IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1326 OF 2007

Tulsiwadi Navnirman Coop.
Housing Society Ltd. & Anr. .. Petitioners
Versus
State of Maharashtra & Ors. .. Respondents

Mr.S.U.Kamdar with Archana Panchal i/b.P.G.Desai for petitioners
Mr.K.K.Singhvi, Senior Advocate with S.S.Pakale and Aruna Savla for Mumbai Municipal Corporation.
Mr.T.N.Subramaniam, Senior Advocate for intervenors
Mr.Shrihari Aney, Senior Advocate with Sanjay Jain and N.M.Dhruva i/b. M.Dhruva and Company for respondent No.6
Mr.Ravi Kadam, Advocate General with K.R.Belosey, G.P. for State
Mr.Ravi Kadam, Advocate General with Mr.G.D.Utangale i/b. Utangale & Co. for S.R.A.

WITH

WRIT PETITION NO.887 OF 2004

Anup Kalyandasani .. Petitioner
Versus
Municipal Corporation of Gr.
Mumbai and Ors. .. Respondents

WITH

WRIT PETITION NO.75 OF 2006
WITH

NOTICE OF MOTION NO.750 OF 2006

Daryus Panthakey .. Petitioner
Versus
Municipal Corporation of Gr. Mumbai and Ors. .. Respondents

WITH

WRIT PETITION NO.1707 OF 2006

Vilas Nana Agawane & Ors. .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION NO.2186 OF 2006

Lokhandwala Idnfrastructure Pvt.Ltd. .. Petitioner
Versus
Slum Rehabilitation Authority and Ors. .. Respondents

WITH

PUBLIC INTEREST LITIGATION NO.20 OF 2007

Mangesh V. Hedulkar .. Petitioner
Versus
B.M.C. & Ors. .. Respondents

WITH

WRIT PETITION NO.74 OF 2007
WITH
CHAMBER SUMMONS NO.244 OF 2007

Shivaji Nagar Rahiwashi Sangh and Ors. .. Petitioners

Versus
State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION LOD.NO.678 OF 2007

Ravindra C. Patra and Ors. .. Petitioners
Versus
Slum Rehabilitation Authority
and Ors. .. Respondents

WITH

WRIT PETITION LOD.NO.759 OF 2007

Lok Jagran Manch, Mumbai & Ors. .. Petitioners
Versus
Slum Rehabilitation Authority
and Ors. .. Respondents

WITH

WRIT PETITION NO.1193 OF 2007

Anvarul Mehbula Chaudhary .. Petitioner
Versus
Chief Executive Officer (SRA)
and Ors. .. Respondents

CORAM : SWATANTER KUMAR, C.J.
DR.D.Y.CHANDRACHUD, J &
S.C.DHARMADHIKARI, J.
Reserved on: 22nd August 2007
Pronounced : 1st November 2007.

JUDGMENT (Per Dharmadhikari, J) :-

. These petitions are placed before the Full Bench after a detailed order was passed in W.P.No.1326 of 2007 on 27th July, 2007.

2. The Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971, (hereinafter referred to as "Slum Act" for short) came to be extensively amended in 1996-97 and 2001, introducing Chapter I-A therein. That Chapter is entitled "Slum Rehabilitation Scheme". Under that Chapter falls Section 3A. This provision is inserted with a view to establish a Slum Rehabilitation Authority (S.R.A. for short) for implementing Slum Rehabilitation Scheme. After this Chapter was introduced in the Slum Act and such Authority became functional for Brihanmumbai and its suburbs, that the S.R.A. decided to undertake and implement several rehabilitation schemes. The State took notice of proliferation of Slums on public lands and

properties. Therefore, it decided to confer wide powers on the S.R.A. so that the public lands are cleared by S.R.A. acting in coordination with the local authorities. For that purpose, the State Government made appropriate amendments and inserted provisions in the planning and local laws. Insofar as, Mumbai is concerned, S.R.A. was put in charge of permitting developments on lands, which had large slum pockets. Lands were of private/public ownership. Therefore, after amending Maharashtra Regional and Town Planning Act (M.R.T.P. Act) for short, the Development Control Regulations for Brihanmumbai (D.C. Rules 1991) were also amended. These Development Control Regulations are traceable to section 22(m) of the M.R.T.P. Act, 1966. For individual development to be controlled, monitored and regulated as also restricted, development control rules were made and they are traceable to the Development Plan itself.

3. One of the Regulations in the set of Regulations, to control development in Mumbai, pertains to Floor Space Index and its computation (F.S.I). While, computing the permissible F.S.I. for development of the lands/property, incentives were offered by the State and Local Body (Brihanmumbai Municipal Corporation) to Developers and Builders. An obligation was cast upon them as also the owners of these private lands to rehabilitate the slum dwellers at the same site as far as possible and after discharging this obligation to develop the plot/land. The incentive was increased F.S.I. or appropriate adjustments in computing permissible outer limit. At the same time, the slum pockets were also offered incentive inasmuch as persons residing in slums were permitted to organise themselves into Cooperative Housing Societies and such Cooperative Societies were further permitted to come forward with a proposal for development of the land, on which slums are

situated or located, either by societies themselves or an outside Agency and incentives were offered for the same as well.

4. The underlying object for the above being clearance of the lands by removal of the slums and dilapidated structures. It is now a well known fact of which judicial notice has been taken repeatedly, that large scale encroachment takes place as far as Government properties and lands are concerned. The Government and its instrumentalities and agencies are unable to control encroachment, illegal squatting and unauthorised development on its lands as the political will and strength is lacking. The slum pockets being Vote Banks, preventive or prohibitory measures are not initiated at right time. The number of encroachers and squatters on lands, roads and pavements have increased and one can witness the same. Once the incentives were offered as above and regulatory and

rehabilitation measures and schemes were mooted number of disputes and differences between the slum dwellers/encroachers and the local authority and appropriate agencies have arisen which are consuming valuable time of this Court. In such disputes, the acts and omissions of the Authorities and Agencies are highlighted. The State and the SRA does not resolve them is the principal grievance. Hence, steps are taken to approach this Court.

5. Every Division Bench assigned constitutional and writ matters on the Original Side has to deal with petitions under Article 226 of the Constitution of India arising specifically from Mumbai, wherein above disputes and differences are involved. The request is to resolve the same in this Court’s constitutional and Writ Jurisdiction.

6. Noticing an increasing spate of

litigation and the nature of disputes and differences projected therein, it was decided that certain parameters need to be laid down which would enable this Court to take note and cognisance of genuine grievances. Hence, the first and foremost objective of setting up a larger bench was laying down the parameters.

7. The second reason which necessitated constituting a Full Bench is that a contention was raised that conflicting views have been expressed by Division Benches of this Court not only with regard to parameters referred to above but also the rights of the slum dwellers and the extent to which the State and S.R.A. can go into the question and issues arising out of such rights. In this behalf, the attention was invited to some Division Bench decisions of this Court, which are noticed by a Division Bench (consisting of Hon'ble Chief Justice and Hon'ble Dr.Justice D.Y.Chandrachud). The conflict was on

account of some observations in these decisions with regard to the nature of the power conferred upon the State and the S.R.A. during the course of implementation and monitoring of a Slum Rehabilitation Scheme. A request was made to resolve the disputes and differences and set at rest the controversy with regard to the authority and power of the State Government and S.R.A. to settle and adjudicate upon the questions, issues and disputes raised during the course of implementation and rehabilitation scheme.

8. Noticing the issues and questions of far reaching public importance raised during the oral arguments, that a Division Bench of this Court felt that it would be just, fair and proper to constitute a larger bench and refer to it certain questions, for being answered. This is how a Full Bench has been constituted.

9. The facts in the Writ Petitions need not

be noticed in great details. Suffice it to state that in Writ Petition No.1326 of 2007, the reliefs claimed are that, the permission granted on 11th February 2005 and 30th April 2005 and sanction of building plans in pursuance thereof be declared as illegal, invalid, ultravires of the powers of respondent Nos. 2 and 3 viz., Municipal Corporation and S.R.A. Although, this is not a petition which could be said to be representative of the questions and issues arising frequently, yet, some indication thereof is available from the allegations and statements made therein. Petitioners therein are occupiers and tenants of tenements situate at Tulsiwadi, Tardeo, Mumbai. Some of the occupiers and tenants from amongst 3220 families are Municipal Employees. The Municipal Employees are housed in structures and building which are owned by Municipal Corporation whereas other structures are slums and huts occupied by slum dwellers. The occupants of these tenaments/chawls and

structures promoted 17 different societies including respondent No.5 which is a proposed society. Later on 16 of the societies out of these 17 societies came together under the umbrella of petitioner No.1. The petitioner persuaded the proposed society also to join them. That attempt could not succeed. As usual occupiers in the dilapidated structures/slums/huts became members of these societies with a view to fulfil their dream of having alternate permanent construction/tenaments. Shanties, slums and dilapidated structures in which such persons were staying for decades together being on the verge of collapse or likely to be demolished, an opportunity was taken by the occupants thereof to present a proposal or scheme for development of the property/land upon which the structures are standing. However, there being difference of opinion between two societies, two proposals for development were presented. Thus, on one

property there was a scheme which was proposed by a society which was yet to be registered whereas another was proposed by the petitioner No.1 society, yet, another scheme was proposed by respondent No.6. All the schemes were presented for further processing and scrutiny. It is common ground that the proposals/schemes presented by these societies were financed by eminent builders and developers. There was a litigation on account of the rival schemes and this Court by an order dated 23rd February 1999 passed in W.P. 2406 of 1998 appointed Mr.Justice M.N.Chandurkar (Retd. Chief Justice Madras High Court) to consider and go into the allegations with regard to the schemes. The Municipal Corporation had appointed respondent No.6 as developer for the scheme/project which decision was the subject matter of challenge in the petition and the Hon'ble Judge was requested to record his opinion and forward it to this Court. Learned Judge opined that the decision to award

the contract to respondent No.6 does not suffer from any undue preference or favouritism.

10. After setting out the salient features of the urban renewal scheme of Tulsiwadi what the petitioners allege is that despite obtaining several permissions and clearances for implementing the comprehensive scheme, later on the scheme was sought to be divided by entertaining a request from slum dwellers on a portion of the property for development under D.C. Regulation No.33(10) of the D.C.Regulations. Petitioners' contention is that Regulation 33(9) of the said Regulations would be the applicable one but taking into consideration the request of slum dwellers on portion or pockets of the properties in question, another scheme purporting to be under D.C. Regulations 33(10), in derogation of the main scheme, is being entertained. It is alleged that the bifurcated scheme is supported by an minuscule of

slum dwellers and hutment occupiers. It is not a separate pocket or portion or property to say in the least. Yet, a list of these structures has been separately prepared and a map/plan is prepared pertaining to the same. Thus, a portion of the property known as Jijamata Nagar comprising of 113 structures is sought to be developed separately under D.C. Rule 33(10) and for that purpose, approvals have been granted by the B.M.C. and S.R.A. The larger scheme, therefore, has necessarily been given a go-by by this action of the authorities, who are owners of the properties as well. In such circumstances, permitting redevelopment for housing occupants of only 113 structures is neither beneficial nor in the interest of slum dwellers and other occupants nor is the decision taken on that basis supportable in law. The decision is contrary, malafide and violative of mandate of Article 14 and 21 of the Constitution of India. In such circumstances, the decision and orders be quashed

and set aside.

11. Insofar as another representative petition is concerned, the same is W.P.No.75 of 2006. This petition was earlier dismissed by this Court on the ground that it involves disputed questions of facts. However, the Supreme Court set aside the order of this Court in that behalf and remanded the matter to this Court to reconsider the writ petition. The Supreme Court expressed no opinion on the correctness or otherwise of the submissions. It left open all questions including that of maintainability of the petition and grant of any relief therein. In that petition, the petitioner claims to have right, title and interest in an immovable property being Dastoor Block, Dastoor Wadi, Naigaon, Dadar. It is not necessary to go into this aspect in details inasmuch as the petition proceeds to allege that the petitioner is a co-owner of this property, which has been

more particularly described at Annexure A to the petition. It is alleged that one of the predecessors of the petitioner conveyed his rights in the said property to the MCGB for public purpose for putting up a school and not for benefit of a private developer. It is alleged in the petition that respondent Nos. 1 to 3 who are M.C.G.B. and its officers have granted permission to respondent No.4 under D.C. Rule 33(7) for combined re-development of the plots bearing C.S.No.4 and 4-1/4 of Naigaon Division and 1/5 of Matunga Division. The proposals/requests to develop the same was moved by respondent Nos. 5 and 6 who are proposed cooperative societies of the occupants. Thus, they are beneficiaries in the said re-development. Respondent Nos. 7 and 8 claim to be owners of entire Dastoorwadi which claim, according to petitioner, is false and bogus since the property was sold by one of the predecessor of petitioner to M.C.G.B. Its employees who have

also formed cooperative societies desired that the fruits of the development be made available to them. They have been joined as party respondents along with statutory authorities, viz., the State through its Education Department and the Repair Board because certain statutory obligations are cast upon it.

12. The subject matter of the petition arises out of and is related, inter alia, to the failure to discharge the statutory obligations and duties by the respondent No.1 to 3, and granting illegal sanction to the respondent No.4, through respondent No.5 and 6 under Regulation 33, sub-Regulation 7 of the D.C. Regulation in regard to the combined redevelopment proposal of plots bearing C.S.No.4 and 1/4 of Naigaon Division known as Dastoorwadi C.H.S. (Proposed), with Plots bearing No.1/5 of the Visanji Park, Old Naigain Cross Road, in Matunga Division at Marathi Grantha Sangrahalaya Marg, more

particularly set out in the description of the subject plots. The said action of sanctioning the said redevelopment proposal of the respondent Nos. 4 to 6 by the respondent Nos. 1 to 3 is contrary to and violative of, among other statutes and settled principles of law, the provisions of Regulation 33(7), of the Development Control Regulations 1991 and ultra vires, illegal and void ab initio. The said proposal in fact does not qualify any of the requirements of the said provision of Regulation 33(7) and the Annexure - III to the said D.C. Rules and, therefore, the impugned sanction could never have been granted. The petitioners have learnt that the respondent Nos. 1 to 3 had proposed to permit the Redevelopment/ Reconstruction of the said school for commercial purposes, under Regulation 33(7) of Development Control Regulation for Greater Mumbai and that the said development was assigned to the respondent No.4 at a consideration of about

Rs.12.5 Crores.

13. This petition concerns D.C.Regulation 33(7) which is dealing with re-construction or re-development by Cooperative society of old buildings belonging to the Corporation. The subject regulation, (Regulation 33) provides for additional FSI which may be allowed in certain categories. Though, this is not a typical slum dispute or matter, yet, a reference is made to the facts in this case only to highlight the aspect that Regulation 33 of D.C. Regulation for Greater Mumbai framed in 1991 provides for Additional F.S.I. which may be allowed in certain categories. Additional F.S.I. to be allowed in certain category is an incentive for builders and developers to undertake housing projects involving old buildings, dilapidated structures and slum pockets. It is when such agencies are involved in construction or development, by slum dwellers who have organised

themselves, that majority of disputes and differences crop up. The slum dwellers complain that groups or sub-groups amongst them are interested in another builder or developer thereby frustrating the entire project. In other words, they fear and apprehend that the original scheme would be highjacked by another developer. It is in such circumstances, fights between groups of slum dwellers on the same property land up in this Court.

14. Broadly, the disputes which are brought before the Court and highlighted by the facts in the two petitions noticed above are between slum dwellers themselves, Slum Dwellers and Developer, Developer in a Rehabilitation project who is not acceptable to a particular group or section of slum dwellers, they propose name of another developer and last but not the least between the slum dwellers, developers and the B.M.C. and S.R.A. This is a common complaint. The

implementation of the scheme or project is obstructed and often comes to a complete halt on account of inaction by the S.R.A. and the State Government. They do not take any cognisance of common grievances, for example, removal of the Minority or obstructing occupants from the site etc. On some occasions, they refuse to intervene. The allegation is that SRA or State sides with one group or the other. Resultantly all disputes land up in this Court and that is how petitions under Article 226 of the Constitution of India, are filed.

15. There are several such matters which have been grouped together. It is in the backdrop of such factual and other disputes and complaints with regard to implementation/non implementation of the schemes and projects meant for slum dwellers that the following questions were formulated, for being answered in this reference, by the Division Bench :-

(a) Whether, a private party can seek resolution of dispute and claim relief entirely falling in the private domain, under the garb of Public Authority not functioning?

(b) Whether Municipal Corporation or S.R.A. are responsible for defaults, under the schemes of Slum Redevelopment or under Urban Renewal Schemes?

16. Before we consider the contentions of the learned Counsel appearing for parties, it would be appropriate if reference is made to some statutory provisions and Regulations relevant for our purpose:-

Section 22 of M.R.T.P. Act.

"22. A Development plan shall

generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say:-

(a) proposals for allocating the use of land for purpose, such as residential, industrial, commercial, agricultural, recreational;

(b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious building and Government and other public buildings as may from time to time be approved by the State Government;

(c) proposals for designation

of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;

(d) transport and communications, such as roads, highways, parkways, railways, waterways, canals and airports, including their extension and development;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of area of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts;

(j) proposals for flood control and prevention of river pollution;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to requisition for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;

(n) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or

may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the size of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act."

Section 3K of Slum Act - reference will be made in the foregoing paragraphs.

D.C.Regulation No.33(10) - reference will be made in the foregoing paragraphs.

17. After the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act,1971(hereinafter referred to as the Slum Act) was amended with effect from 18th May 2001 and Chapter I-B was incorporated therein, it has come to light that beneficiaries of the slum rehabilitation schemes, which are being implemented by the concerned authorities on lands belonging to Government and local bodies are complaining about the denial of benefits meant for them.

18. In this behalf, it is worthwhile noticing that the word "scheme" is defined in section 3X(d). That definition will have to be read with the term "protected occupier" defined in section 3X(c). The term "photo-pass" is also crucial and the same is defined in section 3X(b).These definitions are as under:

19. "3X(b)" "photo-pass" means an identity card cum certificate issued by the Government in the prescribed format under section 3Y, and shall include such other document or documents declared by Government, by order issued in this behalf, to be equivalent of photo-pass for the purposes of this Chapter.

20. "3X(c)" "protected occupier" means an occupier of a dwelling structure who holds a photo-pass;

21. 3X(d) "scheme" means any arrangement or plan prepared and declared by the State Government for the protection, relocation and rehabilitation of the protected occupiers.

22. Thus, the entire intent is to have an identification done of the dwelling structure and issue a photo-pass for the purpose of the Act, in the prescribed format to the actual occupier thereof. Section 3Y(1) contemplates that the photo-pass is issued to the actual occupier of a dwelling structure in existence on or prior to 1st January 1995. Sub-section (2) thereof states that if the photo-pass issued under sub-section (1) is lost or destroyed or defaced,the holder of the photo-pass shall forthwith intimate the loss, destruction or defacement of the photo-pass to the concerned authority which has granted the photo-pass and shall apply, in writing, to the said authority with the prescribed fee for issue of a duplicate. Sub-section (3) contemplates

issuance of duplicate photo-pass.

23. Section 3Z states that notwithstanding anything contained in the Act, on and after the commencement of the Amendment Act, no protected occupier shall, save as provided in sub-section (2),be evicted, from his dwelling structure. However in larger public interest, he may be evicted, but the State Government will have to do so after relocating and rehabilitating him in accordance with the scheme or schemes prepared by the State Government in this behalf.

24. There are powers conferred upon the competent authority for demolition of unauthorised or illegal dwelling structure. However, what we are really concerned is with the rehabilitation and relocation of the slum dwellers / dwelling structures/ occupants but the very scheme which has been noticed above would indicate that if a photo-pass is issued, then

such photo-pass holder is entitled to the protection. He has been termed as protected occupier. Larger question that arises before us in several matters is whether protected occupier as set out in law and those persons, who have not been issued photo-pass, but are on the land before the cut off date, would fall in the same category. In other words, a person, occupier of a dwelling structures, which is existence prior to 1st January 1995, can be classified as eligible slum dweller and would thus be entitled for rehabilitation or relocation.

25. In this behalf Chapter IA is important, in as much as it’s Title is "Slum Rehabilitation Scheme." Making of the scheme by the State Government or Slum Rehabilitation Authority is taken care of by section 3B. The term "slum rehabilitation area" means an Area which is declared as such under section 3C(1) by the competent authority in pursuance of the slum

rehabilitation scheme notified under section 3B. The term "slum rehabilitation scheme" is defined in section 3B. There are powers conferred by further provisions of the Act and for that purpose, the Act has been extensively amended.

26. Section 24, which is now holding the field reads as under:

> "24(1) Where an occupant of any premises in an area declared as a slum rehabilitation area has vacated, or is evicted from such premises on the ground that the premises are required for the purpose of development under the Slum Rehabilitation scheme such occupant may, within such time as may be prescribed file a declaration with the Slum Rehabilitation Authority that he desired to be rehabilitated in that area after its redevelopment under the said Scheme.
>
> (2) On the receipt of such declaration the Slum Rehabilitation Authority shall register his declaration in the prescribed manner and no completion of the development of the area and reconstruction of the buildings in the said area under the scheme, give notice to the registered occupants by affixing it in some conspicuous part of the building and sending it by post to the address which may have been

> registered with the Slum Rehabilitation Authority by such occupants in such other manner as may be determined by the Slum Rehabilitation Authority that the building is likely to be or is ready for occupation from a specified date and that they should vacate transit accommodation, if any, given to them and occupy the building so erected within a period specified in the notice."

27. A bare perusal of the said provision would indicate that it contemplates allotment of tenement to the occupants by the Slum Rehabilitation Authority and pending such allotment, his shifting into a vacant transit accommodation.

28. We are not much concerned with the constitution of Slum Rehabilitation Authority but Section 3K which confers powers on the State Government to issue directions to the slum rehabilitation authority also needs to be noticed. It reads as under:-

> "(3K): Power of State Government to issue direction:-

> 1) The State Government may issue to the Slum Rehabilitation authority such general or special directions as to policy as it may think necessary or expedient for carrying out the purposes of this Act and the Slum Rehabilitation Authority shall be bound to follow and act upon such directions.
>
> (2)(a) Without prejudice to the generality of the foregoing provision if the State Government is of opinion that the execution of any resolution or order of the Authority is in contravention of, or in excess of, the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to abuse or misuse of or to cause waste of the Fund of the Authority the State Government may in the public interest by the order in writing suspend the execution of such resolution or order. A copy of such order shall be sent forthwith by the State Government to the Authority and its Chief Executive Officer.
>
> (b) On receipt of the order sent as aforesaid the Authority shall be bound to follow and act upon such order.

29. Thus, as far as the Slum Act is concerned it contemplates protection of occupiers in dwelling structure by issuing them photo-pass so that the eviction of such slum dwellers/protected

occupiers in public interest is subject to relocation and rehabilitation of such persons in accordance with the schemes prepared by the State Government.

30. The question that arises before us frequently is not relating to Slum Act alone. The question is posed in the backdrop of the lands which are the properties of the Municipal Corporation and other local bodies, such as Maharashtra Housing and Area Development Authority and Mumbai Metropolitan Region Development Authority. Apart from encroachers and squatters on these lands, there is encroachment on footpaths and pavements. Sometimes, the occupants on such lands organise themselves into coop. Societies and contending that they are eligible for permanent alternate accommodation, proposals are moved on their behalf by either such societies or developers/builders.

31. As far as the Municipal Corporation of Greater Mumbai is concerned, The Maharashtra Regional and Town Planning Act 1966 which confers powers under section 22(m) of making rules regulating development has resulted in making Development Control Regulations for Greater Mumbai and they are known as Development Control Regulations For Greater Mumbai, 1991, for short D.C Rules. As far as the D.C. Rules are concerned there are also certain definitions therein, which need to be noticed. The word "Amenity" is defined in regulation 2(7) whereas the term "hazardous building" is defined in regulation 2(e). The term "unsafe building" is defined in regulation 2(o). The term "FSI" is defined in regulation 2(42) to mean total covered area of all floors divided by plot area. This definition would provide some guideline when one is considering various regulations.

32. Regulation 33 deals with additional floor space index which may be allowed in certain categories. In this behalf, one should also notice the notifications which have been issued by the State Government. Regulation 33(5) deals with low cost housing schemes of the Maharashtra Housing and Area Development Authority. There, the additional FSI is permitted while housing economically weaker sections and low income group categories. Regulation 33(6) deals with reconstruction of buildings destroyed by fire which have collapsed or which have been demolished, whereas Regulation 33(7) deals with reconstruction and redevelopment of cessed building in the Island City by Cooperative Housing Societies or of old buildings belonging to the Corporation. Thus, the additional FSI is permitted to be consumed in such cases. Similar is the case where housing is for dishoused and that category is dealt with in Regulation 33(8) which reads as under:

> "33(8) Construction for housing the dishoused- For the construction of the building by the Corporation in the category of "Housing the Dishoused" in the Island of City for the purpose of housing those who are displaced by the project the Corporation for implementation of proposals of the development plan, the FSI shall be l.00 .Such additional FSI will not be available when owner undertakes development as in Sr No.1(c) in Table-l."

33. Bare perusal of the said regulation indicates that those who are displaced by projects undertaken by the Corporation for implementation of the proposals of the development plan can be rehabilitated and for such purpose FSI is 1.00, additional FSI will not be available to the owners undertaking development as in Sr. No.1(c) in Table 1.

34. For the schemes which are of repairs and reconstruction of cessed buildings and urban renewal schemes undertaken by MHADA or Maharashtra Housing and Area Development Board,

or the Corporation in the Island City, FSI shall be 1.00.

35. Regulation 33(1)(l) is entitled "The eligibility for redevelopment scheme" and Regulation 33(10)(ll) is entitled "The definition of slum, pavement and structure of hut".

36. Regulation 33(13) deals with development of sites reserved for resettlement and rehabilitation of project affected persons, whereas Regulation 33(14) sets out the provision relating to transit camp tenements for slum rehabilitation scheme. Then comes Regulation 34 which deals with TDR.

37. Thus, there are incentives and benefits such as additional FSI, if one undertakes redevelopment scheme. The eligibility for a tenement is dealt with by Regulation 33(10) and slum including pavement, whose inhabitants' names

and structure appear in the electoral roll prepared with reference to 1st January 1995, or a date prior thereto, but where the inhabitants stay at present in the structure are held as eligible. The provisions of Appendix IV shall apply on the basis, a tenement in exchange for an independently numbered structure. It is however clearly stated that only the actual occupants of the hutments shall be held eligible, and that the so called structure-owner other than the actual occupant if any, even if his name is shown in the electoral roll for the structure, shall have no right whatsoever to the reconstructed tenement against that structure. Definition of the terms "slums and slum rehabilitation area"have been adopted from the Slum Act and pavement means any Municipal/Government/ Semi-Government pavement, and shall include an viable stretch of the pavement as may be considered viable for the purpose of slum rehabilitation projects. A structure shall mean all the dwelling areas of

all persons who were enumerated as living in that one numbered house in the electoral roll of the latest date, upto 1st January 1995 and regardless of the numbers of persons, or location of rooms or access.

38. Thus, the concept is of censued slum/ slum area/ pavement being cleared of occupants and structures, but while such project is undertaken, protect those who are found to be in occupation prior to 1st January 1995 or on 1st January 1995.

39. Appendix IV of D.C. Rules is also often quoted i.e. dealing with redevelopment/ construction of accommodation for hutment/ pavement dwellers through owners/developers/ cooperative housing societies of hutment/pavement dwellers/ public authority such as MHADA, MIDC, and MMRDA etc. A project is also permitted to be undertaken by NGOs approved by SRA. Therefore

Appendix IV applies while redeveloping/ constructing accommodation for hutment/pavement dwellers through owners/developers/ Cooperative Housing societies or persons enumerated therein. This is a very big attraction and incentive for builders and developers. The concept is that while fulfilling a social obligation they can make profit by disposing of some flats /tenements in open market. However, the rehabilitation of eligible slum dwellers is their prime duty.

40. Rights of the hutment dwellers are enumerated in Appendix IV. There clause 1.5 is relevant, which reads as under:

> "1.5 A certified extract of the relevant electoral rolls be considered adequate evidence to establish the eligibility of a person provided he is found residing in the structure. This is to avoid the possibility of persons who have left the structures coming back to claim free tenement under the scheme even though they have in the normal course left the slum and gone away into a proper non-slum areas or out of Brihan Mumbai. If hutment dwellers are found resident in

> the structure, but the names are on the electoral roll on or prior to 1st January 1995 at another slum/pavement site in Brihan Mumbai, they shall be considered eligible but only at the place of present residence. In case of doubt or dispute, the decision of the Competent authority to be appointed by the Government in Housing and Special Assistance Department shall be final and binding on all the parties concerned."

41. A bare reading of the same would indicate that certified extract of the relevant electoral rolls is considered adequate evidence to establish the eligibility of a person provided he is found residing in the structure. In case of doubt or dispute about the residence of the person at site, the decision of the Competent authority to be appointed by the Government in Housing and Special Assistance Department is final and binding on all the parties concerned.

42. After that Appendix IV(2) deals with building permission for slum rehabilitation project and SRA is designated as an authority for

approval of plan etc. Here, it is material to note that SRA is to be in charge of granting approval by laying down guidelines and prescribing therein the percentage of the built up areas of both rehab and free sale components. Thereafter, clause 3 is important. It deals with rehab and free sale components.

43. Temporary transit camps are dealt with at Sr. No.4 under Appendix IV. Commercial/official/shop/economic activities free of costs is dealt with at item 5 and there are other stipulations as well.

44. Appendix III and IV are traceable to the computation of FSI provided in D.C. Regulations. As stated above Regulation 33 deals with additional FSI, which may be allowed in certain categories. Regulation 33(7) deals specifically with reconstruction and redevelopment of cessed buildings in the Island city by cooperative

housing societies or of old buildings belonging to the Corporation. We are concerned mainly with Regulation 33(10), which speaks of redevelopment scheme. This redevelopment scheme is with regard to slums including pavement. The scheme is that those inhabitants whose names and structures appear in the electoral roll prepared with reference to 1st January, 1995 or a date prior thereto, but where the inhabitants stay at present in the structure, the provisions of Appendix IV shall apply on the basis a tenement in exchange for an independently numbered structure. Regulation 10(1)(b) clearly states that only the actual occupants of the hutments shall be held eligible, and that so called structure owner other than the actual occupant, if any, even if his name is shown in the electoral roll for the structure, shall have no right whatsoever to the reconstructed tenement against that structure.

45. It is necessary to find out the meaning of Annexure II. This concept is referred to in the relevant notification under Slum Act. The concept appears to be that a person, whose structure appears in the survey carried out by the office of the Collector shall be eligible for the benefit under the scheme. Such survey, along with the details of the persons, the structure, the number in the relevant document such as voters list, ration card etc., which is entitled as Annexure II. Thus, the basis for the same is the survey and if the survey which is carried out does not refer to the structure and the persons, then no rights would accrue in their favour.

46. The grievance is that several persons are eligible for tenements because their names are appearing in the electoral roll, but since the survey of 1985 is silent with regard to the structure, therefore, they are not granted any benefit. This has resulted in multiple

litigations. Therefore, whether an eligible slum dweller should get the benefit under the Act or not is something, which has been the subject matter of several writ petitions. For this purpose, even the procedure contemplated by the D.C. Rules needs to be understood.

47. The D.C. Regulations contemplate redevelopment of the slums, pavements and structures or huts i.e. D.C. Regulation 33(10). As is observed above i.e. providing for redevelopment/ construction of accommodation for hutment/pavement-dwellers through owners/ developers/ cooperative housing society of such persons. A scrutiny of the proposals of above nature is undertaken by the office of the Collector (Encroachment) (Slum Improvement). The proposals for redevelopment are received only, if same are accompanied by an application, which has to be in accordance with Annexure I and certificate of the Collector(Encroachment) in the

prescribed form in Annexure II for lands owned by a private owner is also necessary and a certificate in Annexure II either from Additional Collector (Encroachment) or from MHADA or Government or Housing Board as the case may be is necessary in case of slums on lands belonging to these bodies. Thus, Annexure II is nothing but a Certificate from the Competent Authority. The Division Bench of this Court in Om Sai (supra) has correctly outlined the policy of the State and the role of SRA (see paras 13 and 14)

48. It should also contain other documents which are more particularly mentioned in the circular dated 15.7.1993 (copy enclosed). This circular as also a circular bearing No.CHE/59/DPC of 6th July 1992(copy enclosed) would make it clear that the Architect has to submit along with a building proposals, as stipulated in Annexure I, to the circular dated 6th July 1992.

49. The procedure for scrutiny of the said proposals is enlisted in another circular dated 31st July 1992.

50. A perusal of these circulars would leave one in no manner of doubt that a mechanism is provided for scrutiny and processing of the proposals for redevelopment of slums. Further, it is abundantly clear that these circulars and Rules postulate development of private lands upon which slums are existing, so also government lands. Argument therefore that the proposals when brought forward and submitted are not scrutinised or there is no procedure for scrutiny, is misplaced. There are number of authorities through whom such proposals are routed and some of them are very High Powered Officials. Advisedly, they have been chosen so that the grievances of slum dwellers are do not remain unheard and unredressed.

51. In this chain, the circular dated 15.4.1997 needs to be noticed. For clarity purpose, it is restated that same is one which grants sanction under D.C. Regulation 33(10) and contains modifications to Annexure IV.

52. Clause 1.14 under caption Rights of the Hutment Dwellers reads as under:

> "A slum rehabilitation project shall be considered preferably when submitted through a proposed or registered cooperative housing society of hutment dwellers on site. The said society shall include all the eligible hutment dwellers on site when applied therefor and /or other eligible and allotted by slum rehabilitation authority as members of the society".

53. A bare perusal thereof would show that a slum rehabilitation project is considered preferentially when submitted through a proposed or registered cooperative housing society of hutment dwellers on site. The said society shall include all the eligible hutment dwellers on site

when applied therefor and /or other eligible and allotted by slum rehabilitation authority as members of the society. Thus, eligible hutment dweller on site together with those, who are satisfying the criteria above are the beneficiaries. Eligibility criteria and the cut-off date is enumerated in clause 1.5 reproduced above. Further, those who are held eligible by the Slum Rehabilitation Authority, but not at site, also are eligible. Thus, membership of the Housing Society is granted to eligible slum dwellers to whom SRA will allot a particular slum dwellers registered cooperative housing society. Such eligible slum dwellers may be affected by some project undertaken by a public body. The SRA can allocate or allot them to such slum dwellers societies as are chosen and notified and the society will make them members. The membership issue is also decided by SRA to whom powers under the Maharashtra Cooperative Societies Act, 1960 are delegated.

54. Clause 1.15 states that where 70% or more of the eligible hutment dwellers in a slum or pavement in a viable stretch at one place join a rehabilitation scheme, it may be considered for approval. Thus, 70% or more thereof of eligible slum dwellers in a slum or pavement in viable stretch can agree to join the rehabilitation scheme and they may be considered for approval.

55. The argument in most of the cases is that such eligible slum dwellers can come together and if 70% or more of them decide to formulate a scheme and submit it for approval of the authority, the authority in its discretion may consider it for approval. Here, the authority means the Slum Rehabilitation Authority. Reading of Appendix IV together with its paras and sub-paras makes it clear that there can be a scheme for development of slums and slum dwellers may come together to form a Cooperative Housing

Society or 70% or more of the eligible slum dwellers/pavement dwellers can involve a developer and such developer can forward a scheme for approval. That developer can come forward and submit a scheme is also not ruled out.

56. The package is enumerated thus :-

a) Appendix IV applies for redevelopment /construction of accommodation for hutment/pavement dwellers through owners/developers/cooperative housing society or such developers/ such as MHADA, MMRDA and Municipal Corporation etc/ Non Governmental Organisations etc. anywhere within the limits of Brihan Mumbai.

b) The right of the hutment dweller is to have in exchange of his structure free of cost Residential area of not more than 20.90 sq m (225 sq ft) including balcony, bath and water closet, but excluding common area.

c) All eligible hutment dwellers/pavement dwellers taking part in the slum rehabilitation scheme shall have to be rehabilitated according to the provisions of Appendix IV and such rehabilitation may be in site and in same plot as far as possible.

d) A certified extract of the relevant

electoral roll shall be considered adequate evidence to establish the eligibility of a person provided he is found residing in the structure. (see clause 1.5 of Appendix IV -1)

e) There can also be an individual agreement by owners/ developers/ cooperative housing society/NGO with eligible hutment dwellers and such individual agreement shall be in joint names of pramukh hutment dweller and spouse for every structure.

f) The hutments having a physically handicapped person, or female headed households shall be given first preference in allotment of tenement and thereafter allotments are drawn from the remaining tenements.

g) The land upon which development takes place is to be granted on lease to the slum cooperative society.

h) Slum dwellers can organise and unite themselves into a cooperative housing society and include all the eligible hutment dwellers on site and take up the development project.

i) 70% or more of eligible hutment dwellers at a site can agree to join a rehabilitation scheme and such scheme can be considered for approval.

j) Those who do not join the project willingly are dealt with under clause 1.16.

k) Till the construction of permanent

> alternative tenement is complete Transit Accommodation is provided. Thereafter, those who are coming forward for development project through developers would be housed in a complementary complex or component which is called Rehabilitation Free Sale components.
>
> l) The developer can after making rehabilitation deal with the rest of the tenements/components by disposing them of in open market.This acts as incentive for development. In such development, a provision of rehabilitation free of costs is made and the developer gets compensated by right to develop the remainder property and deal with the construction by disposing of the flats /tenements in open market. The entire scheme is set out above.

57. We have referred to the statutory provisions and regulations in details only to appreciate the submissions which have been raised before us. The submissions are broadly summarised hereinbelow.

58. Mr.Kamdar learned Counsel appearing for petitioners in lead petition urges that a petition under Article 226 of Constitution of India would be maintainable if the complaint is

that the slum rehabilitation scheme, as envisaged by the abovementioned statutes and regulations, is not being implemented, monitored and supervised to fulfil the object and purpose behind it. In other words, his submission is that doors of this Court cannot be shut to parties, that is slum dwellers, societies of slum dwellers, developers etc; for complaining about acts of omission and commission on the part of the authorities in charge of implementing the statutory scheme. His submission is that doors are sought to be shut by the respondents in all these petitions on the spacious plea that disputed question of facts are involved and there is a alternate remedy for resolving the said question. He submits that Slum Act and D.C. Regulations are completely silent on existence of such a remedy. He submits that in limited areas a statutory remedy is provided. He gives an instance with regard to eligibility of a slum dwellers and submits that if he is to be provided

a tenement, he has to fulfil the prescribed criteria. In other words, his occupation on the cut off date is crucial and relevant. In cases where such persons approach authorities with a request to decide the Issue of Eligibility, then, there is an alternate remedy provided in law. In this behalf he invites our attention to D.C. Regulation 33(10), Appendix IV read with section 35 of the Slum Act. In this behalf, he invites our attention to the definition of the term "competent authority" appearing therein. He submits that only in a limited case, there is a statutory remedy provided and writ petitions are directed against the actions and orders passed in such proceedings. He submits that such petitions are definitely maintainable and upon the petitioners demonstrating an error apparent on the face of record or perversity on the part of statutory authority so also their orders being vitiated on account of arbitrariness and malafides, then, intervention by this Court under

Article 226 is always permissible.

59. Even in other cases and disputes, the remedy under Article 226 of the Constitution of India is always available. His submission is that in the absence of any statutory remedies or alternatives, parties cannot be prevented from approaching this Court under Article 226 of the Constitution of India. He submits that merely because the disputes involve private parties and have some private Law element, does not mean that the normal remedies are being by-passed by parties. He submits that the ultimate complaint is of improper and erroneous implementation or non-implementation of welfare scheme formulated by the State and the local authority. Therefore, and when authorities are exercising powers under the Statutes or subordinate legislations framed thereunder, then, all their actions have a public Law element in them. Therefore, merely because some private parties are also involved does not

mean that a petition is not maintainable.

60. His next submission is that to determine whether a writ under Article 226 is maintainable or not in cases of different challenges which are coming up before this Court in respect of a Slum Rehabilitation Scheme, it is necessary to keep in mind various provisions of law. Essentially, the disputes which are coming before the Court arise from the following kinds of orders:-

(a) The order passed by the SRA sanctioning the scheme by selecting one developer where another group of slum dwellers are seeking to bring in another developer;

(b) Dispute as to the correctness of Annexure II or issuance of Letter of Intent;

(c) Disputes as to the removal of obstructing slum dwellers and the orders passed by the Competent Authority directing their eviction or demolition of their structures;

(d) Dispute as to the actual nature of work carried out by the developer or defaults committed by him;

. It is also submitted that each of the aforesaid issues are in fact in the public domain and are arising out of the performance of statutory functions by the authorities and therefore, Writ Petition under Article 226 against their orders or refusal to pass orders or prohibiting them from passing the orders, lies before this Court.

61. Under the provisions of the Slum Act a limited alternate remedy is provided i.e. under Section 4(3) of the Slum Act a person aggrieved by a declaration of any area as a slum is entitled to file an appeal against such declaration to the Appellate Tribunal. This Appellate Tribunal has a very limited jurisdiction. It can go into the issue of declaration by the Competent Authority of any area as slum under section 4(1) of the Act.

62. Another limited alternate remedy is prescribed under section 35 of the Slum Act, wherein it is provided that any person aggrieved by any notice, order or direction issued by the Competent Authority, can appeal to the Administrator within a period of 35 days from the date of issue of such notice, order or direction. Once again a very limited jurisdiction is conferred on the Appellate Authority as an Administrator to go into the validity of the notice, order or direction of the Competent Authority.

63. No Appeals are provided against the orders passed by the SRA sanctioning the scheme or pertaining to the implementation of the scheme of Slum Redevelopment.

64. It is submitted that the remedy of a suit is not an alternate remedy. It is held that for a purpose of alternate remedy, the remedy must be

one which has been provided by a Statute and not a general remedy by means of a suit under section 9 of the Civil Procedure Code, 1908. In support of this submission Mr.Kamdar relied upon a decision of the Gujarat High Court in the case of Ahmedabad Cotton Mfg. Co.Ltd. Vs. Union of India reported in A.I.R. 1977 Guj.113 (FB).

65. Mr.Kamdar submits that under the Slum Act, in fact, a suit is barred under section 42 which, inter alia, provides that civil courts shall have no jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or authority in respect of any action taken or to be taken in pursuance of the power conferred under this Act.

66. Thus, there is an absence of alternate remedial machinery under the provisions of the Slum Act. In such case, it becomes necessary to entertain a Writ Petition challenging various orders passed by the SRA under the Slum Act and/or read with D.C.Regulation No.33(10).

67. In support of his submissions Mr.Kadmar relies upon the following decisions:-

(a) Awdesh Tiwari & Ors. Vs. Chief Executive Officer, SRA (2006 MLJ 282)

(b) Mohamed Hanif Vs. State of Assam (1969 (2) S.C.C. 782)

(c) DFO, South Kheri & Ors. Vs.Ram Sanehi Singh (A.I.R. 1973 S.C. 205);

(d) Ram and Shyam Company Vs. State of Harayana & Ors. [(1985) 3 S.C.C. 267)]

(e) Life Insurance Corporation of India Vs. Escorts Ltd. (1986 (1) S.C.C. 264)

(f) Mahavir Auto Stores & Ors. Vs. Indian Oil Corporation & Ors. (1990 (3) S.C.C. 752)

(g) Kumari Shrilekha Vidyarthi & Ors. Vs. State of UP & Ors. [(1991) 1 S.C.C. 212]

(h) Nilabati Behera (Smt) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee Vs. State of Orissa & Ors. [(1993) 2 S.C.C. 746]

(i) LIC of India & Anr. Vs. Consumer Education & Research Centre & Ors. [(1995) 5 S.C.C. 482]

(j) Indian Statutory Corporation etc. Vs. United Labour Union & Ors. [(1997) 9 S.C.C. 377]

(k) Verigamto Naveen Vs. Govt. of A.P. & Ors. [(2001) 8 S.C.C. 344]

(l) Dwarka Prasad Agarwal (D) by Lrs. and Anr. Vs. B.D.Agarwal & Ors. (A.I.R. 2003 S.C. 2686)

(m) Union of India & Anr. Vs. S.B.Vohra & Ors. [(2004) 2 S.C.C. 150]

(n) State of U.P. Vs. Johri Mal (2004 (4) S.C.C. 714)

(o) Jayrajbhai Jayantibhai Patel Vs. Anilbhai Nathubhai Patel & Ors. [(2006)

8 S.C.C. 200]

(p) ZEE Telefilms Ltd. Vs. Union of India & Ors. [(2005) 4 S.C.C. 649]

(q) Noble Resources Ltd. Vs. State of Orissa [(2006) 10 S.C.C. 236]

(r) Moran M. Baselios Marthoma Mathews II & Ors. Vs. State of Kerala & Ors. (J.T. 2007 (6) AS.C. 282);

68. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 provides for appeal as and by way of an alternate equally efficacious remedy only in following cases :-

(1) Chapter 1A which has been introduced by the Maharashtra Amendment Act 4 of 1996 as a special provision for a slum rehabilitation scheme. Under section 3C(2) an appeal is provided against a declaration made by Chief Executive Officer declaring any area as a slum rehabilitation area as an appeal lies to the special tribunal.

(2) Under section 4(3) an appeal lies to the Tribunal against a declaration by a Competent Authority against any area as a slum area.

69. He has invited our attention to the section 3(C)(2), 4(3), section 4A(2), Section 12(4), 17(6), Section 18(2), 19(2) and Sections 22 and 23 so also section 35 of the Act to highlight the aspect of appeals provided therein. He submits that none of these provisions contemplate any appellate or other remedy with regard to the implementation of Slum Rehabilitation Scheme.

70. On the other hand, Mr.Kadam, learned Advocate General appearing for the State submits that the object and purpose of the Slum Act so also the Development Control Regulations cannot be brushed aside while answering this reference.

He submits that the issue is not as much as maintainability of writ petition but the extent to which this Court will exercise the powers under Article 226 of the Constitution of India, while taking cognisance of matters and grievances, pertaining to slum rehabilitation or implementation of welfare and rehabilitation measures. He submits that the process has to be expeditious and smooth with minimum hurdles and obstacles placed in the way of rehabilitation and removal of encroachments. In such circumstances, the wider question really should not trouble anybody. On the other hand, one can safely assume that writ jurisdiction can be invoked by aggrieved parties but the Mandate of Section 42 of the Act so also other provisions should be at the back of the mind all through out. These provisions are advisedly incorporated to ensure expeditious implementation of the rehabilitation scheme. In such circumstances, the interference should be minimal and in exceptional matters on

case to case basis. This Court must decide whether the dispute involved is such as would be capable of being resolved in the limited jurisdiction of this Court under Article 226 of the Constitution of India and then pass appropriate orders.

71. Mr.Kadam, then emphasises that the broad scheme of rehabilitation and the measures with regard to the same are set out under the Slum Act whereas the incentive and encouragement to initiate and complete the process of rehabilitation is in the D.C. Regulations and more particularly D.C.Regulation No.33(10). He submits that D.C. Regulations are traceable to the development plan itself. Thus, the Slum Act and the D.C. Regulations complement each other. They should be read and construed harmoniously so that the intention of the Legislature becomes apparent to all concerned.

72. He submits that the issue of maintainability of writs in matters arising out of the Slum Act may also be considered in the light of,

(a) The scheme of the Slum Act and the connected Development Control Regulations.

(b) The nature and substratum of the disputes raised i.e. whether they are really private disputes raised to challenge actions/inactions on the part of the State Government or its agencies.

(c) The availability of statutory alternate remedies under the Slum Act, 1971.

73. According to Mr.Kadam there are different remedies available, such as Appeal to SRA under

section 35, from any order of the Competent Authority, Appeal to the Tribunal from various orders as provided and approaching to State Government to issue direction under section 3K.

74. Adequate safeguards at every stage including remedy of appeals to different forums/ authorities considering the nature of the notice/ orders/ directions are provided. The language of section 35 is very wide and encompasses all kinds of notices/ orders or directions. In addition to the appeals, is the power of the State Government to issue directions under Section 3K. Thus, before any person approaches this Court by way of writ petition under Article 226 of the Constitution of India, it is only appropriate that the remedies provided under the Act are exhausted.

75. Mr.Kadam relies upon a decision of Division Bench of this Court in the case of

Bhikaji Jadhav Vs. State of Maharashtra reported in 2002(5) Bom.C.R. 83 and states that this Court has held that the authority passing the order under Section 35 of the Slum Act is a Tribunal and discharges quasi judicial functions subject to the supervisory jurisdiction of this Court and subject to superintendence under Article 227 of the Constitution of India. It was further held that from the order passed in a petition under Article 227 of the Constitution of India, no appeal under the Letters Patent would lie. Thus, the role of this Court whilst considering an order passed by the concerned appellate authorities under the Slum Act would be very limited and supervisory and restrained as per the well settled principles for exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

76. Development Control Regulations are delegated legislation and form part of the

development plan under Section 22(m) of the Maharashtra Regional Town Planning Act. D.C.Regulation 32 lays down Floor Space Index (FSI). D.C.Regulations makes permissible FSI and tenements densities for various occupancies locations and zones as mentioned thereunder. D.C. Regulation 33 provides for additional FSI. Sub-regulation 10 provides that for rehabilitation of slum dwellers and for redevelopment of slums a total FSI upto 2.5 may be granted subject to the condition laid down in Appendix IV of the D.C. Regulation.

77. Mr.Kadam further states that the disputes which can come before this Court may be broadly categorised in the following manner:-

(a) Eligibility of slum dwellers for alternate accommodation is an issue involving consideration of complicated and disputed questions of facts. These

are issues considered by the Competent Authority and thus would be appealable under section 35 of the Slum Act to the S.R.A.

(b) Dispute between two rival developers wanting to implement a scheme and claiming support of 70 percent of the slum dwellers. There would be similar disputes between two managing committees of societies/ proposed societies claiming support of 70 percent slum dwellers. This is primarily an issue as regards support of 70 percent eligible slum dwellers. It involves consideration of eligibility of slum dwellers and also the number of slum dwellers supporting the scheme. This would be a fundamentally factual exercise by the Authority rendering it completely incapable of being reviewed in a writ jurisdiction

under Article 226 of the Constitution of India.

(c) Disputes between individual slum dwellers and the Managing Committees of the societies/ proposed societies. This is essentially a private factual dispute between two private parties which ought not to be agitated/ entertained in a writ petition.

(d) Disputes regarding registration of the slum dwellers society cannot be entertained as this is not an order under the Slum Act or the D.C. Regulation or the Authorities thereunder so also there are adequate remedies under the Cooperative societies Act.

(e) Disputes also arise when a society/ proposed society of slum

> dwellers terminates the development agreement of a developer appointed by them and replaces them by another developer. Typically in such a situation, the developer files a petition impleading the S.R.A. as a party but essentially challenging its removal by the slum dwellers. This is primarily a private dispute between the developers and the slum dwellers and the orders of the authorities are often consequential orders. The proper remedy is therefore, to file a suit for specific performance against the society of slum dwellers and not to approach this Court under Article 226.

78. Mr.Aney, learned Senior Counsel for respondent No.6 in W.P.1326 of 2007 more or less adopted the contentions of the learned Advocate General and additionally submitted that there are

self-imposed restrictions of judicial review which are devised by the courts. He submits that section 42 of the Slum Act does not create a bar for this Court to exercise its writ jurisdiction but intent behind inserting such a provision is to have minimum interference. He has then invited our attention to section 3(k)(1) and (2) and contended that the only other power contained under the Act which indicates a statutory limitation on the power of this Court is to be found in Section 3K.

79. Section 3K (1) and (2) appear to invest power in the State Government to decide at the first instance disputes that may arise under the Act. Section 3(K)(1) empowers the State Government to issue directions as to the policy necessary and expedient for carrying out the purposes of the Act, and it enjoins a duty on the Slum Authority to act upon such directions.

80. Section 3(K)(2)(a) empowers the State Government in public interest, by an order in writing to suspend the execution of any resolution or order. The resolutions or orders issued by any Authority can, therefore, be suspended by the State Government if the State Government is of the view that these orders or resolutions are in contravention of any of the provisions of the Act, or are in excess of the powers conferred by the Act or any other law for the time being in force. The State Government may suspend such order or resolution if it is of the view that the same are likely to lead to abuse or misuse or waste of funds of the Authority.

81. It is also submitted that every order or resolution passed under this Act can, therefore, fall within the scrutiny of the State Government under the power vested in it by Section 3K(2)(a) and the State Government is empowered to issue

appropriate directions to the Authorities under it. The said Authorities are bound to follow and act upon such an order. Under section 3K(2)(b), every dispute which is traceable to some action covered by the purposes of the Act or where there appears to be a contravention of the Act or other law for the time being in force, where funds are likely to be misused or wasted can, therefore, be brought before the State Government who can pass necessary orders in that regard.

82. The provisions of Section 3K fell for consideration of this Court in two cases. (1) Om Sai Darshan Coop.Hsg.Society Vs. State (W.P.No.910 of 2005 with Notice of Motion No.698 of 2005) decided on 26th April 2006 by a Division Bench of this Court where the bench held that the power under Section 3K(i) extended only to the issuing of general or special directions to SRA as to policy. In a subsequent judgement in Sri Sai Bhagwati Coop.Hsg. Society Vs. S.R.A.

reported in 2006(5) Mh.L.J. 483) another Division Bench of this Court negatived the contention that Section 3K would relate only to directions as to policy. In view of this conflicting position, Mr.Aney submitted that the subsequent judgement is correct and acceptable not merely because it is latter in point of time but also because it lays down the correct legal position, after considering and distinguishing other judgements. The power contained in Section 3K must be held to extend to all matters where it is necessary for the State to issue directions to prohibit contravention of the Act or to prevent misuse or waste of funds.

83. Mr.Aney has then invited our attention to the work "Administrative Law by J.F.Garner (5th Edn) where the learned Author, according to Mr.Aney, has enumerated certain situations wherein the power of Judicial Review would not be exercised.

84. Apart from Mr.Aney, Mr.Subramaniam, learned Senior Counsel also addressed us. He urged that there is no straight jacket formula, which could be evolved for deciding as to whether the writ jurisdiction of this Court would be available or not. He submits that there are disputes and differences which are incapable of precise classification. He submits that writ jurisdiction is available in most cases. He submits that the classification of disputes into public Law element and private law dispute is also not possible to be made in this case.

85. There are other learned Advocates who wished to addressed us. Since the issue touches several aspects of welfare measures, we gave liberty to them to intervene and make their submissions. Mr.Mihir Desai appearing in one of the matters contended that the questions and disputes should not be considered in a limited

angle. They are not merely contractual matters or disputes. He submits that housing the dis-housed or those residing in slums and in extremely poor condition is a Constitutional obligation. It is part and parcel of Article 21 of Constitution of India which guarantees right to life. He submits that it is a public function. It is not a dispute purely between some private developers. He submits that the nature of the function being public function, that cannot be overlooked while answering the question of maintainability. The writ jurisdiction is available because there is no alternate remedy in law so also the functions being essentially public. In any event, when slum dwellers are approaching this Court, then, the view of this Court should not be rigid but flexible. He further submits that the State function is being performed by private parties and, therefore, writ jurisdiction is available.

86. Mr.Gangal, learned Counsel appearing in Writ Petition No.74 of 2007 contends that writ jurisdiction is maintainable in all cases except where dispute is between two developers or builders. Ultimately a dispute or question arises out of participation of S.R.A. and when S.R.A's. decision is improper, then, depending upon the facts and circumstances in each case, this Court will decide whether to interfere with the same or not. Therefore, no general rule can be laid down.

87. Mr.K.K.Singhvi, learned Senior Counsel appearing for BMC submits that no constitutional court should limit its powers under Article 226. He submits that it is a guarantee provided by the Constitution makers against arbitrary and discriminatory action. He submits that wherever injustice is writ large, a petition should be entertained. He submits that the Rule of Exhaustion of alternate remedy is only of caution

and necessity but that rule does not control the plenary power of this Court. Consequently, the reference should be answered by holding that writ jurisdiction is permissible to be invoked but the extent of the interference would depend upon facts and circumstances of each case.

88. For properly appreciating these contentions, it would be necessary to make a brief reference to the ambit and scope of this Court’s powers under Article 226 of the Constitution of India.

89. In a decision reported in A.I.R. 1999 S.C. 1723, at page 1734, the Supreme Court observes thus:-

> "27. .... Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its

> powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief."

90. In an another decision reported in A.I.R. 1999 S.C. 1786 (State of Himachal Pradesh Vs. Raja Mahendra Pal) the Supreme Court holds thus:-

> "6. The learned Counsel appearing for the appellant has vehemently argued that the writ petition filed was not maintainable as the High Court was not justified in entertaining the same and consequently granting the relief to the respondent No.1. The rights of respondent No.1, if any, are stated to be based upon a contract for which he was

obliged to avail of the alternative efficacious remedy of filing a suit either for the recovery of the money or for rendition of accounts. It is contended that the discretionary powers vested in the High Court under Article 226 of the Constitution could not have been exercised in the facts and circumstances of the case. Though, we find substance in the submission of the learned Counsel for the appellant, yet we are not inclined to allow the appeal and dismiss the writ petition of respondent No.1 only on this ground. It is true that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental right or legal right but not for mere contractual rights arising out of an agreement particularly

in view of the existence of efficacious alternative remedy. The Constitutional Court should insist upon the party to avail of the same instead of invoking the extraordinary writ jurisdiction of the Court. This does not however debar the Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of the special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article. In the instant case, the High Court did not notice any special circumstances which could be held to have persuaded it to deviate from the settled proposition of law regarding the exercise of the writ jurisdiction under Article 226 of the

Constitution. For exercise of the writ jurisdiction, the High Court pressed into service the alleged fundamental right to livelihood of the respondent which was found to have been violated by not making him the payment of the amounts claimed in the writ petition. It is true that Article 21 of the Constitution is of utmost importance, violation of which, as and when found, directly or indirectly, or even remotely, has to be looked with disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforesaid Article. It is also true that the right to livelihood would include all attributes of life but the same cannot be

> extended to the extent that it may embrace or take within its ambit all sorts of claim relating to the legal or contractual rights of the parties completely ignoring the person approaching the Court and the alleged violation of the said right. The High Court appears to have adopted a very generous, general and casual approach in applying the right to livelihood to the facts and circumstances of the case apparently for the purpose of clothing itself with the power and jurisdiction under Article 226 of the Constitution....."

91. Thus, the Supreme Court holds that self-imposed restrictions and limitations have been placed upon exercise of its power by the Court and the Court would not exercise the power merely for the asking or because it is of the

view that prejudice would be caused to the parties if the same is exercised. The essential attributes for exercise of such powers have been the subject matter of number of decisions of the Supreme Court.

92. In A.I.R. 1964 S.C. 1006 (State of M.P. Vs. Harilal Bhai), the Supreme Court has observed thus:-

> "17. At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs

in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the Court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing

repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the Statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the courts should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the

> party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution."

93. This is a decision by the Constitution Bench. The same Constitution Bench in another decision reported in A.I.R. 1964 S.C. 1419 (Thansingh Nathmal & Ors. Vs. The Superintendent of Taxes, Dhubri and Ors.) observed thus:-

> "7. ..... The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not

exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by Statute. Ordinarily the Court will not entertain a petition for a writ under Article 226 where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a

court or tribunal to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a Statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

94. In another Constitution Bench decision reported in A.I.R. 1975 S.C. 1121 (Harshankar Vs. Deputy Excise Commissioner) the Supreme Court observed that the writ jurisdiction of the

High Courts under Article 226 of the Constitution of India is not intended to facilitate avoidance of obligations voluntarily incurred. In other words, such of the contractual obligations which have been entered into voluntarily and accepted accordingly, cannot be avoided by taking recourse to writ jurisdiction.

95. In a Two Judge Bench decision of Supreme Court reported in A.I.R. 1973 S.C. 205 (The D.F.O. South Kheri & Ors. Vs. Ram Sanehi Singh) the Supreme Court observed thus:-

> "4. Counsel for the appellants contends that since the dispute arose out of the terms of the contract and the Divisional Forest Officer under the terms of the contract had authority to modify any action taken by a subordinate forest authority, the remedy of the respondent was to institute an action in the Civil

Court and that the writ petition was not maintainable. But in the present case the order is passed by a public authority modifying the order or proceeding of a subordinate forest authority. By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgement of this Court in K.N.Guruswamy's case (1955) 1 SCR 305 = A.I.R. 1954 S.C. 592, there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract where the action challenged was of a public

authority invested with statutory power."

96. Thus, what emerges from these decisions is that :-

a) There are self-imposed restrictions on the exercise of plenary and constitutional powers.

b) They are not be exercised for the asking and merely because it is lawful to exercise them.

c) They are not meant to replace the ordinary remedy of a civil suit or statutory remedy.

d) The powers under Article 226 will not be exercised in cases involving serious dispute about the right to claim the relief in writ jurisdiction. If such issues or questions are to be determined

and decided by elaborate examination of evidence.

e) Lastly, the power will not be exercised to facilitate avoidance of contractual obligations voluntarily incurred.

97. This much, according to us, is enough to bring home the point that writ jurisdiction is not the only remedy available to aggrieved parties, even while questioning the actions and inactions of the authorities in charge of implementation of rehabilitation schemes under the Slum Act and the D.C. Regulations. It is well settled that all actions of Public Bodies or those involving public bodies are not necessarily of public character. More so, when some of them involve private participation or concern acts undertaken jointly by a Public Authority and Private Operator. It cannot be assumed straight

away that whenever they are participating in such scheme or measures, by the very nature of their participation, the duties and functions which are performed and discharged by them assume a public law character. It is not disputed before us that the functions and duties of these authorities are performed by them with the assistance of private entities. The same is envisaged and contemplated by the Act and Rules. Some incentives are provided to such private parties if they perform or fulfil the public function. Therefore, whenever, their actions are impugned or challenged, merely because public bodies are also involved does not mean that all of them are amenable to writ jurisdiction. There are several disputes and questions which may also involve public bodies but if their resolution is not possible in the limited jurisdiction, then, recourse to private law remedies is permissible and should be insisted upon.

98. We do not intend to lay down any broad principles as each of them are well settled. Therefore, under the garb of filing Writ Petition against S.R.A./ State/ B.M.C./ MHADA/ MMRDA if the applicant/petitioner is ventilating a purely private grievance or dispute so also raising an issue which is not possible of being resolved in writ jurisdiction, then, he can always be directed to avail of private law remedies. Merely because, a Letter of Intent is issued by the S.R.A. to the applicant does not mean that in all cases and for all times to come, the applicant/developer is the agent of S.R.A. and the S.R.A. is capable of being dragged into writ jurisdiction along with private developer by an aggrieved party. If the aggrieved party, who has essentially a grievance against the builder/developer approaches the S.R.A. and the State requesting for their intervention in the dispute and they refuse to do so on untenable and false grounds or that they act arbitrarily

capriciously or malafide, writ jurisdiction could be permitted to be invoked in appropriate cases. This is because, the aggrieved party has full recourse to the remedy of a suit or Arbitration provided in the contract and by impleading the State/SRA/Public Body, it can seek appropriate declarations and reliefs. The bar under section 42 of the Slum Act cannot straight away be held to be applicable to such cases. We do not wish to go into the interpretation so also the ambit and scope of section 42 for the purpose of present reference. Suffice it to state that doors of a civil court cannot be shut to a litigant unless the jurisdiction of civil court is ousted by express provision or necessary implication.

99. The decision of the three Judge bench (supra) has been later on explained in several cases. That apart, if it is possible to resolve the controversy in the limited jurisdiction on

the principles enunciated above, then, notwithstanding it being in the nature of contract, a writ petition would lie. However, we are of the view that in some of the disputes which have been narrated above, there is purely private issue involved and by impleading public bodies as parties, the petitioners cannot by-pass remedies available to them of filing a suit or otherwise. The instances of such disputes are given by both Mr.Kamdar and the learned Advocate General in their submissions. The list provided is by no means exhaustive. These are commonly raised grievances.

100. While not giving an exhaustive list but to outline the nature of the dispute which can be taken cognisance of in writ jurisdiction, we wish to make some observations on this aspect because, it was seriously contended that when it comes to the rehabilitation and relief of slum dwellers, their eligibility, rights, the bargaining power

being unequal, so also no remedies provided in the relevant Laws at all, the writ jurisdiction is always open to be invoked.

101. In this behalf, in the two Division Bench decisions [(1) W.P.No.910 of 2005 - Om-Sai Darshan Cooperative Housing Society (Proposed) and Chandrakant Ramchandra Thakur v/s.The State of Maharashtra, through the Secretary, SRA Section represented through the Govt. Pleader and Ors. - Coram : H.L.Gokhale and Abhay S.Oka, JJ. and (2) W.P.No.5068 of 2005 - Shri Sai Bhagwati Co.Op.Housing Society (Proposed) & Anr. v/s.Slum Rehabilitation Authority & Ors. - Coram : H.L.Gokhale and J.H.Bhatia, JJ.] brought to our notice it is observed thus:-

(2006 (5) Mh.L.J.483)

> "8. Mr.Sugdare relied upon two judgements of the Apex Court. Firstly,

he relied upon a judgement in the case of Bangalore Development Authority Vs. Hanumaiah (2005) 12 SCC 508. That was a case concerning the interference by the Chief Minister into certain decisions of the Bangalore Development Authority by exercising the powers of the State Government under section 65 of the Bangalore Development Authority Act, 1976. This section is quoted in para 50 of that judgement which reads as follows:-

> "65. Government's power to give directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duly of the Authority to comply with such directions."

". What is observed by the Apex Court in paragraphs 51, 52 and 58 is pressed into service by Mr.Sugdare. He

submitted that under this section only a direction for carrying out the purposes of the Act could be given. In the instant case, the Apex Court has noted that it has not been shown that the Chief Minister was authorised to issue directions to Bangalore Development Authority. That apart, on the facts, the Court noted in para 52 that the direction given by the Chief Minister in the instant case would not be to carry out the purposes of the Act rather than it would be to destroy the same. At the end of para 51, the Court has clearly observed:-

> ". The Government can give such directions to the Authority which in its opinion are necessary or expedient for carrying out the purpose of the Act."

"9. The second Judgement relied upon

is in the case of State of U.P. Vs. Neeraj Awasthi (2006) 1 SCC 667. The relevant section in consideration was section 26-M of the U.P.Krishi Utpadan mandi Adhiniyam, 1964. That section reads as follows:-

> "26-M(1) In the discharge of its functions, the Board shall be guided by such directions on question of policy as may be given to it by the State Government.
>
> (2) If any question arises whether any matter is or is not a matter as respects which the State Government may issue a direction under sub-section (1), the decision of the State Government shall be final."

"While considering that section, the Court has observed in para 40 that power of the State Government was confined to issue directions on questions of policy. It however, cannot interfere in the day-to-day functioning of the Board. In

our understanding, that clearly arose from the wording of section 26-M that was under consideration in the matter."

"10. As far as the present scenario is concerned, section 3K is quite wide as we have seen it. It is undoubtedly true that in day-to-day functioning, the State Government is not expected to interfere. At the same time, in the present case, what has happened is that on facts the action of the SRA in entertaining the application of the 1st petitioner before disposing of the pending one of respondent No.5, was clearly contrary to the Scheme of Development as interpreted by this Court. That being so, the Secretary (Housing) was clearly within his powers and he has rightly set aside the entertaining of the application of the petitioners by SRA."

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"22. Shri Govilkar appearing for the petitioners relied upon the Minutes of the meeting held on 18th October 2003 in Chamber of the Minister of State of Housing. A copy of the Minutes is annexed to the petition which records that the office bearer of petitioner No.1 society and the Resident Deputy Collector were present in the meeting. The minutes do not disclose that any representative of the Hanuman Nagar Society was present in the meeting or was given notice of the meeting. The Minutes record that the representative of the Petitioner No.1 Society pointed out that though Annexure II was issued in the name of Hanuman Nagar Society no progress had been made by the said society for a period of 8

years. The original Minutes which are in Marathi record that the minister of State directed that the proposal submitted by the Petitioner No.1 Society should be examined and decided immediately and Annexure II should be issued to the Petitioner No.1 Society. Shri.Govilkar submitted that this is a direction issued under Section 3K of the Slum Act. Even assuming that it can be read as a direction under Section 3K, it is obvious that the direction was to the SRA to consider the proposal of the Petitioner No.1 Society immediately. The said direction cannot be read as direction to grant approval to the proposal of the Petitioner No.1 Society as neither under the Slum Act nor under Regulation 33(10), the Minister of State for Housing has a power to sanction either Annexure or the Scheme. Apart from this, by no stretch

of imagination, the direction which is recorded in the Minutes of Meeting can be read as direction under Section 3K issued by the State Government. The power under sub-Section (1) of Section 3K extends only to the issuing of general or special directions to the SRA as to policy as it may think necessary and expedient for carrying out the purposes of the Slum Act. Whatever is stated in the Minutes of Meeting cannot be read as a special or general direction as regards policy. The power under Section 3K cannot extend to giving a direction that Annexure II of a particular proposed society should be sanctioned. When the purported direction was given, slum Rehabilitation Scheme of the Respondent No.4 was already approved by SRA. The Petitioner No.1 was claiming to develop a smaller area out of the area for which scheme of the Respondent No.4

was already sanctioned. Therefore, the Application of the Petitioner could not have been entertained either by SRA or by the State. Thus, the direction cannot be read as one under sub-Section (1) of Section 3K by any stretch of imagination.

23. Sub-Section (2) of Section 3K provides that if the State Government is of the opinion that execution of any resolution or order of the authority is in contravention or in excess of powers conferred by the Slum Act or is likely to cause waste of the funds of the SRA, the State Government in public interest can suspend the execution of such resolution or order. In the present case, this power is obviously not exercised. As pointed out earlier, the meeting was held on 18th October, 2003 and letter of intent in favour of Hanuman Nagar Society

was issued by SRA on 12th May, 2003, the sanction was issued by the SRA in favour of the said society on 21st October, 2003, and on the same day permission was granted to construct transit camp. The Minister of State has not suspended the orders passed in favour of Hanuman Nagar Society by the SRA. When the letter of intent was already issued by SRA in favour of Hanuman Nagar Society on 12th May, 2003, the Minister of State could not have directed the SRA to consider Annexure II prepared by the Petitioner No.1 Society of only 28 eligible hutment dwellers as area in respect of which the scheme was sought to be submitted by Petitioner No.1 was already covered by letter of intent issued in favour of Hanuman Nagar Society. In any event, no such decision could have been taken by the Minister without following the

elementary principles of natural justice by giving an opportunity of being heard to Hanuman Nagar Society."

102. In this behalf the Supreme Court in a decision reported in 2006(4) S.C.C. 501 (P.R.Murlidharan & Ors. v/s. Swamy Dharmananda Theertha Padar & Ors.) has observed that jurisdiction of the Civil Court is wide and plenary. A writ proceeding cannot be a substitute for a civil suit. It is also observed in this decision that a writ petition cannot be made a forum for adjudicating civil rights. A writ of Mandamus cannot be converted into a proceeding seeking relief for adjudication of civil rights. The Supreme Court observes that the wide Jurisdiction under Article 226 of the Constitution of India would remain effective and meaningful only when it is exercised prudently and in appropriate situation.

103. In another decision reported in A.I.R. 2005 S.C. 4455, (G.Srinivas Vs. Government of A.P. & Ors.), the Supreme Court has observed that the question of title could not be determined in the writ jurisdiction. The scope of judicial review is limited in cases involving the property rights.

104. However, it was contended before us that there is an absence of corrective machinery in the Statute and, therefore, recourse to Article 226 is permissible. In other words, Judicial review, is permitted whenever there is no alternate remedy, is the submission.

105. Reliance was placed upon a recent decision of the Supreme Court reported in (2006) 11 S.C.C. 67 (Indian Airlines Ltd. Vs. Prabha Kanan). The Supreme Court decision must be seen in the backdrop of the fact that what was impugned before the Supreme Court and the High

Court was an action of Board of Directors doing away with the services of a permanent employee employed with the Indian Airlines Ltd. Regulation 13 which confers powers on the Board of Directors was invoked and the order impugned before the Supreme Court was passed. The Argument was, there was no remedy of an appeal because the decision is taken by the Highest Authority of the Corporate entity viz., Board of Directors, which includes the Chairman. Therefore, it was urged that in the absence of an appeal to anybody within the establishment, Judicial Review is permissible. It is in this context that the observations have been made by the Supreme Court and more particularly in paras 34 to 46.

106. It is not as if there is no remedy at all in the matters before us. The State Government has a power to issue directions. We have already referred to the said power in the Slum Act. The

State Government is empowered to direct the SRA to take such steps as are necessary for successful, meaningful and purposeful implementation of the rehabilitation scheme meant for slum dwellers. It is not as if the SRA itself is also powerless. Once it issues a Letter of Intent to the Developer, it can by taking recourse to the terms and conditions thereof, monitor and supervise the activities of development at site and can even make suggestions and direct changes. Thus, it is S.R.A. which has to implement slum rehabilitation scheme. Slum Rehabilitation is its duty. It is established by the State Government. Therefore, within the scheme of the Act, Rules and the D.C.Regulations so also the terms and conditions of the Letter of Intent, the aggrieved party including the slum dweller can approach the slum rehabilitation authority and seek redressal of any of the grievances. If the S.R.A. refuses to intervene, then, the State Government can be

approached. If the State Government refuses to take cognizance of the grievances and fails to exercise its powers in that behalf, then, recourse to a writ petition is permissible, depending upon other facts and circumstances. Therefore, we are of the view that the submission that there is no alternate remedy or absence of corrective machinery is not well founded. In such circumstances, we do not find that writ petition is maintainable straightway. Once we are of the view that corrective mechanism is available then, we cannot render such a conclusion.

107. That apart we are of the view that as far as ambit and scope of the powers conferred by Section 3K(1) and (2), there is no conflict and the interpretation thereof is correct. Further, considering the nature of the function and duty of the State, it would be appropriate to construe that the State Government can intervene so as to

smoothen the process and remove all obstacles and hurdles in the way of proper and complete rehabilitation. Additionally, we are of the view that it is for the Legislature to intervene and provide for a complete corrective mechanism by setting up a Supervisory and Monitoring Authority. Such an authority can be set up by the State by making appropriate changes or amendments in the relevant Statutes. We hope these steps are taken expeditiously.

108. Absence of adequate administrative, executive or quasi judicial process or forum would naturally tilt in favour of invoking jurisdiction under Article 226 of the Constitution but the nature of the dispute would indicate that by proper exercise of power or authority vested in these departments as afore-indicated would help of reduction in litigation and expeditious resolution of disputes or problems, which might have arisen because of

lack of coordination and systematic administrative approach of various departments involved in the entire process of planning and rehabilitation of slum development scheme, and sanctioning development scheme, and sanctioning developments of various projects under the scheme.

109. Compared with the dimensions of the litigation generated and lack of adequate and proper remedy within the statute compels us to observe that the State may consider objectively legislative amendment to Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, MHADA, MRTPA, not only to provide for appropriate forum for remedying the grievances of the persons but also to some extent collective working of these authorities.

110. During the interrugnm period constitution of the authority would serve the ends of justice

and would result in reducing avoidable litigation.

111. We have actually not nor should it be understood that we have in any way expressly or implied restricted the scope of applicability of Article 226 of the Constitution to such cases. We have only indicated certain cases where inter or intra-departmental mechanism may be invoked in consonance with the scheme of the Act before approaching this Court. Such classification is not exhaustive but is merely an indication of class of cases where the Court in its discretion may require the parties to take recourse to such remedy. These principles are neither innovative nor new percepts but are re-appreciation of well accepted principles.

112. Compelling the parties to file suits would neither be efficacious, alternate remedy nor would meet the ends of justice in all cases.

The controversies in such cases are best resolved at the administrative level itself as the cause of action is founded on the inaction, incorrect action or colourable exercise of powers by the authorities. The records of the authorities and their action based upon such matters can best be corrected in accordance with the established percepts of administrative functioning and executive action at different levels of the departments within the frame work of the Statute.

113. Till such time as the Legislature or the State Government makes changes or amendments, it would be just, fair and proper to direct that a Monitoring Agency/mechanism should be set up by the State so that the power to supervise and issue directions available in the Slum Act can be exercised effectively. The State Government as also the Slum Rehabilitation Authority has not opposed this course during oral arguments. Hence, we are of the view that the State should

immediately establish a monitoring agency. It is necessary to do so for the following reasons:-

114. That apart, with a view to remove all apprehensions in the minds of slum dwellers and other aggrieved parties, we suggested to the learned Advocate General that the State should immediately set up a monitoring agency / mechanism so that the power to supervise and issue directions available in the slum Act can be exercised effectively. In all fairness, learned Advocate General stated that directions be issued in that behalf. The State should immediately put a monitoring agency in place.

a) Considering that the Eligibility criteria is determined by the District Collectorate and in cases of land belonging to public body by the Competent Authority thereof, the scheme works with cooperation and coordination of these

Authorities. It is, therefore, of utmost importance that the SRA acts as a Chief Coordinator and the Government, being the ultimate and final body, which establishes authority like SRA and sets up public authorities like MHADA, MMRDA etc. should have a final word.

b) The Government and all such bodies have a duty to undertake and implement these projects. The implementation is not restricted only to sanction and approval of plans and grant of permission. The Government must see to it that the purpose of establishing SRA is achieved and slum dwellers are rehabilitated, so that the government and private lands are slum free. Equally the pavements, which are meant for use of residents and tax payers are cleared. In other words, if the Government does not

want proliferation of slums, then it has to take steps to ensure Coordination and Harmony amongst the Agencies and Authorities.

c) It would be of utmost importance that the Government sets up high power committee, consisting of a person, preferably a Principal Secretary, to be nominated by the Secretary, who shall be assisted by Chief Executive Officer / SRA, CEO / Vice President of MHADA and CEO / Vice President of MMRDA and Commissioner of Municipal Corporation, Gr.Mumbai.

d) That any complaint about eligibility of slum dwellers, eligible slum dwellers being denied tenement, developers not undertaking and completing the project as per the permission and

approval so also within the stipulated time frame, transit accommodation being unavailable or not provided for etc. shall be addressed to this Committee and grievances be looked into by it accordingly. The Courts cannot be approached straightway unless and until above mentioned Committee is first moved by the aggrieved person in the form of an application / complaint in writing. If the grievance is not redressed or complaint / representation is not attended to, then and in that event this Court can be approached under Article 226 of the Constitution and not otherwise. Ordinarily, no person can approach this Court directly without exhausting the above remedy.

115. In the result, we are of the opinion that writ jurisdiction is available in matters of

Rehabilitation of Slum Dwellers but the limits of exercise of power should be confined and restricted to matters, which remain unresolved despite the remedies of Appeals etc. being exhausted. Similarly, in the illustrations given by learned Advocate General, this Court can be approached only if the decision of SRA or State is permissible for being interfered with on the settled principles in writ jurisdiction. We have given illustrations and categories of case wherein a prerogative writ may be issued so as to ensure smooth and effective implementation of Slum Rehabilitation Scheme. However, the writ jurisdiction will not be available where the dispute is essentially private or contractual and the State Government, SRA and other local bodies are impleaded as parties only to file writ petition. In other words, when the main relief is not sought against these bodies, yet, they have been impleaded as parties and the dispute is mainly and essentially between private parties

involving purely private law, then, writ petition is not the remedy.

116. We are recording our conclusions hereinbelow on the basis that none of the parties have taken an extreme stand before us. The Counsel, whether appearing for petitioners or respondents, do not contend that in all cases involving Slum Dwellers, Developers and Public Bodies invoking Writ Jurisdiction is impermissible. They do not dispute the salutary principles set out above, culled as they are, from the decisions of the Supreme Court. They could not submit an exhaustive list of disputes having public law character or raising private grievances. The Counsel appearing for petitioners so also the learned Advocate General agreed that there are inbuilt checks and safeguards so also enough powers reserved to the Authorities in charge of implementation and supervision of the Slum Rehabilitation Scheme

within the frame work of the existing law. They broadly agree with the conclusion that the intent of the Legislature is minimum obstacles and obstructions in the way of implementation of Slum Rehabilitation Scheme. All provisions and measures are intended at smooth and expeditious implementation of the scheme so as to achieve removal of encroachment and demolition of structures on pavements and public lands. Therefore, interference by the Court should be minimum and bearing in mind the above intent.

117. Having perused the decisions of this Court on the issue of right of slum dwellers and developers, both sides agree that there is really no difference of opinion between two Division Bench decisions of this Court reported in (1) 2006(5) Mh.L.J. 483 (Sai Bhagwati Coop.Housing Society (Proposed) and Anr. Vs. Slum Rehabilitation Authority & Ors.), (2) 2006 Mh.L.J. 282 (Awdesh Tiwari & Ors. Vs. Chief

Executive Officer, S.R.A.). We also could not find any conflict in the same insofar as State's power to issue directions under Section 3K and more particularly sub-Section 2 thereof. Wide as the power is, its exercise or otherwise was the core issue. Thus, on the existence of the power to issue directions, there is no difference of opinion at all.

118. In the result, we answer the question framed hereinabove as under:-

A) While exercising the Jurisdiction and powers under Article 226 of the Constitution of India in matters concerning Rehabilitation - of Slum Dwellers and schemes framed under relevant statutes, distinct yardsticks cannot be carved out nor separate parameters laid down by this Court.

B) However, the limits and restrictions which are placed on the writ jurisdiction of this Court by Authoritative pronouncements of Supreme Court would govern the writ petitions challenging the orders, actions/inaction of the Authorities in charge of implementing and/or monitoring the slum rehabilitation scheme.

C) It is clarified that ordinarily a petition under Article 226 of the Constitution of India can be filed and depending upon the facts and circumstances of each case, this Court can decide to intervene, even if, alternate remedy provided above is not exhausted by the petitioner. However, such intervention should be minimum and the Court must abide by the Rule of caution and Prudence enunciated by the

Supreme Court in this behalf. In exceptional and deserving cases, this Court would exercise its powers and no general rule can be laid down in that behalf.

D) As far as disputes and questions involving the slum dwellers and Slum Rehabilitation Authority/Public Body/State, Cooperative Housing Society of Slum Dwellers and Developers, Registered Cooperative Housing Society of Slum Dwellers on one hand and proposed Cooperative Society on the other, Developers and S.R.A./State, a Writ petition under Article 226 of the Constitution of India would not lie or would be entertained unless and until the parties exhaust the remedy of approaching the High Powered Committee referred to above.

E) The only exception that can be made to Clause (D) above, is with regard to Writ petitions challenging the validity and legality of the Rules, Regulations and Policy Circulars/directives issued under the Statutory provisions or the vires of the Statutory provisions themselves. In such cases, the Court would not insist upon exhaustion of remedies stipulated above. Similarly, if a High Powered Committee/Authority refuses to act on the representations/applications despite proof of the same having been received, then, in appropriate cases, directions can be issued to the said Authority. However, the parties must satisfy this Court that they had made a grievance with regard to inaction of High Powered Committee to the State Government and it

has also refused to issue any directions to either that Authority or SRA. Thus, if the State inaction is also alleged, then, the petition can be entertained. However, grant of relief would depend upon this Court satisfying itself about the promptness or sense of urgency shown by the aggrieved party apart from its bonafides in approaching this Court.

F) Needless to state that the Rule of Prudence and caution evolved by the Supreme Court with regard to exhaustion of alternate remedy would always be applicable. If the disputes and questions raised involve factual aspects or necessitate leading of oral and documentary evidence, then, this Court can refuse to interfere in writ jurisdiction leaving open to the parties, remedy of suit in competent civil court

or Arbitration.

G) It is clarified that purely private disputes or those involving contractual rights, brought before this Court by way of writ petitions, will have to be ordinarily resolved by recourse to civil suit or arbitration and this principle would apply even to petitions where the State, S.R.A., B.M.C., MHADA etc. are impleaded as parties.

H) An exhaustive category of such cases and disputes cannot be framed and the General principles governing writ jurisdiction would be applicable having regard to the facts in each case.

119. We are thankful to the learned Counsel who have appeared in the matter for their

valuable assistance.

120. Lastly, we clarify that we have not gone into the merits and de-merits of individual petitions. They were not placed before the Full Bench for decision. The petitions which are listed before us, were representative of the issues and questions commonly canvassed and, therefore, the facts were taken from some of them. In the light of our opinion and conclusion recorded above, each of these petitions to be placed before the respective Division Benches under appropriate headings i.e. Admission / Hearing or Interim Relief.

121. Office to take steps accordingly. However, all matters will be disposed of bearing in mind the above mentioned conclusions. Reference is disposed of accordingly.

(Swatanter Kumar, C.J.)

(Dr.D.Y.Chandrachud, J.)

(S.C.Dharmadhikari, J)