhar Tekchand Gandhi (supra).** In our respectful opinion the decision of the Supreme Court in **Murlidhar Tekchand Gandhi (supra)** would not be applicable to the facts in hand for more than two reasons. Firstly in **Murlidhar Teckchand Gandhi** (supra) the Courts were not concerned with a land declared as a 'slum rehabilitation area' under Section 3C(1) as falling under Chapter I-A but were concerned with a declaration of the land as slum under Section 4

of the Slum Act. This is clear, firstly from the following observations in the judgment of the Division Bench of this Court in **Murlidhar Teckchand Gandhi vs. State Of Maharashtra**[33] in which the petitioners conceded to the position that the said amended provisions (Chapter I-A) are not applicable:-

> "28 Mr.Sathe's second and third contention are interconnected and therefore, are disposed of together. There is no dispute in the present case that there was no Notification as contemplated by Section 3-C of Slum Act issued by the Chief Executive officer of the Slum Rehabilitation Authority. Therefore, Mr.Sathe may be right in his submission that the provisions of specified Chapters of the Slum Act, as modified in terms of Section 3-D of the Slum Act might not apply to the said property. Section 3-B of the Slum Act empowers the State Government or the Slum Rehabilitation Authority (SRA) concerned with the previous sanction of the State Government, to prepare a general Slum Rehabilitation Scheme for areas specified under sub-section (1) of section 3-A for Rehabilitation of slums and hutment colonies in such area. The said property, in the present case, is undoubtedly, a property situated in the area specified under section 3-A of the Slum Act and further, even a general Slum Rehabilitation Scheme, as contemplated by section 3-B of the Slum Act is in place. However, section 3-D of the Slum Act provides that on publication of Slum Rehabilitation Scheme under sub-section (1) of section 3-B, the provisions of other Chapters of Slum Act shall apply to any area declared as the slum rehabilitation area, subject to certain modifications. Since, the said property has not been declared as 'Slum Rehabilitation Area', Mr. Sathe is right in his contention that the provisions of other Chapters of Slum Act will apply to the said property, in their original and not modified form. The question which therefore arises for determination is whether the compliance with the provisions contained in sections, 5,11, 12(7) and 13 of the Slum Act is necessary prior to exercise of powers of acquisition under Section 14 of the Slum Act and further, whether in the facts and circumstances of the present case, there has been any such compliance." (emphasis supplied)

83. Further in M**urlidhar Teckchand Gandhi (supra)** the Supreme Court in considering the challenge to the said decision of the

33 2016(2) Bom CR 539

Division bench was also concerned with the applicability of the provisions which were falling outside Chapter I-A of the Slum Act namely the provisions of Sections 3, 5, 11, 12, 13. This is clear from the following observations of the Supreme Court as made in the said decision :

> "It was urged by Shri Shyam Diwan, learned senior counsel appearing on behalf of the appellants that there was non-compliance of the mandatory procedure of the Act as provided under Sections 3,5,11,12 and 13 which ought to have been resorted to before issuing notification under section 4 of the Act. It was also urged that show-cause notice issued under Section 14 of the Act is non-est. As due to the operation of the interim order of stay on notification under section 4 of the Act, there was no slum area as such in terms of Section 4 of the Slum Act.
> … …
> "Shri Tushar R. Mehta, Additional Solicitor General, and Shri Ashok H. Desai learned senior counsel appearing on behalf of the respondents urged that it was not necessary to make compliance with the provisions of Sections 3, 5, 11, 12 and 13 of the Act while invoking the provisions of acquisition under Section 14. Section 14 is an independent provision and its operation is not dependent upon compliance with the provisions of Sections 3, 5, 11, 12 and 13. Opportunities were granted to the appellants to improve the conditions of the slum, its condition has been noted by the High Court in its order. Though earlier notice under Section 14 was issued thereafter, fresh notice for hearing was issued after the Division Bench had dismissed the previous writ appeal which order was challenged before this Court. When the interim order was operative, no final order was passed. Appellants have prayed for enhancement of compensation for which they filed an appeal, which was later withdrawn. Fair and due procedure of law have been followed and compensation had been determined. Thus, there was no violation of provisions of Article 300 A of the Constitution of India. With respect to the development, after the acquisition, it is the choice of the slum dwellers and they decided it to hand-over the project for redevelopment by entering into an agreement under the Development Control Regulation No. 33 (10) to M/s. Pooja Developers.
>
> First, we consider the question raised by the learned senior counsel on non-compliance of the provisions of Act. Sections 5, 11, 12(10), 13 and 14 are extracted hereunder:
> "[5 Power of Competent Authority of execution of works of improvement]
> (1) Where the Competent Authority is satisfied that any slum area or any part thereof is capable of being improved, at a reasonable expense, so as not 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, if any, to the Competent Authority, within thirty days from the date of such notice. A copy of such notice shall also be displayed at some conspicuous places in the area for the information of the occupants 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.

(2) 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.]

11. Power to declare any slum area to be a clearance area

(1) Where the Competent Authority, upon a report from any of its officers or other information in its possession, is satisfied as respects any slum area, that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area, the Authority shall cause that area to be defined on a map in such manner as to exclude from the area any building which is not unfit for human consumption or dangerous or injurious to health, and then it shall, by an order notified in the Official Gazette, declare the area so defined to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Act. The order shall also be given wide publicity in such manner as may be prescribed.

(2) Before any area is declared to be a clearance area, the Competent Authority shall satisfy itself as to the sufficiency of its resources, and ascertain the number of persons who are likely to be dishoused in such area, and thereafter, to take such measures as are practicable whether by the arrangement of its programme or by securing as far as practicable such accommodation in advance of displacements which will from time to time become necessary as the demolition of buildings in the area, or in different parts thereof proceeds, or in any other manner so as to ensure that as little hardship as possible is inflicted on those dishoused. The State Government may, subject to the provisions of Chapter V, and subject to the condition of previous publication, make rules for the purpose of carrying out the provisions of this sub-section; and without prejudice to the generality of this provision, Such rules may provide for ascertaining the number and names of persons who on a date to be specified by the Competent Authority were

occupying the buildings comprised in the clearance area, for the location of the accommodation either temporary or permanent and extent of floor areas to be provided to those who are dishoused, for occupying the building after it is re-erected, for rent to be paid for the temporary accommodation provided to those who are dishoused, the circumstances in which persons provided with temporary accommodation may be evicted, and for purposes connected with the matter aforesaid. The provisions of sub-section (2) of section 46 shall apply in relation to rules made under this section as they apply to rules made under that section.

(3) The Competent Authority shall forthwith transmit to the Administrator a copy of the declaration under this section, together with a map and statement of the number of persons who, on the date specified by the Competent Authority under sub-section (2), were occupying buildings comprised in the clearance area.

12. Clearance order

(10) Subject to the provisions of this Act, and of any other law for the time being in force in relation to town planning and to the regulation of the erection of buildings where a clearance order has become operative, the owner of the land to which the 1[clearance order] applies, may redevelop the, land in accordance with the plans approved by the Competent Authority, and subject to such restrictions and conditions (including a condition with regard to the time within which the redevelopment, shall be completed), if any, as that Authority may think fit to impose :

Provided that an owner who is aggrieved by a restriction or condition so imposed on the user of his land, or by a subsequent refusal of the Competent Authority to cancel or modify any such restriction or condition may, within such time as may be prescribed, appeal to the Tribunal and its decision shall be final.

13. Power of Competent Authority to redevelop clearance area

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

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

Provided that, before passing such order, the owner shall be given

a reasonable opportunity of showing cause why the order should not be passed.

14. Power of State Government to acquire land

(1) Where on any representation from the Competent Authority it appears to the State Government that, in order to enable the Authority 1[to execute any work of improvement in relation to any slum area or any building in such area or] to redevelop any clearance area, it is necessary that any land within adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the Official Gazette, a notice to the effect that the State Government has decided to acquire the land in pursuance of this section:

[Provided that, before publishing such notice, the State Government, or as the case may be, the Collector may call upon by notice the owner of, or any other person who, in its or his opinion may be interested in, such land to show cause in writing why the land should not be acquired with reasons therefore, 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].

3 [(1 A) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.]

(2) 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.

It is apparent from a bare reading of the aforesaid provisions that Section 14 with respect to acquisition is not conditional upon Chapter IA from Section 3A to 3W of the Act which contains provisions as to Slum Rehabilitation Scheme. We find that Slum Rehabilitation scheme has a totally different object under Chapter IA. It contains procedure with respect to slum rehabilitation which is not so in case of acquisition. Thus, the provisions of Chapter 1 A are not at all attracted."

84. Thus it is clear from the above observations of the Supreme Court that the Court was not called upon to decide the question, as posed for consideration in the present case, namely the preferential right created by the provisions of section 3B(4)(e) read with Section 13 (1) of the

Slum Act, as falling under chapter I-A of the Slums Act. The Court was also not called upon to decide an issue falling under chapter I-A of the Act. Further the contention of Mr. Samdani that the decision in **Anil Gulabdas Shah** (supra) stands overruled also cannot be accepted. The Supreme Court has not even referred to the decision of the Division Bench in **Anil Gulabdas Shah** nor the parties before the Supreme Court relied on the said decision. Further there is no question of the decision being impliedly overruled, when the Supreme Court has made the observations as emphasized by us above namely "It is apparent from a bare reading of the aforesaid provisions …….", in saying so the Court was referring to the provisions as extracted by the Court namely Section 11, 12, 13 and 14 of the Slum Act which were falling outside Chapter I-A of the Act. This for the reason that the issue before the Supreme Court was not an issue similar to the one as arising in **Anil Gulabdas Shah** (supra).

85. The contention as urged on behalf of the society that by the impugned notification dated 22 December 2016 issued under section 14(1) of the Slum Act the land had stood vested in the State Government and by virtue of such vesting the petition itself is not maintainable also cannot be accepted in as much as it cannot be countenanced that this court is precluded from examining the decision of the State Government

and the SRA leading to the issuance of impugned notification issued under section 14-1 of the slums Act and on being satisfied that the decision to acquire the land had failed to satisfy the test of law, set aside the said decision.

86. We now briefly refer to the decisions as relied on behalf of the parties.

87. As noted above, the Division Bench of this Court in **Anil Gulabdas Shah** (supra) has held that the owner would have a preferential right under section 13(1),(2) to undertake re-development of the slum rehabilitation area and acquisition by the authorities without recognizing such rights, will be illegal. It is to be noted that this legal position has also been accepted by the SRA by issuance of a circular dated 9.11.2015 in which in para 2 the SRA has clearly notified that under section 13(1), in respect of slums on private lands, the owner would have a primary right and to that effect earlier circular no.144 has been modified. We find much substance in the contention of the petitioner that the SRA has accepted this position in law, of a preferential right conferred on the owner in issuing this circular which also conforms to the acceptance of the law laid down by the Division Bench of this Court in **Anil Gulabdas Shah (supra)**. As rightly contended by the petitioner conduct of the SRA is thus clearly in

the nature of *contemporanea expositio*. In support of this contention in our opinion, the petitioner has rightly relied on the decision of the Supreme Court in **K. P. Verghese vs Income Tax Officer** (supra) wherein the Supreme Court has held that the rule of construction by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to the exposition. The Supreme Court has held thus:

> ".....These two circulars of the Central Board of Direct Taxes are, as we shall presently point out binding on the Tax Department in administering or executing the provision enacted in sub-section (2), but quite apart from their binding character, they are clearly in the nature of *contemporanea expositio* furnishing legitimate aid in the construction of sub-section (2). The rule of construction by reference to *contemporanea expositio* is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in Crawford in Statutory Construction, (1940 Edn.) where it is stated in para 219 that
>
> > administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight; it is highly persuasive.
>
> The validity of this rule was also recognised in **Baleshwar Bagarti v. Bhagirathi Dass** where Mookerjee, J. stated the rule in these terms:
>
> > It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactments and since, by those whose duty it has been to construe, execute and apply it.
>
> and this statement of the rule was quoted with approval by this court in Deshbandhu Gupta & Co vs Delhi Stock Exchange Association Ltd. It is clear from these two circulars that the Central Board of Direct Taxes, which is the highest authority entrusted with the execution of the provisions of the Act, understood sub-section (2) as limited to cases where the consideration for the

> transfer has been understated by the assessee and this must be regarded as a strong circumstance supporting the construction which we are placing on that sub-section."

88. We are also not impressed with the submissions as urged on behalf of the society that opportunity was available to the petitioner to undertake re-development of the land under DCR 33 (10) which had come into force in the year 1997 and having not availed the opportunity of re-development the land since the year 1997 the petitioner cannot claim any preferential right under section 13 (1) of the Slums Act as the petitioner did not undertake re-development for a unreasonable period since 1997. This submission cannot be accepted for two reasons. Firstly, that in the year 1997 when DCR 33 (10) was brought into force, it created an independent right falling under a different enactment/rules namely the 'Development Control Regulation' which is a delegated legislation framed under the Maharashtra Regional Town Planning Act. The provisions of the DCR cannot be imported to interpret either to construe extinguishment of any right, of the owners of land under section 13 (1) of the Slums Act. DCR 33 (10) enables the concerned persons to undertake re-development of slum areas in a manner as set out under DCR 33 (10). For the purpose of the Slum Act and more particularly interpretation of section 13 or section 14 the provisions of DCR 33 (10) cannot be considered to be relevant. The concerned statutory provisions also do not permit such an

interpretation. In this context, we refer to the *Principles of Statutory Interpretation,* 14th Edition by G. P. Singh. The learned author has expressed thus:

> *Para 75*..... In interpreting a provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction. The principles stated above are 'well-settled'. A legal fiction may also be interpreted narrowly to make the statute workable."

The above principle has been referred with approval by the Supreme Court in its decision in **State of Karnataka vs State of Tamil Nadu & ors.** (supra)

89. We also cannot accept the submission as urged on behalf of the society that since the society has submitted a scheme prior to the petitioner's scheme, the preferential right in favour of the petitioner does not survive. This submission pre-supposes that there is a preferential right in the petitioners to redevelop the said land. We are quite surprised by this submission as made on behalf of the society. This firstly, for the reason that even otherwise society's scheme was admittedly not complete so as to be stated to fulfill the requirements of a valid application (See

Atesham Ahmad Khan and others vs Lakadawala (supra)***)*** The nature of the proposal/scheme of the society for not fulfilling the essential requirements can also be seen from the contents of para 5 and 10 of the affidavit in reply of the society dated 9.11.2017, in Chamber Summons No.232 of 2017 (page 589 and 592-593). The society has clearly admitted that there was no NOC from the City Survey Office and Engineering Department of SRA and NOCs were awaited and that the NOC cannot be issued until acquisition of the property is done.

90. Another aspect of the case is the legal consequence created by the proviso to section 14 (1) of the Slums Act. The proviso to section 14 of the Slums Act would clearly cast an obligation on the State Government to consider the reports of the SRA as also objections which were raised by the petitioner to the acquisition and considering the said material, may pass appropriate order as it deems fit. In the present case, the Hon'ble Minister has passed an order dated 17th November 2016 directing that acquisition of the land under section 14 (1) be undertaken. However, this order was not communicated to the petitioner as also the order does not contain any reasons for which objections of the petitioners have been rejected nor any reasons are borne out by the record. In our opinion, surely the requirement of law was that the order dated 17th November

2016 passed by the Hon'ble Minister, though not communicated was required to contain reasons for rejection of the petitioner's objections as also the same was required to be communicated to the petitioner. This conclusion which we have reached is supported by the decision of the Supreme Court in **Bachhitar Singh vs State of Punjab and another (supra)**. The Supreme Court in para 9 and 10 of the decision has held that it is necessary for the government to communicate the order/remarks. The Supreme Court observed thus:

> "9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such order is drawn up the State Government cannot in our opinion be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.
>
> 10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution therefore requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council or Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be

> completely opposed to the earlier opinion. Which of them, can be regarded as the "order" of the State Government ? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgement of this Court in the State of Punjab vs Sodhi Sukhdev Singh.
>
> "Mr.Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him and that according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."
>
> Thus, it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

91. In **State of West Bengal vs M.R.Mondal and another** (supra) the Supreme Court in para 16 observed thus:

> "An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of the law or claim to have come into operation and effect. No reliance can be placed on the same to even assert a claim based on its contents."

92. Also in **Oryx Fisheries Private Limited vs Union of India** (supra) the Supreme Court held that even in a quasi-judicial proceeding, justice is rooted in confidence and justice is the goal of a quasi-judicial

proceedings also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Referring to the decision in Kranti Associates (P) Ltd vs Masood Ahmed Khan (2010) 9 SCC 496 the Supreme Court in paragraph 40 observed thus :

> "40. In Kranti Associates this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-512)
>
> "(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (b) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi judicial or even administrative power.
>
> (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
>
> (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi judicial and even by administrative bodies.
>
> (g) Reasons facilitate the process of judicial review by superior courts.
>
> (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision making justifying the principle that reasons is the soul of justice.
>
> (i) Judicial or even quasi judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
>
> (j) Insistence on reason is a requirement for both judicial accountability and transparency.
>
> (k) If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible

> to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
>
> (l) Reasons in support of decisions must be cogent,clear and succinct. A pretence of reasons or 'rubber stamp reasons' is not to be equated with a valid decision-making process.
>
> (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harv. L.Rev. 731-37.)
>
> (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija vs Spain EHRR at p.562 para 29 and Anya v University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions.'
>
> (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process.'"

It is thus clear that there is a requirement of recording reasons which is an essential requirement in exercise of a quasi-judicial power by the authorities. Thus, reasons were required to be recorded by the Hon'ble Minister in support of the conclusions that has reached in a cryptic order dated 17th November 2016.

93. We also accept the contention as urged on behalf of the petitioner that the decision of the Supreme Court in **Murlidhar Teckchand Gandhi** (supra), **Twin Deccan Builders vs State of Maharashtra** (supra), and in **Pratap Singh Vallabhdas vs State of** Maharashtra (supra), cannot be relied as a precedent on the of

interpretation of section 13(1) read with section 3B(4)(e) of the Slum Act as falling under Chapter I-A, creating preferential rights in the petitioner/ owner of the land, to undertake redevelopment. In the said decisions, the Court was not concerned with land which was declared as a 'slum rehabilitation area' under section 3C(1) of the Slums Act but, was concerned with the land which was declared as a slum under Section 4 of the Slums Act. As discussed above, the legislative scheme is materially different when the land is declared as a slum under section 4 and to a land which is declared as a slum rehabilitation area under section 3C (1). We may note that the *ratio decidendi* of these decisions is certainly not as to what is being canvassed by the respondents. The subject matter of consideration of the Court in the said decision is certainly not similar to the issues which fall for our consideration in the present case. For a decision to be followed for its precedential value, what is necessary is to be seen what constitutes the ratio decidendi and not some conclusions based upon some facts which may appear to be similar. The duty of the court would be to ascertain as to what is the ratio decidendi of the judgment. As noted above in detail, the Supreme court in **Murlidhar Teckchand Gandhi** (supra) was not dealing with the specific issue as in the present case in regard to the applicability of chapter I-A of the Act or in respect of a land declared as a slum rehabilitation area' under section

3C (1)of the Slum Act. The law is well-settled that uncomparable facts make a world of difference between conclusions which would be arrived in two cases. In view of this clear position, in our opinion the judgment of the Supreme Court in **Murlidhar Teckchand Gandhi** (supra) cannot operate as a ratio decicendi in the present case. The law on the Doctrine of ratio decidendi needs to be noted. In **Regional Manager vs Pavan Kumar Dubey** (supra) in para 7 has observed thus:

> 7. "It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

94. In the Constitution Bench decision of the Supreme Court in **Union of India vs Chajju Ram** (supra) **i**n holding that the decision is an authority for that it decides and not what can be logically deduced therefrom. In para 23, the Court observed as under :

> "23. It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion."

95. We are also not persuaded to accept the submissions of Mr.Samdani learned senior counsel for the Society, that from the year 1979 when part of the land was declared as a slum under section 4 of the Slums Act and thereafter in the year 1997 when DCR 33 (10) came into

effect no steps were taken by the petitioner as also no steps were taken by the petitioner to redevelop the land in question and thus the acquisition of land is just and proper. Mr.Samdani learned senior counsel would support his contention relying on the decision of the Division Bench **in Om Sai Darshan Co-operative Housing Society vs State of Maharashtra** (supra) **and Nenshi Monjee vs State of Maharashtra** (supra)**.**

96. In ***Nenshi Monjee*** *(supra),* the land was declared as a slum under section 4 (1) of the Slums Act by a notification dated 31.8.1977. A show cause notice dated 21.12.2004 was issued under section 41 of the Act to the petitioner as also an intimation of the show cause notice was pasted at the site in presence of panchas. The petitioner failed to respond to the show cause notice. As there was no response to the show cause notice, the show cause notice was also published in two daily newspapers. No response was submitted by the petitioner therein and ultimately by a notification dated 22.12.2005 which was almost one year after the issuance of the show cause notice, the State Government acquired the land in question. It is in these circumstances, the Court considered the application of the provisions of DCR 33 (10) and observed that in the facts of the case, if the petitioners were to undertake the slum rehabilitation scheme on their own, the petitioners were required to obtain 70% consent

of the slum-dwellers for undertaking a slum rehabilitation scheme. We are afraid that this judgment would not assist the society in any manner. In the present case, the petitioner had objected to the show cause notice under section 14(1); secondly it is difficult to reach a conclusion that there was delay on the part of the petitioner to express its willingness and come forward to re-develop the land after it was declared as a slum rehabilitation area (declared on 11 March 2011). Considering the correspondence, it cannot be said that the petitioner was sleeping over its rights. In any case, after issuance of the notification under section 3C declaring the land as a slum rehabilitation area, we cannot attribute any gross conduct of delay on the part of the petitioner in sleeping over their rights so as to non-suit the petitioner on that ground.

97. The decision in **Om Sai Darshan society (supra)** the court was dealing with the issue as noted by the Court in para 2 of the decision which reads thus :

> "This petition under Article 226 of the Constitution of India interalia seeks to challenge the orders of eviction dated 4th March 2005 issued by the respondent no.3 (Mumbai Housing and Area Development Board) against the members of the petitioner no.1 proposed society under sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (hereinafter referred to as "the slum Act"). In the said notices, it is alleged that the members of the petitioner no.1 to whom notices have been addressed have refused to shift to the alternative accommodation offered by the developer i.e respondent no.7. It is stated in the notices that if the concerned persons failed to show cause, action of eviction will be taken under sections 33 and 38 of the Slum Act. The second prayer in this petition is for a writ of

> mandamus directing Respondent nos.2,3 (Slum Rehabilitation Authority) and respondent no.6 (Deputy Collector, SRA) to hear the applications made by the petitioners for grant of Index-II for development of the property in favour of the petitioner no.1 proposed society. The petitioners have taken out a notice of motion for interim protection against demolition. An order of status quo has been granted on 12th December 2005 and the same has been continuing."

In dealing with the said issues which are quite different from the issues before us, the Court considered a question whether the issuance of notification under section 3C(1) of the Slum Act, is a condition precedent for sanction of slum development scheme governed by DCR 33 (10). The court held that issuance of notification under section 3C(1) of the Slum Act is not a condition precedent for sanction of a slum redevelopment scheme governed by DCR 33 (10). In our opinion, this decision would not be applicable to the facts in hand. In any event, in the facts of the case, the land was declared as a slum rehabilitation area under section 3C (1) for the first time on 11 March 2011. The law no where creates an automatic mandate on the owner of the land to redevelop slum immediately when it is either fully or partly notified as a slum or a slum rehabilitation area. On the contrary, for all these years since 1979, nothing precluded the SRA from using appropriate powers and issuing directions for maintenance and/or betterment of the slum dwellers. Surely it is an obligation on the authorities to utilize the powers as conferred on the authorities in a balanced manner and to further the real object and purpose of the legislation and not to exercise jurisdiction only on specific

issues which would not only delay the development but also add to the suffering of the slum dwellers. A reasonable, effective, mitigating and a balanced approach is required to be adopted by the authorities so that the slum redevelopment projects become effective and are not stuck into litigation for large number of years. It is for this purpose that right from inception the SRA is required to find out effective and appropriate solutions and if need so arises in consultation with the State Government and other planning authorities, by taking into confidence all the stake holders. It is only when such approach is adopted the legislation will become effective and would benefit those who deserve to be benefitted. Though the legislation can be said to have immensely benefited to rehabilitate the slum dwellers but at the same time it cannot be overlooked that it has created large litigation. It is high time that such litigious issues are avoided and the slums are eradicated by providing decent and legitimate housing facilities to the slum dwellers with utmost expediency. The efficiency of administering the Act is surely in the hands of the SRA and the State Government. If appropriate and effective steps are taken by the concerned officers keeping in view the larger public interest and the object the enactment intends to achieve an ideal situation can surely be brought about. This would also achieve the constitutional object as enshrined in Articles 38, 39, 48 and 49 of the Constitution read

with article 21. The responsibilities on the authorities is onerous and more particularly when large urban areas like Mumbai are in need of such balanced, efficient and effective implementation of such social welfare legislation.

98. Lastly the decision in ***Jagnnath Hanumant Sonawane & Ors. vs. S.R.A & Ors.***[34] rendered by the learned Single Judge of this Court is also not applicable in the facts of the present case. The issue which fell for consideration of the Court was a challenge to an order passed under Section 3C(1) of the Slum Act declaring the land in question in the said proceedings as a 'slum rehabilitation area', without issuance of a show cause notice to the petitioner who inherited the leasehold interest in the land. It is in this context analyzing the provisions the Court was of the view that the exercise of the powers under Section 3(1) by the Chief Executive Officer, is not a legislative exercise of power so as to exclude principles of natural justice. We are afraid as to how this decision would be of any assistance to the Society. The petitioner has not raised any challenge to the declaration of the land in question as a slum rehabilitation area under section 3C(1) of the Slum Act.

99. We thought it appropriate not to burden this judgment

34 Writ Petition No.2488 of 2011, order dt.11/5/2011

discussing other decisions as cited on behalf of the parties as these decisions are not arising in the context of declaration of a slum rehabilitation area under Section 3C of the Slum Act wherein the provisions of Chapter I-A were not attracted. We have referred in detail, only those decisions which in our opinion were relevant and necessary in the context and adjudication of the issues to be decided.

100. Before we conclude and in addition to the above discussion, we may broadly summarize the reasons which in our opinion would render the impugned acquisition to be illegal:-.

i. The SRA/ State Government has acted in patent disregard to the preferential rights of the petitioner to undertake redevelopment of the said land as available under the provisions of section 3B(4) (c) and (e) read with Section 13(1) falling under Chapter I-A of the Slum Act.

ii. There was a failure to recognize these rights of the petitioner/owner, by the SRA and the State Government, Such rights if were to be recognized by the authorities, the petitioner would have surely availed to undertake redevelopment of the said land.

iii. The consequence of non-adherence/breach of these provisions and non-recognition of the said rights as conferred on the owner, and directly resorting to acquisition of the land by exercising powers under section 14(1) would render nugatory the said statutory provisions, which bring about no different consequence which the owner would bring about, without the acquisition of the land, namely, the redevelopment of the slum rehabilitation area.

iv. Permitting such exercise of power oblivious to the said provisions of the Slum Act so as to acquire the slum rehabilitaion area, would be nothing short of conferring arbitrary powers to pick and choose lands for acquisition at the discretion of the SRA/State Government, resulting in defeating the statutory intent as created by the said provisions.

v. Considering the declaration of the said land as a slum rehabilitation area vide notification issued under Section 3C(1) of the Slum Act dated 11 March 2011, and the consistent assertion of the petitioner to undertake redevelopment, an opportunity was required to be conferred on the petitioner to undertake redevelopment in consonance

of the law laid down by the Division Bench in Anil Gulabdas Shah (supra) and the SRA's own circular dated 9 November 2015 conferring preferential right on the land owners to undertake redevelopment as per section 13(1) of the Act and the consequential actions taken in other cases.

vi. The SRA has selectively acted in deciding to acquire the land in question as the petitioner was not called upon at any point of time to undertake the development as issued in many other cases. Fairness in resorting to acquisition proceedings is a *sine qua non* and requirement of Article 14 of the Constitution.

vii. And lastly as noted above, the SRA had not examined the authenticity of the documents which formed part of the proposal of the society to acquire the land. It is thus difficult to accept that there was at all a valid proposal to be acted upon.

viii. The Order passed by the State Government under Section 14(1) in the present case also cannot be supported by any acceptable legal measure to uphold the acquisition when tested on the touchstone of Article 14 of the Constitution.

101. In view of our conclusion that the impugned notification has been issued in violation of the provisions of section 3B(4)(c)and (e) and section 13(1) falling under Chapter I-A, in such a situation the Court cannot be said to be lacking in power in exercise of its jurisdiction under Article 226 to quash the notification. We thus cannot accept the contention of the respondents that in view of the land having vested in the State Government the petitioner's remedy is to receive monetary compensation and avail of a remedy under Section 17(6) of the Slums Act, considering the view we have taken on the illegality of the acquisition. The law in this regard is well settled. Further the Court had also granted interim protection to the petitioner, by an interim order dated 27 January 2017 the Court had directed the parties to maintain status quo as it existed. The said order continues to operate till date.

102. As a sequel to the above discussion, we answer the questions as framed by us as under :

(i) The petitioner as a owner of the land has a preferential right to undertake redevelopment of the land in view of the specific provisions as contained in section 3B(4)(c) and (e) and section 13(1) falling under Chapter I-A of the slums Act. We are in complete agreement with the view taken by the Division Bench in the case of **Anil Gulabdas Shah** (supra) which stands as good law.

(ii) The authorities having failed to recognize the aforesaid rights of the petitioner, the acquisition of the land under Section 14 (1) of the Slums Act is rendered illegal and void ab initio.

103. We accordingly set aside the impugned notification dated 22 December 2011 issued under section 14(1) of the Slums Act and the consequential notice dated 9 January 2017 issued by the SRA. We direct the respondent nos.1 and 2 to process the petitioner's application/proposal for implementation of a slum rehabilitation scheme as per law, as expeditiously as possible and preferably within a period of eight weeks from today.

104. The writ petition stands allowed in the aforesaid terms, however, there shall not be order as to costs.

105. The pending Chamber Summons no.232 of 2017 does not survive. It is accordingly disposed of.

(G.S.KULKARNI,J) (SHANTANU KEMKAR,J)