SUSME BUILDERS PVT. LTD. A

v.

CHIEF EXECUTIVE OFFICER, SLUM REHABILITATION AUTHORITY AND ORS.

(Civil Appeal No. 18121 of 2017)

JANUARY 04, 2018 B

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Slum Dwellers:

Rehabilitation of slum dwellers – 800 slum dwellers in Mumbai – Relief of rehabilitation – Slum dwellers, who are also owners of C *the land, formed a society – Agreement between the society and appellant-developer to develop the slums and rehabilitate the slum dwellers in proper accommodation in the year 1986 – Thereafter, various agreements between the Society and developer – Developer to obtain consent of 70% slum dwellers in terms of amended DCR –* D *However, the developer not developing project as per the agreement – Society entered into an agreement with respondent no. 4, which was subsequently terminated and appellant again appointed as the developer – Dispute between the appellant and respondent no. 4 – Matter before Supreme Court, wherein former judge of Supreme Court appointed to verify the factum of consentum of the eligible* E *slum dwellers – Report to the effect that both the developers failed to show that they had obtained 70% consent – Held: It is our duty to ensure that these owners who also happen to be slum dwellers do not live in sub-human conditions for eternity – Appellant delayed the project, and respondent no. 4 obtained the consent of society* F *members by holding out a false promise of a larger flat – Thus, both the contesting developers not entitled to any relief – 800 slum dwellers, in addition to the flats, to be given compensation for the land owned by them – In exercise of power u/Art. 142, directions issued to Slum Redevelopment Authority-SRA to invite letters from* G *renowned builders/developers, for rehabilitation of all eligible occupiers/slum dwellers within the stipulated period – Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 – Development Control Regulations for Greater Bombay, 1991 – Development Control Regulations, 1997 – Constitution of India – Art. 142.*

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A *Rehabilitation of 800 slum dwellers – Various agreement between the slum dwellers and appellant-developer to develop the slums and rehabilitate the slum dwellers – In terms of amended DCR, the developer to obtain consent of 70% slum dwellers – However, project not developed as per the agreement – Dispute between the*
B *appellant and respondent no. 4-new developer – Matter before Supreme Court, wherein former judge of Supreme Court appointed to verify the consent of the slum dwellers* in praesenti *– Scope, ambit and effect of the said order– Held: Intention of the Court, will have to be deduced from the entire order – Phrase "there should be appropriate verification of the consent of the eligible slum dwellers*
C *in praesenti" cannot be read in isolation – It has to be read in the context of the contention of the contesting parties that each one of them had the consent of more than 70% of the slum dwellers – This Court was not oblivious of the requirements of the Slum Act though may not have explicitly mentioned 70% in its order – It is clear that*
D *the judge had understood that he was to ascertain whether 70% of the eligible slum dwellers are in favour of the redevelopment scheme signed with the appellant or with respondent no. 4 – Holistic reading of the order admits of no other meaning – Admittedly, neither the appellant nor respondent no. 4 received 70% support of slum dwellers, as such, the said order cannot be taken to its logical*
E *conclusion.*

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971:

s.13(2) – Power of Competent Authority to redevelop clearance
F *area – Held: Under s.13(2), the Slum Redevelopment Authority-SRA has the authority to take action and hand over the development of land to some other recognized agency under three circumstances-when there is contravention of the plans duly approved; when there is contravention of any restriction or condition imposed under sub-section 10 of s. 12; and when the development has not taken place*
G *within time, if any, specified – On facts, slum dwellers are virtually the owners of the land as members of the owner Society, the SRA had the power u/s. 13(2) to issue the order of setting aside the appointment of the appellant as developer.*

s.3A(3)(c) and (d) – Slum Redevelopment Authority-SRA –
H *Power to remove the developer – Held: Since SRA issued the letter*

of intent, it necessarily has the power to cancel the same – In terms of clause (c) and (d) of sub-section (3) of s.3A, SRA not only has the power, but it is duty bound to get the slum rehabilitation scheme implemented and to do all such other acts and things necessary for achieving the object of rehabilitation of slums – On facts, SRA was faced with a situation where the slum dwellers were suffering for more than 25 years, thus, action by SRA to remove the developer for the unjustified delay totally justified – Developer could not have carried out the development work on the basis of its agreement with the Society – It needed permission of SRA – Thus, SRA can revoke such permission.

s.13(2) – Notice u/s.13(2) – Issue of 70% consent, if raised – Held: When a notice is issued to a party, it must be clear and unambiguous as to what are the allegations it must meet – No allegation in the notice that right to develop granted in favour of the developer was liable to be revoked because it had not obtained consent of 70% of the slum dwellers but was confined to the issue of delay – Reference to Regulation 33(10) also did not specifically raise the issue of 70% consent.

Development Control Regulations of 1991:

70% consent of the slum dwellers, if mandatory – Held: Development Control Regulations of 1991 makes it absolutely clear that at least 70% of the slum dwellers/occupiers were to form a Society for the purpose of slum re-development scheme – Under the amended DCR of 1997, the developer/owner was required to enter into agreements with 70% of the slum dwellers to take up the slum rehabilitation scheme for consideration – Figure remains at 70% – Even if the remaining minority slum dwellers do not agree to be part of the scheme, the owner/developer is duty bound to make adequate arrangements for their rehabilitation and they can join the scheme, and can take benefit even at any later stage – Thus, 70% consent of the occupiers is mandatory – On facts, developer having applied for migration to new Scheme, had to obtain consent of 70% of the slum dwellers – Stand of the developer that it was not required to submit agreements with 70% slum dwellers, not legally tenable – Agreements with 70% slum dwellers should have been provided within a reasonable time and, though almost 20 years have elapsed since the second letter of intent was granted in favour of developer,

A *it has till date failed to submit agreements – Development Control Regulations of 1997.*

Rehabilitation of slum dwellers – Whether developer delayed the construction of the scheme – Entitlement to relief – Held: Developer never earnestly pursued the authorities for approval of B *the plans because it did not have consent/agreements of 70% slum dwellers – It sought waiver of the requirement of obtaining 70% consent from the slum dwellers – Furthermore, only a portion of plot was covered by the CRZ Notification and the developer not prevented from raising construction on that portion of the land which* C *was not affected by the CRZ Notification – Finding given by SRA that developer was responsible for the delay, based on appreciation of material on record and cannot said to be perverse – Though there may have been a few stop orders and a few occasions when the developer may not have been able to raise the construction but, by and large, developer was itself guilty of delaying the construction* D *for no reason – Thus, developer rightly held responsible for the delay in implementation of the rehabilitation scheme.*

Rehabilitation of slum dwellers – Developer entered into rehabilitation scheme for slum dwellers – Inordinate delay in completion of the project – Developer, if entitled to continue with E *the Scheme – Held: Developer not entitled to continue with the rehabilitation Scheme – Developer cannot take the benefit of technical points to defeat the rights of the slum dwellers – On facts, both equity and law against the developer – Slum dwellers dealt in a highly inequitable manner – Law and the conditions of the letter* F *of intent and various letters issued by SRA clearly required the developer to produce agreements with at least 70% of the slum dwellers – However, developer failed to do so – Developers as a legal entity was treating the slum dwellers only as a means of making money, thus, not entitled to any relief.*

Rehabilitation Scheme – Cancellation of slum rehabilitation G *agreement in favour of appellant-developers – Entitlement of respondent no.4(new developer) to continue with the rehabilitation Scheme – Held: Respondent no. 4 had misled the members of the Society in entering into an agreement with it by holding out a false promise that they would be given much larger flats – Respondent* H *no.4 legally not entitled to make this offer – Also respondent no. 4*

failed to get the consent of 70% slum dwellers and Society had terminated its agreement with the respondent no. 4 – Thus, consent having been obtained by misrepresentation of facts being no consent, respondent no. 4 not entitled to continue with the project and not entitled to any relief.

Constitution of India – Arts. 142 and 136 – Order of this Court requesting former judge of this Court to verify the consent of the slum dwellers in praesenti – Held: Court was aware that the slum dwellers were suffering due to the long protracted litigation and was moved by the pathetic condition in which most of the slum dwellers continued to reside – Court felt the need to find an innovative solution – Thus, the order fell within the ambit of Art. 142 to do complete justice between the parties.

Judicial propriety – Requirement – Judicial propriety and discipline requires that a Coordinate Bench must respect the order of an earlier Bench – Even a larger Bench should not brush aside the order passed by an earlier Bench even if it be a smaller Bench unless the order is in issue before the larger Bench.

Judgment/Order – Interpretation – Held: Judicial order or judgment has to be read as a whole and a single line or phrase cannot be read out of context – Judgment is not to be interpreted like a statute.

Tender – Bid – Competitive bidding – Rehabilitation scheme of slum dwellers by developers – Inter se bidding between the builders – Held: High Court rightly held that consent once given by the slum dwellers should not be permitted to be withdrawn and there should be no inter se bidding between the builders – Competitive bidding can lead to a very unholy practice of developers trying to buy out the slum dwellers, which is also not in the interest of the rehabilitation scheme.

Disposing of the appeal subject to compliance, the Court

HELD: 1.1 Both the contesting developers, the appellant and respondent no. 4 are not entitled to any relief. It is the duty to ensure that these owners who also happen to be slum dwellers do not live in sub-human conditions for eternity. The following conclusions are arrived at:

(i) That the order dated 27.03.2015 was passed in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India and is an order binding on the parties;

(ii) That vide order dated 27.03.2015, this Court wanted Justice B.N. Srikrishna to find out whether appellant or respondent no. 4 had the consent of 70% slum dwellers;

(iii) That, as a result of the Report submitted by Justice B.N. Srikrishna both the appellant and respondent no. 4 have failed to show that they enjoyed support of the 70% of the slum dwellers;

(iv) That, in the peculiar facts and circumstances of this case, where the owners and occupiers are virtually one, the SRA had the jurisdiction to invoke the provisions of Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to revoke and set aside the right to develop and cancel the letter of intent granted in favour of the appellant. Even if it be assumed that s. 13(2) is not applicable, then the SRA could have exercised the power under Section 3A (3)(c) and (d);

(v) That the notice issued by the SRA to the appellant was only on the ground of delay and the issue of obtaining 70% consent was not specifically raised in the notice. Consequently, the order dated 24.02.2012 passed by the SRA in so far as it rejects the case of the appellant for lack of 70% consent is beyond the terms of the notice. Therefore, this part of the judgment of the High Court, holding that the appellant was aware about this allegation, is not accepted and is set aside;

(vi) That, the appellant was responsible for the delay in implementation of the Scheme and construction of the buildings and, therefore, the SRA was justified in setting aside the appointment of the appellant as developer and impliedly cancelling the letter of intent issued in its favour vide order dated 24.02.2012;

(vii) That, the appellant has failed to show that it has the consent/agreements of 70% of the slum dwellers and,

therefore, is not entitled to any relief from this Court; and

(viii) That respondent no. 4 obtained the consent of the members of the Society by holding out a false promise of a larger flat and, therefore, the agreements entered into by respondent no. 4 with the slum dwellers are legally unconscionable and not enforceable and, as such, respondent no. 4 is also not entitled to continue with the Scheme. [Paras 84, 85][57-B-H; 58-A-C]

1.2 The Court is not only disappointed with the conduct of the appellant, but also with the conduct of those persons who were the office-bearers of the Society whichever faction they may belong to. It is more than obvious that the two rival developers and the office-bearers of the Society were playing with the lives of large number of slum dwellers. On examining the various agreements entered into by the appellant with the Society, it is found that though the members may have been entitled to larger flat in each subsequent agreement but, in fact, it was the builder, who was the biggest gainer as the advantage of higher FSI was cornered by the builder. Only a small portion of this advantage was being transferred to the slum dwellers and a large portion was being retained by the builder. Furthermore, it is the occupiers who, through the Society, are also the owners of the land. In addition to the flats which they would be entitled to as slum dwellers or occupiers or encroachers of land, they should have been given some benefits as owners of the land. When a slum, owned by any authority or person, is handed over to the developer, in addition to rehabilitating the slum dwellers, the developer also has to compensate the owner. It is these 800 plus slum dwellers, who own this 23018.50 sq. mtrs. of land, which would be valuing thousands of crores of rupees and, therefore, there is no reason why the slum dwellers, who also happen to be the owners of the land, should also not be compensated for the price of the land.[Para 86][58-D-H]

1.3 This is a case where the earlier Bench of this Court had invoked its power under Article 142 of the Constitution of India and it is a fit case for invocation of this Court's jurisdiction under Article 142. Hence, in exercise of this Court's power under Article 142, the SRA is directed to invite letters of interest from

renowned builders/developers, who have the capacity and experience to take up such a large project by issuing advertisements. The successful developer should undertake to complete the rehabilitation of part of the project to rehabilitate all eligible occupiers/slum dwellers within a period of two years from the date of sanction of the plan. The successful bidder must give a bank guarantee of Rs. 200,00,00,000/- (Rupees Two Hundred crores only) to ensure that it does not violate the terms and conditions of the rehabilitation scheme. In case of violation of the terms and conditions of the rehabilitation scheme without reasonable cause, the SRA would be entitled to invoke the bank guarantee, after giving notice to the developer. [Para 87][59-A, B-C; 60-A-C]

<u>The scope, ambit and effect of the order of this Court dated 27.03.2015:</u>

2.1 Judicial propriety and discipline requires that a Coordinate Bench must respect the order of an earlier Bench. In fact, even a larger Bench should not brush aside the order passed by an earlier Bench even if it be a smaller Bench unless the order is in issue before the larger Bench. The order in question holds the field. It has not been recalled and prayer for modification in I.A. No. 10 was rejected on 13.05.2015. Therefore, the order of this Court dated 27.03.2015 holds the field and the Court bound by the same. At the same time, it is the duty to decipher what was the intention of the Bench while passing the order and to find out what the Court intended to do by the said order. [Para 34][36-C-D]

2.2 The Court was aware that the slum dwellers were suffering due to the long protracted litigation. Therefore, the Court felt the need to find an innovative solution. In the order, the Court noted the factual aspects and again emphasized the need to find a solution to resolve the various issues. The Court was obviously moved by the pathetic condition in which most of the slum dwellers continued to reside. It is thus, apparent that this is an order falling within the ambit of Article 142 to do complete justice between the parties. [Para 35][36-E-G]

2.3 It is settled law that a judicial order or judgment has to be read as a whole and a single line or phrase cannot be read out

of context. A judgment is not to be interpreted like a statute. As far as the order dated 27.03.2015 is concerned, the intention of the Court, will have to be deduced from the entire order. The phrase *" there should be appropriate verification of the consent of the eligible slum dwellers in praesenti."* cannot be read in isolation. This has to be read in the context of the rival contention of the contesting parties that each one of them had the consent of more than 70% of the slum dwellers. This Court was not oblivious of the requirements of the Slum Act though it may not have explicitly referred to them. It is obvious from the order dated 27.03.2015 that counsel for both the parties claimed that their respective clients had the support of 70% of the slum dwellers. Obviously, both of them could not be correct. This factual dispute could not be decided in these proceedings. This was the dispute which was referred for resolution to Justice B.N. Srikrishna. It is, thus, clear that Justice B.N. Srikrishna had understood that he was to ascertain whether 70% of the eligible slum dwellers are in favour of the redevelopment scheme signed with the appellant or with respondent no. 4. A holistic reading of the order admits of no other meaning. The only dispute raised before this Court on 27.03.2015 was which of the builders had the support of the 70% of the slum dwellers. Since this factual dispute could not be decided in Court, Justice B.N. Srikrishna was requested to do this job. Admittedly, neither the appellant nor respondent no. 4 has received 70% support. [Paras 38, 39][37-E-G; 38-C-D]

2.4 The words '*in praesenti*' only mean that the Court wanted the verification of the consent of the eligible slum dwellers as on date of passing of the order. '*In praesenti*' cannot be read to mean 'present and voting'. It only means eligible slum dwellers as on 27.03.2015. Justice B.N. Srikrishna has divided the slum dwellers into four categories; 263 were the original slum dwellers, 318 were the legal heirs, 207 were those who had become members by means of sale and transfer of shares and 79 voters were disputed. During these entire proceedings not a single complaint has been filed that an ineligible slum dweller was permitted to vote or that an eligible slum dweller was not permitted to vote. The procedure followed by Justice B.N. Srikrishna is absolutely correct and no error can be found in this regard. Therefore, there is no hesitation in accepting the report submitted by Justice B.N.

A **Srikrishna. [Para 40][38-D-G]**

2.5 Out of 867 total eligible voters only 651 voted and the appellant secured 423 votes, which would mean 64.98% or roughly 65% of the votes polled. But, if the percentage is calculated from the total number of slum dwellers-867 then the B **percentage is 48.78%, which is less than 50%. In case 79 votes are excluded which are doubtful, then the total eligible voters would be 788 and the appellant secured 413 i.e. 52.41% of the total eligible slum dwellers, well below the magic figure of 70%. It cannot be said that to put an end to all litigation, the Court only wanted to find out who had the majority. That, is not the essence** C **of the order dated 27.03.2015. It is true that 70% is not reflected in the direction given in the order but the directions have to be understood in view of the intention of the Court, which was to find out that which of the builders had the support of 70% of the slum dwellers. Unfortunately, both the developers do not enjoy** D **70% support, though it is true that the appellant has the support of more than twice the number of slum dwellers as compared to respondent no. 4. Since neither the appellant nor respondent No. 4 has the support of 70% slum dwellers, the order dt 27.03.2015 cannot be taken to its logical conclusion. [Para 41][38-G-H; 39-A-C]**

E

<u>The scope of powers under section 13(2) of the Slum Act:</u>

3.1 Under Section 13(2), the SRA has the authority to take action and hand over the development of land to some other recognized agency under three circumstances: (i) When there is F **contravention of the plans duly approved; (ii) When there is contravention of any restriction or condition imposed under sub-section 10 of Section 12 of the Slum Act; and (iii) When the development has not taken place within time, if any, specified. The requirement to complete the development within time may be there in the letter of intent issued by the SRA or may be in the** G **agreement entered into between the owner/developer with the slum dwellers. Such condition, if violated, would attract the provisions of Section 13(2) of the Slum Act. Over and above that, when a clearance order is passed, then in terms of sub-section 10 of Section 12, the competent authority can include a condition** H **with regard to the time within which the development should be**

completed and in that case also Section 13(2) would be attracted. It cannot be said that in case of delay, the condition that is violated must be laid down under Section 12(10) of the Slum Act. [Paras 44-45][40-D-G]

3.2 There may be cases where the slum dwellers do not offer any resistance and willingly consent to move into transit accommodation provided by the owner/developer. Therefore, the conditions laid down under Section 12(10) will come into play only when there is a clearance order, but in case there is no clearance order, then under Section 13(2), the SRA would be empowered to take action when there is violation of any plan or when there is violation of any condition relating to developing the project within time. The time limit can, some time, be provided in the letter of intent, in the agreement or even in the regulations. [Para 46][40-G-H; 41-A-B]

3.3 Normally under Section 13(2) of the Slum Act, action by the SRA has to be taken against the owner. This is a unique case where the slum dwellers are the members of the owner-Society. The Society, in turn, has given power of attorney to the builder. The builder virtually has two roles-one as developer and the other as power of attorney holder of the owner. Both are closely interlinked and inextricably mixed with each other. Therefore, though normally it would be accepted that under Section 13(2) action can only be taken against the owner, in the instant case, it cannot be accepted in its totality. Even the SRA, in its order, has itself noted that since the Society is the owner of the plot of land, it is empowered and within its right to terminate the agreement executed with the said developer for breaches committed by the developer. It has, however, held that a private dispute between the Society and the developer cannot prevent the SRA from discharging its obligations. The SRA agreed that appellant had not completed the project within time. It took action under Section 13(2) of the Slum Act. The action taken by the SRA is to remove appellant as developer which amounts to cancelling the letter of intent issued in favour of appellant. Otherwise, there would be an anomalous situation where the Society would have terminated its contract with appellant but the letter of intent issued by the SRA would continue to hold the field and it would be entitled to

develop the land. The Society approached the SRA, in fact, asking it to take action against the developer. Since the SRA is the authority which issued the letter of intent, it will definitely have the power to cancel the letter of intent. In the peculiar facts and circumstances of the case where the slum dwellers are virtually the owners of the land as members of the owner Society, the SRA had the power under Section 13(2) to issue the order dated 24.02.2012 setting aside the appointment of the appellant as developer. [Paras 47-49][41-B-H]

Whether the SRA has any other power to remove the developer:

4.1 Since it was the SRA which issued this letter of intent, it necessarily must have the power to cancel the same. A bare reading of clause (c) and (d) of sub-section (3) of Section 3A of the Slum Act shows that in terms of the provisons, the SRA not only has the power, but it is duty bound to get the slum rehabilitation scheme implemented and to do all such other acts and things as will be necessary for achieving the object of rehabilitation of slums. In the instant case, the SRA was faced with a situation where the slum dwellers were suffering for more than 25 years and, therefore, the action taken by SRA to remove the appellant for the unjustified delay was totally justified. [Paras 50, 51][42-B, F-G]

4.2 A perusal of the various provisions of the Slum Act would show that normally in a case falling under the Slum Act, it is the owner of the land, whether it be the Government, a statutory authority or a private person, who will be interested in the development work. Normally, the occupiers will be encroachers of slum land. Therefore, there will be a conflict of interest between the occupiers and the owner. The owner, in turn, will always engage a developer/builder to carry out the development work. In case the owner gives a power of attorney to the developer, as in the instant case, the developer now has two identities-(i) the power of attorney holder of the owner and (ii) the developer. As far as the instant case is concerned, the Society is made up of the members who are occupiers and this Society has given power of attorney to the developer. Therefore, the developer is actually having a dual role of owner and developer. Both the letters of intent have been issued in favour of the Society, developer and the architects of the developer. The developer could not have

carried out the development work on the basis of its agreement with the Society. It needed the permission of the SRA. Therefore, SRA can obviously revoke such permission.[Para 52][42-G-H; 43-A-C]

Whether in the notice issued under section 13(2) the issue of 70% consent was raised:

5. When a notice is issued to a party it must be clearly told what are the allegations which it must meet. The notice should be clear and unambiguous. There was no allegation in the notice(s) that the right to develop granted in favour of the appellant was liable to be revoked because it had not obtained consent of 70% of the slum dwellers. The reference to Regulation 33(10) also did not specifically raise the issue of 70% consent. The appellant was never put to notice by the SRA that its right to develop the land may be cancelled because of not having consent of 70% slum dwellers. It was confined to the issue of delay. However, while considering the issue of delay, the SRA was justified in making reference to the various communications made by the developer and its architects seeking time to obtain consent of 70% slum dwellers. [Paras 54-56][43-F-H; 44-A]

Whether support of 70% of the slum dwellers is mandatory and whether slum dwellers are entitled to withdraw their consent:

6.1 A bare reading of Development Control Regulations of 1991 makes it absolutely clear that under the said DCR at least 70% of the slum dwellers/occupiers have to get together and form a Society for the purpose of slum re-development scheme. Therefore, unless 70% slum dwellers agree to form a Society, the provisions of the Slum Act could not be invoked to frame an SRD scheme. Under the amended DCR of 1997, there is a change that now the developer/owner was required to enter into agreements with 70% of the slum dwellers and unless 70% of the slum dwellers agree, the slum rehabilitation scheme cannot be entertained. The magic figure remains at 70%. The idea behind it is that more than 2/3 of the occupiers must agree for the rehabilitation scheme. Even if the remaining minority slum dwellers do not agree to be part of the scheme, the owner/ developer is duty bound to make adequate arrangements for their rehabilitation under the scheme and they can join the scheme, and can take benefit of the scheme even at any later stage.

Therefore, 70% consent of the occupiers is mandatory. [Paras 61-62][46-D-F]

6.2 The circulars issued by the SRA, specially Circular dated 21.08.1997, 19.09.1998 and Circular No. 27 permit conversion of old approved SRD Scheme to new SRA Scheme under the provisions of Clause No.10.1 of Appendix IV of DCR. In the instant case, the scheme was initiated under the old DCR of 1991. There is no manner of doubt that the Society was formed by more than 90% of the occupiers. The migration was done to the Scheme of 1997. Since there is no clear cut provision in the 1997 DCR as to how this migration has to be done, it is presumed that while migrating, it was not necessary for the appellant to have individual agreements with 70% of the slum dwellers. However, it was the appellant who applied for migration to the new Scheme, obviously because the new Scheme gave greater benefits to the developer. When migration was done, it was on the clear cut understanding that after the migration, the provisions of amended DCR would be applicable. When this application of the Society and the appellant for conversion was taken up, it was noticed that one of the main objections was that there were no individual agreements with the slum dwellers. Later, the appellant submitted agreements of 450 of the eligible slum dwellers and stated in writing that the remaining to make up 70% would be submitted before start of Phase II of the construction. Fresh letter of intent dated 27.01.1998, in terms of the new DCR, was issued in favour of the appellant and approved in accordance with Clause No.33(10) and Appendix IV of amended DCR subject to certain conditions. [Paras 63-65][46-G-H; 47-A-E]

6.3 In a migration from 1991 Scheme to 1997 Scheme, obviously 70% individual agreements cannot be obtained prior to submission of the Scheme. However, while granting migration, the SRA can lay down conditions and such conditions can also be laid down during the course of the Scheme. From the facts narrated, it is more than amply clear that the SRA envisaged, and appellant clearly understood, that it had to obtain consent of 70% of the slum dwellers. Even in the resolutions of the Society authorizing the appellant to take up the development work entered after DCRs were amended it was clearly mentioned that

amended Regulation 33(10) would govern the agreements. The appellant cannot now say that it is not governed by the amended regulations. Even the letters issued by the architects of the appellant clearly indicate that they would make up the balance to achieve 70% agreements. The main dispute is by when this should have been done. Initially, time was given till commencement certificate of the sale building was issued. This was a meaningless condition because if this condition was to be applied after the rehabilitation buildings had been built, then having the consent of the slum dwellers would be an exercise in futility because by then they would have been thrown out of their dwellings. At best, it can be understood to mean commencement of the rehabilitation buildings. The slum dwellers are interested with the rehabilitation buildings and not with the free sale buildings. Later on, when applying for permission to trade their development rights, the appellant clearly understood and undertook that it would furnish the consent forms of 70% of the slum dwellers. The architects of the appellant, in fact, deposited 580 individual agreements but out of these, only 372 were found to be correct. Thereafter, the appellant took a U-turn and, relying upon the judgment of the High Court took a stand that it was not required to submit agreements with 70% slum dwellers, which was not legally tenable. The appellant cannot be permitted to back out of its commitments. The agreements with 70% slum dwellers should have been provided within a reasonable time and, though almost 20 years have elapsed since the second letter of intent was granted in favour of the appellants, it has till date failed to submit the agreements. This only dealt with for showing that the appellant delayed the project because it failed to get consent from 70% of the occupiers.[Para 70][49-G-H; 50-A-E]

<u>Whether the appellant delayed the construction of the scheme, and is, therefore, not entitled to any relief:</u>

7.1 Both SRA and the High Court came to the concurrent finding of fact that the appellant was responsible for the delay in implementation of the Scheme. It is more than obvious from the facts narrated that the appellant never earnestly pursued the authorities for approval of the plans and the reason is not far to seek-the reason being the appellant did not have consent/

A **agreements of 70% slum dwellers. It is more than obvious that the appellant was buying time on one excuse or the other. On 18.01.2000, the SRA called upon the appellant to submit revised plans in respect of rehabilitation buildings within 10 days of the receipt of the letter. In reply thereto, the architects of the**
B **appellant sent a letter on 27.01.2000 expressing their intention to start Phase II of the project but, at the same time, sought waiver of the requirement of obtaining 70% consent from the slum dwellers. This clearly shows that the appellant was using this excuse to delay the construction. On 05.01.2001, the appellant addressed a letter to the SRA praying that the plan submitted in**
C **1997 be approved. Thereafter, the SRA did not consider appellant's proposal since, the proposal was affected by the Coastal Regulations Zone (CRZ) Notification. [Para 71][50-G; 51-G-H; 52-A-B]**

7.2 On 07.07.2001, the appellant and the Society filed Writ
D **Petition in the High Court seeking removal of the remarks which indicated that part of the property of the Society was being affected by the CRZ Notification. A perusal of the writ petition and the other documents clearly shows that the entire property was not affected by the CRZ Notification, but only a part thereof. On 07.08.2002, in the petition filed by the appellant and the Society,**
E **the High Court passed an order. It is apparent from the said order that stay was granted not to raise construction in the area which is covered by the CRZ Notification. No material has been brought on record to show that the entire plot was covered by the CRZ Notification and it is amply clear that only a portion of the plot**
F **was covered by the CRZ Notification and nothing prevented the appellant from raising construction on that portion of the land which was not affected by the CRZ Notification. However, for reasons known only to the appellant, it withdrew the Writ Petition only on 07.04.2008. It was only thereafter that respondent no. 3-Society passed a resolution on 29.03.2009, terminating the**
G **development agreement with the appellant. Even after that, the SRA on 15.06.2009 issued a letter that the Society's request for change of developer need not be considered. On 14.09.2009, the Society entered into agreement with respondent no. 4. Thereafter, civil litigation started. It has also been urged on behalf**
H **of the appellant that, in the meantime, a one man Commission**

was constituted and due to the constitution of this Commission, work was affected. [Paras 72-73][52-B-C, F, G; 53-C-D]

7.3 The finding given by the SRA that the appellant was responsible for the delay, is a finding based on appreciation of material on record. It cannot be said to be a perverse finding. It is a finding of fact and, therefore, the High Court was justified in coming to the conclusion that it could not set aside this finding of fact in writ jurisdiction. Though there may have been a few stop orders and a few occasions when the appellant may not have been able to raise the construction but, by and large, the appellant was itself guilty of delaying the construction for no reason at all. Therefore, the appellant was rightly held responsible for the delay in implementation of the rehabilitation scheme and, as such, there is no error in the impugned order. [Para 74][53-E-G]

Whether the appellant is entitled to continue with the scheme:

8.1 The appellant is not entitled to continue with the rehabilitation Scheme on account of the fact that it has been responsible for the delay in completion of the project for an inordinately long time. The appellant has not been able to explain the delay. The slum dwellers are dealt with and the appellant cannot take the benefit of technical points to defeat the rights of the slum dwellers. The claim of the appellant that it had the support of 70% slum dwellers, was contested before Justice B.N. Srikrishna and his findings clearly reveal that the appellant does not have the support of 70% of the slum dwellers. Since the notice by the SRA to the appellant did not make any specific allegation with regard to the appellant not having 70% consent, that portion of the order of the SRA, setting aside the right to develop the land on the ground of lack of 70% consent, may have been beyond the scope of the notice. However, this issue was argued before the HPC and the High Court and on rival claims being made, this Court vide order dated 27.03.2015, referred this dispute to Justice B.N. Srikrishna who submitted his report. [Para 75][54-A-C]

8.2 In writ proceedings, the petitioner must show that both in law and in equity it is entitled to relief. In this case, both equity and law are against the appellant. It has dealt with slum dwellers in a highly inequitable manner. The law and the conditions of the

letter of intent as well as the conditions imposed in the various letters issued by the SRA clearly required the appellant to produce agreements with at least 70% of the slum dwellers. This, the appellant has miserably failed to do. Though the appellant may have remained the same entity in name, there have been, at least, three changes in the promoters of the appellant and these transfers of shareholdings obviously must have been done for consideration. It is more than obvious that the appellant as a legal entity, was treating the slum dwellers only as a means of making money and, therefore, the appellant is not entitled to any relief. [Para 76][54-D-F]

<u>In case the appellant is not entitled to continue with the scheme whether respondent no. 4 is entitled to continue with the rehabilitation scheme:</u>

9.1 Under the terms of the agreement, respondent No. 4 agreed to provide permanent alternative accommodation of 344 sq. ft./419 sq. ft. carpet area to the slum dwellers. Obviously, the slum dwellers, who had been waiting for 23 long years for a flat admeasuring 269 sq. ft. would happily accept the offer of a flat of 344/419 sq. ft. From the communications addressed by the SRA, it is obvious that the respondent was legally not entitled to make this offer. It is submitted that respondent no. 4 was willing to sacrifice its free sale area to give a larger flat. However, he failed to submit even one document to show that the SRA had agreed to this proposal of the respondent no. 4. In fact, the communication sent by SRA clearly shows that the proposal was not accepted. It is, therefore, obvious that respondent no. 4 had hoodwinked the members of the Society in entering into an agreement with it by holding out a false promise that they would be given much larger flats. As such, the request of respondent no. 4 to be permitted to continue with the project cannot accepted. The Society has terminated its agreement with the respondent no. 4. In the voting conducted by Justice B.N. Srikrishna, the respondent no. 4 failed to get the consent of 70% slum dwellers and, in fact, it has got less than 1/2 of the votes, as compared to the appellant, and its support is even less than 30%. [Paras 78-79][55-B-F]

9.3 It is accepted that agreements once entered into and the consent once given, cannot be withdrawn. However, if the

consent is obtained by misrepresentation of facts, then that is no consent. The position stands clarified that the slum dwellers would get flats of 269 sq. ft. area only, respondent no. 4 has failed to get support of even 30% of the slum dwellers. In view thereof, respondent no 4 is not entitled to continue with the project and is not entitled to any relief. [Paras 80-81][55-G-H; 56-A]

Law laid down by the High Court:

10.1 The views of the High Court that consent once given by the slum dwellers should not be permitted to be withdrawn; that voting *inter se* developers should not be done; that in case voting is done, then this will lead to developers trying to buy out the slum dwellers and then no rehabilitation scheme would attain fruition, is accepted. Slum dwellers normally belong to the poorest section of the society. They can be tempted to change their mind. In the instant case itself, the slum dwellers shifted from the appellant to respondent no. 4. for two reasons-(i) appellant had delayed the project and (ii) respondent no. 4 made a promise that it would give a flat of 344 sq. ft./419 sq. ft. area, which promise was obviously a false promise. The view of the High Court that consent once given should not be permitted to be withdrawn, is absolutely the right view. Otherwise, a person may give consent one day, withdraw it the second day and review the consent the third day, leaving the Scheme in a perpetual state of flux. For the said reasons, the view of the High Court that there should be no *inter se* bidding between the builders is accepted. The proper course is that the scheme of the developer who is the first choice, should be placed before the slum dwellers and if it gets 70% votes, then the Scheme can be considered, but if it does not get 70% consent, then obviously, the second developer can be considered. However, competitive bidding should not be done because that can lead to a very unholy practice of developers trying to buy out the slum dwellers, which is also not in the interest of the rehabilitation scheme.[Para 82][56-B-F]

10.2 As far as the instant case is concerned, this Court while passing the order dated 27.03.2015, made a departure because of the peculiar facts of this case. The instant case because of its own unique facts cannot be treated as a precedent in other cases

A **with regard to action taken in this case. [Para 83][56-G]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 18121 of 2017.

From the Judgment and Order dated 11.06.2014 of the High Court of Judicature at Bombay in Writ Petition No. 5 of 2013.

B F. S. Nariman, Mukul Rohatgi, Darius Khambatta, Sr. Advs., Subhash Sharma, Kunal Vajani, Nikhil Rohatgi, Shashank Khurana, Ankur Chawla, Sunil Mittal, Ms. Anu Tiwari, Suneet Tyagi, Ms. Hillaur Vaswani, Ms. Dorcas Jones, R.K. Mohit Gupta, Aman Gandhi, Ms. Pallavi Langar, Manu Sahni, Advs. for the Appellant.

C Atmaram N.S. Nadkarni, Tushar Mehta, ASGs, Gopal Subramanium, Neeraj Kishan Kaul, Raju Ramchandran, Kapil Sibal, Sr. Advs., Tapesh Kumar Singh, Aditya Pratap Singh, Mohd. Waquas, Kunal Verma, Ms. Yugandhara Pawar Jha, Prateek Chaddha, Pawan Bhushan, Satya Mitra, Aman Varma, Ms. Smriti Churiwal, Kush Chaturvedi, Uday D B. Dube, Santosh Rebello, Ms. Nivedita Nair, Ms. Sneha Prabhu Tendulkar, Abhishek Bharadwaj, Gautam Sharma, Sanjay Kharde, Samrat Shinde, Prashant Chaudhari, Sunil Kumar Verma, Amit Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

E **DEEPAK GUPTA, J.** 1. A dream turned into a nightmare. The dream of over 800 slum dwellers who also happen to be owners of the land of having a permanent roof over their head has not turned into reality for more than three decades. The slum dwellers are embroiled in various litigations. There are many powerful persons involved, be they builders, promoters and even those slum dwellers who have managed to F become office bearers of the society of slum dwellers. Learned senior counsel appearing for the parties produced before us graphic photographs showing the sordid conditions in which these slum dwellers continue to reside despite having entered into an agreement with the appellant more than 30 years back to develop the slums and rehabilitate the slum dwellers in proper accommodation.

G **THE FACTUAL BACKGROUND:**

2. This case has a long and chequered history and has some features which are unique to it. The land in question measuring 23018.50 square meters is situated in the heart of Mumbai i.e. Santacruz (East), Mumbai. This land earlier belonged to the Ardeshir Cursetji Pestonji H

Wadia Trust, hereinafter referred to as 'the Trust'. A slum had developed over the said land. The slum dwellers formed an Association known as 'the Shivaji Nagar Residents' Association. It appears that the Trust had initiated some litigation for eviction of the slum dwellers. On 19.03.1980 a consent decree appears to have been passed in this litigation whereby the Trust agreed to transfer the entire land to the slum dwellers in case the slum dwellers formed a society. The slum dwellers thereafter constituted a society in the name and style of Om Namo Sujlam Suflam Co-operative Housing Society, Respondent No. 3 herein (hereinafter referred to as 'the Society'). About 800 slum dwellers formed the Society, which was registered under the Maharashtra Co-operative Societies Act, 1960. In furtherance to the decree, the Trust executed a deed of transfer in favour of the Society (Respondent No. 3 herein), transferring the entire land to the Society on 20.02.1985. Thus, this is a unique case where the slum is owned by the Society of which the slum dwellers themselves are the members. The slum dwellers are, therefore, also the owners of the land in question.

3. It would be pertinent to mention that the land in question was declared to be a slum under Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as 'the Slum Act') firstly on 16.08.1977 and again on 07.12.1983.

4. On 15.09.1985, a General Body Meeting of the Society was held and in this meeting it was decided to appoint M/s. Susme Builders Private Limited, hereinafter referred to as 'Susme' (the appellant herein), to develop the property. Thereafter, a development agreement was entered into between the Society and Susme on 27.02.1986. It was agreed that there were about 800 occupants on the land in question and each one of the slum dwellers would be provided accommodation measuring 240 sq. ft. built up area with carpet area of 190 sq. ft. The agreement also contained a condition that the slum dwellers could purchase additional area of 60 or 110 sq. ft. by paying for the extra area at the rate of Rs. 350 per sq. ft.. The project was to be completed within a period of 5 years. Consequent to the agreement, the Society executed a power of attorney in favour of the nominee of Susme on 07.04.1986 virtually empowering it to act on behalf of the Society.

5. Admittedly, no work was done as per the terms of the agreement and nothing was constructed during this period. The stand of Susme is that during the period some public interest litigations were filed, hence

A the plot of land was not developed.

6. Thereafter, the Development Control Regulations for Greater Bombay, 1991 under the Maharashtra Regional & Town Planning Act, 1966 (for short 'DCR') were enforced. As per these DCRs, each one of the slum dwellers was entitled to a tenement of 180 sq. ft. free of
B cost. Therefore, the general body of the Society met on 30.10.1994 and passed a resolution that the earlier agreement be modified and a tenement of 225 sq. ft. carpet area be given to each slum dweller. Thereafter, letter of intent in terms of the DCR was issued in favour of the Society and Susme on 05.04.1995. As per this letter of intent, each slum dweller
C was to be alloted 225 sq. ft. area. Susme was also to comply with the guidelines laid down for redevelopment of notified slums. It was made clear that first the existing slum dwellers were to be rehabilitated and only thereafter, free sale could be done in the open market. Susme was specifically directed to carry out the activities as per the activity chart and in terms of Regulation No. 33(10) of the DCR within five years
D from the date of issue of the commencement certificate. Thereafter, another agreement was entered between the Society and Susme on 10.07.1995 and in terms of this agreement each slum dweller was entitled for a tenement of 225 sq. ft.; 180 sq. ft. free of cost and 45 sq. ft. at the cost of Rs. 14,350/-.

E 7. In terms of the letter of intent dated 05.04.1995 and the agreement, Susme was to construct 12 buildings of ground plus seven floors for re-housing the slum dwellers and project affected persons on about 11,000 sq. mtrs. of land and remaining 12,497 sq. mtrs. was to be developed for the purpose of free sale. During the pendency of this agreement, Susme constructed two buildings in which 128 slum dwellers
F were rehabilitated. This was the only progress which took place.

8. The DCR was amended in 1997. Under the new DCR, each slum dweller was entitled to a flat having carpet area of 225 sq. ft.. Naturally, the slum dwellers wanted, that as per the amended DCR, which was more beneficial to them, they should be granted a larger flat
G having carpet area of 225 sq. ft.. Therefore, another meeting of general body was held on 10.08.1997. In this meeting it was resolved that fresh negotiations be held with Susme and that Susme should carry out further development under the amended Regulation 33(10) and that 70% residents should consent for the redevelopment. Thereafter, another
H supplementary agreement was entered into between the Society and

Susme on 07.01.1998. In this agreement, it was stated that there are 867 occupants, out of which 825 are occupying residential premises, 27 are occupying shops and 15 are occupying industrial units. This agreement also provided that tenements to be provided to each of the residential occupants would have a carpet area of 225 sq. ft.. Relevant portion of the agreement reads as follows:

> "The parties are aware that under the Slum Redevelopment Scheme and the Development Control Regulations each slum dweller is entitled to, a tenement admeasuring 225 sq. ft. carpet area. As regards 27 shops, the shops members shall be entitled to get such area as they are entitled under Sec. 23(10) of D.C. Regulations 1991 amended from time to time. As regards 15 Industrial Units it is agreed that the Developer shall negotiate with them directly for developing the area occupied by them and the society agrees to sign and execute such papers and writings required by the Developer for that purpose."

Clause 26 of this agreement provided that the plans shall be submitted by the developer to the Slum Redevelopment Authority (for short 'the SRA') according to Regulation 33(10) of DCR, 1991 as amended from time to time. This agreement was treated to be a supplementary agreement to the earlier agreement.

9. Susme, on behalf of the Society, also moved the SRA for permission to convert the old SRD Scheme into a new slum rehabilitation scheme. The SRA granted letter of intent on 27.01.1998 and approval was granted for conversion of the scheme. Clause 19 of the letter of intent provided that Susme would submit the agreements with photographs of wife and husband in respect of all the eligible slum dwellers before issue of commencement certificate for sale building, or three months as agreed by the developer, whichever is earlier.

10. One writ petition was filed by the Shivaji Nagar Residents' Association being Writ Petition No. 1301 of 1999 challenging the sanction by the SRA in favour of Susme on the ground that Susme had not obtained consent of 70% of the slum dwellers. The said writ petition was dismissed on 13.12.1999. The relevant portion of the Judgment reads as follows:-

> "We have heard learned counsel appearing for the parties. We do not find any substance in the contentions raised by the petitioners.

A It is required to be noted that some 109 slum dwellers filed Writ Petition No. 497 of 1997 raising identical challenge to the scheme and the said petition came to be withdrawn unconditionally on 10th July, 1997. Thereafter, as indicated earlier, two new buildings were constructed and the eligible slum dwellers were put in possession of their respective tenements. Under the 1997 scheme the builder is required to enter into agreement with individual members and accordingly 582 agreements have already been signed between the parties. There is also no merit in the contention of the petitioners that consent of 70% of the Slum dwellers was required under the 1991 scheme. On perusal of the said scheme it is clearly seen that consent of 70% of the slum dwellers was not required and what was contemplated was that if 70% of the Slum dwellers join the society, which is interested in the rehabilitation of the slum dwellers, then such society would be eligible to apply for sanction of the same under DCR 33(10). It is not disputed before us that practically all the slum dwellers have been enrolled as members of the society and, therefore, it is not possible to hold that the requirement of 1991 scheme was not complied with. It is also pertinent to note that the proceedings of the general body meeting dated 13th October, 1994 were not challenged by the petitioners or any other slum dwellers by adopting appropriate remedy. Indeed, the general body meeting had unanimously, resolved to modify the agreement in terms of the 1991 scheme and it is too late to challenge the resolution for the first time by way of the present petition which was filed in 1999. As regards the, 1997 scheme there is a Specific provision for conversion, of the old scheme into a new scheme and accordingly the proposal for conversion was accepted by the authorities and in pursuance of the acceptance, two new buildings have been constructed at an estimated cost of Rs. 5 crores. In our opinion, this petition suffers from gross delay and laches. It is clearly seen that the petitioners were aware of the sanction granted to the society under the 1991 scheme as well as the 1997 scheme. The construction on the property began in 1996 and two buildings have already been constructed. Under the circumstances, we do not find any reason to interfere in writ jurisdiction under Article 226 of the Constitution."

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11. After Susme had completed 80% construction of the two rehabilitation buildings, it applied for grant of Transfer of Development Rights (for short 'TDR') in terms of the amended DCR and sold the same. Occupation certificate in respect of these two buildings was issued on 03.11.1998. While granting permission it was observed on the B file as follows:-

> "Further, as per policy & DCR 33(10) it is necessary that agreements with more than 70% slum dwellers as per new scheme is required. This was pointed out to CEO (SRA) during discussion, when CEO (SRA) instructed to submit agreements with 70% slum C dwellers before second phase of T.D.R. Developers have informed that out of 869 slum dwellers, they have submitted 450 agreements to the office of S.R.A. (52%)."

12. On 07.07.1999, the architects of Susme, on instructions of Susme, submitted 12 files containing 580 numbers of individual agreements D with members of the Society and undertook to file the remaining individual agreements to make up 70% in due course of time. On 18.01.2000, Susme was again asked to furnish 70% individual agreements of eligible slum dwellers. Susme replied that in terms of judgment of the Bombay High Court dated 13.12.1999, it was not required to file 70% individual agreements. Under the 1997 amended DCR, the developer was entitled E to a higher Floor Space Index (for short 'the FSI'). Therefore, Susme submitted fresh plans for construction of 14 storey buildings plus ground floor as against the earlier plan submitted for seven storey buildings plus ground floor buildings. These plans were submitted sometime in the year 1998. However, it appears that the plans were not sanctioned and F Susme also did not pursue the matter earnestly with the authorities.

13. Thereafter, on 13.02.2001, SRA informed Susme that the request of Susme for approving amended plans for slum rehabilitation scheme was not considered since the plot under reference was affected by the Coastal Regulation Zone Notification (for short 'the CRZ G Notification'). Then Susme along with the Society filed Writ Petition No. 2269 of 2001 in which the main prayer was for setting aside the CRZ objection and it was also prayed that the petitioner be permitted to complete the rehabilitation scheme. In this petition, an interim order was passed on 07.08.2002.

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A 14. The Government of Maharashtra during this period also appointed a one man Commission headed by Shri Chandrashekhar Prabhu to enquire into the complaints made with regard to the Society and the manner in which the rehabilitation scheme was implemented. Susme and the Society jointly filed Writ Petition No. 1854 of 2004 against this Commission. It was alleged that the SRA had handed over all the files B to Shri Chandrashekhar Prabhu. However, an order was passed on 01.03.2005 in the aforesaid writ petition in which a statement was made on behalf of the SRA that all the concerned files had been retrieved from Shri Prabhu and, therefore, the decision on the plans would be taken within four weeks. The Petition was accordingly disposed of.

C 15. In 2005 itself it was clarified by the authorities that the property in question does not fall in CRZ, Part I and only a portion of the property falls in the CRZ, Part II. The architects of Susme applied for approval of construction of transit accommodation and this approval was granted by the SRA on 18.08.2005. This was, however, subject to the condition D that agreements with individual slum dwellers would be executed before demolition of existing structure on the site. Again complaints were made by some people that transit camps were not constructed as per the approved plans and the SRA issued stop work notice on 14.03.2006.

16. Another supplementary agreement was entered into between E Susme and the Society on 05.09.2006. This agreement had a clause that the developer i.e. Susme was to deal only with the Managing Committee of the Society. This agreement also provided that any of the Directors of Susme would be treated to be the attorneys of the Society. This agreement also provided that Susme had offered to pay a sum of Rs.75,000/- to each member of the Society having a structure not F exceeding 17.00 sq. mtrs. and Rs.1,00,000/- to each of those members whose structure is of more than 17.00 sq. mtrs.. It is, however, not clear whether this amount was actually paid or not. An extraordinary general body meeting of the Society was held on 22.02.2009. In this meeting it was pointed out that the members of the Society were not taken into G confidence by the Managing Committee while issuing power of attorney in favour of the developer and changes to the detriment of the members have been made by the Managing Committee in collusion with Susme. It was also pointed out that agreements were entered into by the Managing Committee with Susme behind the back of the members of the Society. The majority of the members demanded for cancellation of

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the agreement made with Susme. It would not be out of place to mention that the old Managing Committee had been voted out and a new Managing Committee had taken over during this period. Thereafter, another general body meeting was held on 29.03.2009 and the minutes of the meeting dated 22.02.2009 were approved. In this meeting it was also pointed out that now Susme had offered to make new plans giving each slum dweller a tenement of 269 sq. ft. carpet in terms of the new circular. But, the benefit of such bigger tenements was not made available to those who were already housed in the rehabilitation buildings. In effect, in this meeting it was decided to terminate the agreement with Susme.

17. Susme, thereafter, invoked the arbitration clause in the agreement and filed a petition for grant of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 on 29.10.2009. The said arbitration petition was withdrawn on 26.06.2012 with liberty to Susme to file a suit. However, the Society was restrained from implementing the Resolution terminating the agreement till 13.07.2012. Civil suit No. 1588 of 2012 was filed by Susme on 10.07.2012 in the High Court of Bombay against the Society and M/s. J.G. Developers Private Limited.

18. The Society made a complaint to the SRA on 05.04.2009 that Susme was not developing the project as per the agreement and necessary action be taken by the SRA against Susme. On 15.06.2009, a communication was sent to the Society on behalf of SRA that since Susme had constructed two buildings and is in the process of construction of transit camp, the developer Susme should be allowed to continue and the request for change of developer was virtually rejected. There is some dispute as to whether this letter was signed by the Chief Executive Officer or the Executive Engineer but that is not very material for the decision of the case. On 24.07.2009, the Society terminated the agreement with Susme by a written notice. The Society made another complaint to the SRA and on 08.09.2009, the SRA issued notice to Susme in terms of Section 13(2) of the Slum Act, but it appears, that no action was taken pursuant to this notice.

19. Thereafter, on 14.09.2009, the Society entered into an agreement with M/s J.G. Developers Private Limited, respondent no.4 (hereinafter referred to as 'J.G. Developers'). In this agreement J.G. Developers agreed to provide permanent alternative accommodation measuring 269 sq. ft. carpet area to each of the eligible members having residential premises. Sufficient alternative accommodation was also to

A be provided to those occupying commercial/industrial premises. In Clause (4) of the agreement, it was mentioned that since the Society was the owner of the plot, the developer would also grant it 72,000/- sq. ft. carpet area free of cost for use by the members of the Society. This was crystallized in the supplementary agreement entered on 22.09.2009 between the Society and J.G. Developers. In terms of this supplementary B agreement, 155 members occupying double residential premises would be entitled to additional area of 150 sq. ft. and 614 members having single residential premises would be entitled to 75 sq. ft. additional area. This effectively meant that those having single residential area would get a tenement of 344 sq. ft. and those having double residential area C would get a tenement of 419 sq. ft.. J.G. Developers took the responsibility of getting permission for giving this extra area. Thereafter, J.G. Developers entered into individual agreements with some of the members of the Society in terms of the agreement and supplementary agreement as referred to above.

D 20. Complaint No. 30 was filed on 21.09.2006 before the Anti-Corruption Bureau, which was referred to the High Power Committee (for short 'the HPC'), in which it was complained that the names of the occupants at Serial No. 774 to Serial No. 852 of the list of occupants issued on 21.06.1993 by the Additional Collector, Encroachment, are bogus and are based on fabricated documents. Notice was issued on E this complaint. On 04.06.2011, Susme again wrote to the SRA to process the proposal submitted to SRA on 01.10.2008. Similar request was made on 16.07.2011 also.

21. Thereafter, on 11.08.2011, show cause notice under Section 13(2) of the Slum Act was issued by the SRA to Susme as to why the F SRA should not determine the right granted to Susme to develop the land and entrust the work of rehabilitation of the slum of the Society to some other agency. The reasons for issuing the notice are contained in Annexure-A, which reads as follows:

> "1) The LOI for conversion of SRA scheme was issued u/No.SRA/ G ChE/110/HE/PL/LOI dt. 27/01/1998. It is reported by the Secretary that the developer has failed and neglected to complete the work of Rehab building within the stipulated period as per LOI condition and committed the breach of the terms and conditions of the sanctioned S.R. Scheme.
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> 2) As per complaint of Society, the Developer have not taken H

effective steps for speedy implementation of Scheme and shown wilful negligence."

Susme replied to the notice. Even the Society submitted its reply to the notice and stated that there was inordinate delay in completing the scheme. Written submissions were filed by all sides. Finally, by order dated 24.02.2012, the SRA set aside the appointment of Susme as developer mainly on two grounds:-

(i) that there was unexplained delay in carrying out the work under the rehabilitation scheme and,

(ii) Susme had failed to show that it had filed individual agreements with 70% slum dwellers.

The SRA, instead of handing over the work to another agency, held that since the Society had already entered into an agreement with J.G. Developers, it may get the scheme implemented through it. Susme filed an appeal being No. 39 of 2012 before the HPC. This appeal was dismissed on 18.06.2012. This order of the HPC was challenged by filing Writ Petition No. 1718 of 2012, on the ground that one of the Members of the HPC was not entitled to hear the appeal. This writ petition was allowed on 14.08.2012 and the matter was remanded back to the HPC. Thereafter, the HPC again heard the appeal and dismissed the same on 10.10.2012. Against this order of the HPC, the appellant filed Writ Petition No. 5 of 2013, which was rejected by the Bombay High Court by the impugned order dated 11.06.2014 and it is this order of the High Court which is under challenge in this appeal. In the meantime, on 03.08.2012 the Bombay High Court in the suit filed by Susme, refused to grant any interim relief.

22. Letter of intent dated 29.10.2012 was issued by the SRA in favour of the Society, J.G. Developers and also its architects. In this letter of intent approval was given for FSI of 3.78 for slum portion, 3.18 for slum portion in lieu of 128 tenements with carpet area of 20.90 sq. mtrs., already constructed and 2.58 for slum portion in CRZ-II. Effectively, the FSI for the developer had increased substantially. In this letter of intent it was mentioned that the eligible slum dwellers would be re-housed in residential tenements of carpet area of 25 sq. mtrs. (269 sq.ft.) or 20.90 sq. mtrs. (225 sq.ft.). It is thus apparent that no permission was granted for giving larger tenements to the eligible slum dwellers.

A 23. In another Special General Meeting of the Society held on 13.07.2014, it was decided by majority vote to cancel the agreement with J.G. Developers. It was also decided that in view of the cancellation of appointment of J.G. Developers, the Managing Committee should select a new and capable developer and the offer made by such developer should be put up before the next general body meeting. The Society terminated the appointment of J.G. Developers on 25.08.2014. J.G. Developers challenged the termination of their agreement by filing Civil Suit No. 756 of 2014 on 19.09.2014 and in this civil suit an interim order was passed on 24.09.2014.

C 24. After the termination of the agreement with J.G. Developers on 25.08.2014, on 26.08.2014 the Managing Committee of the Respondent No. 3, the Society, entered into consent terms with Susme again appointing Susme as the developer.

D 25. Susme filed the present petition for special leave to appeal challenging the decision of the High Court of Bombay in Writ Petition No. 5 of 2013, before this Court. The respondents put in appearance even before the notice was issued and on 27.03.2015 this Court has passed the following order:

> "Heard Mr. Fali S. Nariman, learned senior counsel for the petitioner, Mr. P.C. Chidambaram, learned senior counsel and Mr. Mihir Joshi, learned counsel for respondent no.4, Mr. Kapil Sibal, learned senior counsel for respondent no.3, Mr. C.U. Singh, learned senior counsel for respondent no.1 and Mr. Raval, learned senior counsel for the applicant in IA No.5/14 along with their assisting counsel.
>
> 2. The present case frescoes a labyrinthine chequered history that can flummox the prudence of the wise, for the procrastination in putting an end to a litigation. But, a pregnant one, it is a problem created by human beings by use of adroit proclivity at their best and, therefore, as advised at present, this Court is obliged to take recourse to an innovative method, at least to attempt at a solution.
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> 3. We need not reflect the nature of orders passed in various cases fought between the parties. Suffice it to mention that they have invoked the power of the authorities under the Maharashtra

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Slum Areas (Development, Clearance and Redevelopment) Act, 1971, instituted civil suits on the original side of the Bombay High Court and sometimes the society, namely, Om Namo Sujlam Sujlam Co-operative Housing Society, respondent no.3 herein, has changed its colour as chameleon with afflux of time may be yielding to the "hydraulic pressures of time" and thereby eventually, in all possibilities, making the slum dwellers of the area, i.e., C.T.S. No.7627, 7627/1 to 852 admeasuring 23018.50 sq. mtrs. situated at village Kolekalyan at Santacruz (East), Mumbai remain in that pathetic condition as they were since 1986, as if the parties have nurtured the notion that they can arrest time. Be that as it may, a solution has to be thought of.

4. In course of hearing Mr. Chidambaram, appearing for respondent no.4, assiduously asserted that he has got the consent from 70% of the eligible slum dwellers and, therefore, the society is absolutely justified in entering into an agreement which is called a "development agreement". Mr. F.S. Nariman, learned senior counsel, determined not to lag behind, would astutely asseverated that he has the consentum of 70% of eligible slum dwellers and hence, his case cannot be brushed aside. We have been apprised by Mr. Kapil Sibal, learned senior counsel appearing for respondent no.3, that at present there are slightly more than 800 eligible slum dwellers. Mr. Raval, learned senior counsel appearing for the assumed authorised authority of the society, would present that it is the respondent no.3 who has been correctly granted the privilege of development agreement inasmuch as there was a verification with regard to the consent earlier.

5. In our considered opinion, regard being had to the special features of the case which includes the longevity of the case and indefatigable spirit in which the parties are determined to fight, we think there should be appropriate verification of the consent of the eligible slum dwellers in *praesenti*. Regard being had to the same, we request Mr. Justice B.N. Srikrishna, formerly a Judge of this Court, to verify the factum of consentum of the eligible slum dwellers. The Slum Rehabilitation Authority represented by the Chief Executive Officer either by himself or by any responsible high level officer nominated by him shall assist Mr. Justice B.N. Srikrishna in this regard.

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6. As secretarial staff would be required for this purpose, the petitioner and the respondent no.4 shall deposit a sum of Rs.5,00,000/- (Rupees five lacs only) each so that the verification can be expedited. In addition, learned Judge may fix his honorarium which shall be paid proportionately, as agreed to by the petitioner and the respondent no.4.

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7. The parties are at liberty to file documents to facilitate the process of verification with regard to consentum in *praesenti* before the learned Judge. We repeat at the cost of repetition that such a mode has been adopted, regard being had to the special phenomena of the case. As we have taken recourse to such a method any other the litigation pending in any forum in this regard shall remain stayed.

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8. Needless to say, the interim order of status quo passed in this special leave petition, except the directions which have been issued hereinabove, shall remain in force.

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9. Let this matter be listed on 09.07.2015 awaiting the report from Mr. Justice B.N. Srikrishna."

26. Thereafter, Justice B.N. Srikrishna, former Judge of this Court carried out the mandate, which he was required to do in terms of the aforesaid order. He decided that voting should be held by secret ballot. He categorized the voters in four categories.

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Category "A"	Persons who were original slum dwellers and continue to be occupants as on the cut-off date i.e. 27th March 2015.
Category "B"	Persons who claim to exercise their vote as a result of legal heirship.
Category "C"	Persons who claim to have become members of the Society by reason of sale and transfer of the shares.
Category "D"	79 persons whose eligibility is under challenge before the Competent Authority as per the directions of the High Power Committee.

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He found that there were 867 slum dwellers in the four categories:

Category "A"	263
Category "B"	318
Category "C"	207
Category "D"	79
Total	867

Four separate ballot boxes were kept i.e. one for each category and the result of the voting is tabulated as follows:

Category	Total Eligible Voters	Voter turn-out at the Poll on 22/11/2015	Votes polled by Petitioner	Votes Polled by Respondent No.4	Invalid Votes
"A"	263	191	108	70	13
"B"	318	275	179	84	12
"C"	207	172	126	43	03
"D"	079	013	010	03	-
Total	867	651	423	200	28

Thereafter, Justice Srikrishna submitted his report setting out the voting pattern but did not make any recommendation.

CONTENTIONS:

27. The main contention raised on behalf of the appellant-Susme by Shri F.S. Nariman, learned senior counsel is that the order dated 27.03.2015 is an order passed by this Court in exercise of its extraordinary jurisdiction either under Article 136 or under Article 142 of the Constitution

of India. It is submitted that this order was passed with a view to settle all disputes between the parties. It is urged that this Court cannot go behind this order especially when there is no application filed for recall of the said order. It is also urged that I.A.No. 10 of 2015 filed by J.G. Developers for modification of the order, was rejected. It is contended that since Justice B.N. Srikrishna has found that the majority supports Susme, the appeal should be allowed and Susme be permitted to carry on with the project.

28. The other contentions raised on behalf of the appellant-Susme by Shri Darius Khambata, learned senior counsel are:

(a) that Section 13(2) of the Slum Act is wholly inapplicable;

(b) that the notice under Section 13(2) was given only in respect of delay and not in respect of 70% consent and hence the SRA, the HPC and the High Court fell in error in insisting on 70% consent;

(c) that when migration of the scheme took place from redevelopment scheme to slum rehabilitation scheme, 70% consent was not necessary.

29. On behalf of J.G. Developers it is contended by Shri Gopal Subramanium, learned senior counsel that the intention of this Court was to find out whether any party had support of 70% of the slum dwellers or not. It is also contended that it was not the intention of this Court to bypass the legal provisions and this Court is not bound by the aforesaid order. In the alternative, it is submitted that the exercise carried out by Justice B.N. Srikrishna only shows that as on date there are more people with Susme. It is contended that the Bombay High Court has consistently held that there should be no competitive voting *inter se* developers because that gives rise to many malpractices with the developers trying to outbid each other by giving sops to the voters. It is contended that the consistent view till now has been that once the slum dwellers have given consent for one developer or have entered into an agreement with a developer then they cannot be permitted to withdraw the consent, otherwise, it will lead to chaos and no slum rehabilitation scheme would be implemented. It is also contended that the matter should be decided on merits and not on the basis of this order. It is also contended that Susme does not have the support of 70% of the slum dwellers.

30. It is also contended on behalf of J.G. Developers that Susme is guilty of unexplained delay and the slum dwellers are suffering and, therefore, the Society had rightly decided to enter into a fresh agreement with J.G. Developers. It is also urged that Susme had never obtained the consent of 70% of the slum dwellers, which was mandatory. It is also contended that Susme had taken advantage of trading of the development rights by assuring the SRA that it would get 70% consent. It is further urged that Susme never contested the issue of 70% consent earlier.

31. Here, it would be pertinent to mention that the Society has two factions. One faction supports Susme and the other faction supports J.G. Developers. The faction supporting Susme states that it has terminated the agreement with J.G. Developers and cannot be forced to get the development work done through J.G. Developers. The other faction alleges that there is no valid existing agreement with Susme.

32. The following issues arise for decision in this case:

(i) What is the scope, ambit and effect of the order of this Court dated 27.03.2015;

(ii) What is the scope of powers under Section 13(2) of the Slum Act;

(iii) Whether the SRA has any power to remove the developer;

(iv) Whether in the notice issued under Section 13(2) of the Slum Act the issue of 70% consent was raised;

(v) Whether support of 70% of the slum dwellers is mandatory and whether slum dwellers are entitled to withdraw their consent;

(vi) Whether Susme delayed the construction of the Scheme, and is, therefore, not entitled to any relief;

(vii) Whether Susme is entitled to continue with the Scheme;

(viii) In case Susme is not entitled to continue with the scheme whether respondent no. 4 J.G. Developers is entitled to continue with the rehabilitation scheme.

THE SCOPE, AMBIT AND EFFECT OF THE ORDER OF THIS COURT DATED 27.03.2015:

A 33. Relevant portion of order dated 27.03.2015 has been quoted hereinabove. The main contention of Mr. Nariman, learned senior counsel appearing for the appellant is that this order is an order passed under Article 142 or Article 136 of the Constitution and is binding upon the parties. On the other hand, it was urged by M/s Gopal Subramanium and Neeraj Kishan Kaul, learned senior counsel appearing for the B respondents that the order in question is not a binding order. In the alternative, it was submitted that even if the order is binding, this Court can interpret the order and even as per the said order, the appellant is not entitled to continue with the Scheme.

C 34. At the outset, we may note that judicial propriety and discipline requires that a Coordinate Bench must respect the order of an earlier Bench. In fact, even a larger Bench should not brush aside the order passed by an earlier Bench even if it be a smaller Bench unless the order is in issue before the larger Bench. Suffice to say that the order in question holds the field. It has not been recalled and prayer for modification D in I.A. No. 10 was rejected on 13.05.2015. Therefore, the order of this Court dated 27.03.2015 holds the field and we are bound by the same. At the same time, it is our duty to decipher what was the intention of the Bench while passing the order and to find out what the Court intended to do by the said order.

E 35. In Para 2 of the order, the Division Bench has noted the long and chequered history of the case and has noted that the Court had to take recourse to an innovative method to try and find a solution. It is thus apparent that this is an order falling within the ambit of Article 142 to do complete justice between the parties. The Court was aware that the slum dwellers were suffering due to the long protracted litigation. F Therefore, the Court felt the need to find an innovative solution. In Para 3 of the order, the Court has noted the factual aspects and again emphasized the need to find a solution to resolve the various issues. The Court was obviously moved by the pathetic condition in which most of the slum dwellers continued to reside.

G 36. Para 4 of the order is very important because it notes the contention of learned counsel appearing for J.G. Developers, who had emphatically stated that his client had the consent of 70% of the eligible slum dwellers and, as such, the Society was justified in entering into a development agreement with his client. On the other hand, learned senior H counsel appearing for the appellant equally strongly refuted this claim

and claimed that his client had the consent of 70% eligible slum dwellers. It is in this context that the directions contained in Para 5 of the order dated 27.03.2015 were passed wherein this Court directed *".....there should be appropriate verification of the consent of the eligible slum dwellers in praesenti."* Justice B.N. Srikrishna was requested to verify the factum of the consent of the eligible slum dwellers.

37. The contention raised on behalf of Susme is that there is no mention of "70%" in the direction given in Para 5 of the order and, therefore, all that Justice B.N. Srikrishna was required to do was to ascertain consent of the slum dwellers *in praesenti.* It is contended that almost 70%, and at least much more than the majority, have exercised their choice in favour of Susme and, thus, there is no reason why the appeal should not be allowed. Susme should be permitted to carry on the development work in terms of the agreement entered into with the respondent no. 3-Society. It is also urged that as far as respondent no. 4 is concerned, it has got hardly 30% of the votes and, therefore, there is no question of awarding the contract to respondent no. 4.

38. We are not in agreement with this submission. It is settled law that a judicial order or judgment has to be read as a whole and a single line or phrase cannot be read out of context. A judgment is not to be interpreted like a statute. As far as the order dated 27.03.2015 is concerned, the intention of the Court, will have to be deduced from the entire order. We cannot read the phrase *".....there should be appropriate verification of the consent of the eligible slum dwellers in praesenti."* in isolation. This has to be read in the context of the rival contention of the contesting parties that each one of them had the consent of more than 70% of the slum dwellers. According to us, this Court was not oblivious of the requirements of the Slum Act though it may not have explicitly referred to them. It is obvious from Para 4 of the order dated 27.03.2015 that learned counsel for both the parties claimed that their respective clients had the support of 70% of the slum dwellers. Obviously, both of them could not be correct. This factual dispute could not be decided in these proceedings. This was the dispute which was referred for resolution to Justice B.N. Srikrishna. We may observe that Justice B.N. Srikrishna in the first effective procedural order dated 27.04.2015, rightly understood the order to mean as follows:

> "After carefully perusing the Order dated 27th March, 2015 made by the Hon'ble Supreme Court and the submissions made in writing

A and through Counsel and representatives on behalf of the Petitioners as well as the Respondents, I am of the view that the best way of verifying the factum of consentum of the eligible slum dwellers in praesenti would be to hold a secret ballot under my aegis and after counting the votes, make a report to the Court as to whether more than 70% of the eligible slum dwellers are in favour of the redevelopment agreement being signed with the Petitioner or Respondent No.4."

39. It is, thus, clear that Justice B.N. Srikrishna had understood that he was to ascertain whether 70% of the eligible slum dwellers are in favour of the redevelopment scheme signed with the appellant-Susme or with respondent no. 4. We are clearly of the view that a holistic reading of the order admits of no other meaning. The only dispute raised before this Court on 27.03.2015 was which of the builders had the support of the 70% of the slum dwellers. Since this factual dispute could not be decided in Court, Justice B.N. Srikrishna was requested to do this job. It is not necessary for us to go into the other arguments raised with regard to the effect of the order because, according to us, this order admits of no other interpretation. Admittedly, neither the appellant nor respondent no. 4 has received 70% support.

40. Further, the words '*in praesenti*' only mean that the Court wanted the verification of the consent of the eligible slum dwellers as on date of passing of the order. '*In praesenti*' cannot be read to mean 'present and voting'. It only means eligible slum dwellers as on 27.03.2015. Justice B.N. Srikrishna has divided the slum dwellers into four categories; 263 were the original slum dwellers, 318 were the legal heirs, 207 were those who had become members by means of sale and transfer of shares and 79 voters were disputed. We may note that during these entire proceedings not a single complaint has been filed that an ineligible slum dweller was permitted to vote or that an eligible slum dweller was not permitted to vote. The procedure followed by Justice B.N. Srikrishna is absolutely correct and no error can be found in this regard. Therefore, we have no hesitation in accepting the report submitted by Justice B.N. Srikrishna.

41. Out of 867 total eligible voters only 651 voted and the appellant secured 423 votes, which would mean 64.98% or roughly 65% of the votes polled. But, if we were to calculate this percentage from the total number of slum dwellers i.e. 867 then the percentage is 48.78%, which

is less than 50%. In case we exclude 79 votes which are doubtful, then the total eligible voters would be 788 and the appellant secured 413 i.e. 52.41% of the total eligible slum dwellers, well below the magic figure of 70%. We are unable to accept the contention of Mr. Nariman that to put an end to all litigation, the Court only wanted to find out who had the majority. That, according to us, is not the essence of the order dated 27.03.2015. It is true that 70% is not reflected in the direction given in Para 5 of the order but as earlier noted by us, the directions have to be understood in view of the intention of the Court, which was to find out that which of the builders had the support of 70% of the slum dwellers. Unfortunately, both the developers do not enjoy 70% support, though it is true that the appellant has the support of more than twice the number of slum dwellers as compared to respondent no. 4. Since neither Susme nor J.G. Developers has the support of 70% slum dwellers, the order dated 27.03.2015 cannot be taken to its logical conclusion and we have to decide the appeal on merits.

THE SCOPE OF POWERS UNDER SECTION 13(2) OF THE SLUM ACT:

42. Relevant portion of Section 13 of the Slum Act which is the bone of contention between the parties reads as follows;

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

A 43. Shri Darius Khambata, learned senior counsel appearing for Susme urged that under Section 13(2) of the Slum Act, the SRA is entitled to take action only against the owner. He also submits that Section 13(2) will apply only when there is violation of the conditions imposed under sub-section 10 of Section 12 of the Slum Act and the condition with regard to the time should also be a condition contained in sub-section 10 of Section 12. He submits that there is no power to take action under this section against the developer. According to him, action could have been taken by the SRA against the Society but not against Susme.

C 44. We cannot accept such a wide submission. According to us, under Section 13(2) of the Slum Act, the SRA has the authority to take action and hand over the development of land to some other recognized agency under three circumstances:

i. When there is contravention of the plans duly approved;

D ii. When there is contravention of any restriction or condition imposed under sub-section 10 of Section 12 of the Slum Act; and

iii. When the development has not taken place within time, if any, specified.

E 45. The requirement to complete the development within time may be there in the letter of intent issued by the SRA or may be in the agreement entered into between the owner/developer with the slum dwellers. Such condition, if violated, would attract the provisions of Section 13(2) of the Slum Act. Over and above that, when a clearance order is F passed, then in terms of sub-section 10 of Section 12, the competent authority can include a condition with regard to the time within which the development should be completed and in that case also Section 13(2) would be attracted. We are not, however, able to accept the very wide argument that in case of delay, the condition that is violated must be laid G down under Section 12(10) of the Slum Act.

46. There may be cases where the slum dwellers do not offer any resistance and willingly consent to move into transit accommodation provided by the owner/developer. Therefore, the conditions laid down under Section 12(10) will come into play only when there is a clearance

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order, but in case there is no clearance order, then under Section 13(2), the SRA would be empowered to take action when there is violation of any plan or when there is violation of any condition relating to developing the project within time. The time limit can, some time, be provided in the letter of intent, in the agreement or even in the regulations.

47. Having held so, we are of the view that Shri Darius Khambata, learned senior counsel, is right in his submission that normally under Section 13(2) of the Slum Act, action by the SRA has to be taken against the owner. Here, we may repeat that this is a unique case where the slum dwellers are the members of the owner-Society. The Society, in turn, has given power of attorney to the builder. The builder virtually has two roles – one as developer and the other as power of attorney holder of the owner. Both are closely interlinked and inextricably mixed with each other. Therefore, though normally we would have accepted the contention that under Section 13(2) action can only be taken against the owner, in the present case, we are unable to accept this contention in its totality. We may point out that even the SRA, in its order, has itself noted that since the Society is the owner of the plot of land, it is empowered and within its right to terminate the agreement executed with the said developer for breaches committed by the developer. It has, however, held that a private dispute between the Society and the developer cannot prevent the SRA from discharging its obligations. The SRA agreed with the submission made by the Society that Susme had not completed the project within time. It has taken action under Section 13(2) of the Slum Act. The action taken by the SRA is to remove Susme as developer which amounts to cancelling the letter of intent issued in favour of Susme.

48. Otherwise, there would be an anomalous situation where the Society would have terminated its contract with Susme but the letter of intent issued by the SRA would continue to hold the field and it would be entitled to develop the land. The Society approached the SRA, in fact, asking it to take action against Susme. Since the SRA is the authority which issued the letter of intent, it will definitely have the power to cancel the letter of intent.

49. We are of the considered view that in the peculiar facts and circumstances of the case where the slum dwellers are virtually the owners of the land as members of the owner Society, the SRA had the power under Section 13(2) of the Slum Act to issue the order dated 24.02.2012.

WHETHER THE SRA HAS ANY OTHER POWER TO REMOVE THE DEVELOPER:

50. Even if we were to assume that the SRA did not enjoy this power under Section 13(2) of the Slum Act, we are of the considered view that since it was the SRA which issued this letter of intent, it necessarily must have the power to cancel the same. The SRA can also derive this power under clauses (c) and (d) of sub-section (3) of Section 3A of the Slum Act, which read as under:

> "3A. (1) Notwithstanding anything contained in the foregoing provision, the State Government may, by notification in the *Official Gazette*, appoint an authority to be called the Slum Rehabilitation Authority for such area or areas as may be specified in the notification; and different authorities may be appointed for different areas.
>
> xxx xxx xxx
>
> (3) The powers, duties and functions of the Slum Rehabilitation Authority shall be,-
>
> xxx xxx xxx
>
> (c) to get the Slum Rehabilitation Scheme implemented;
>
> (d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slums."

51. A bare reading of these provisions shows that in terms of clause (c) and (d) of sub-section (3) of Section 3A of the Slum Act, the SRA not only has the power, but it is duty bound to get the slum rehabilitation scheme implemented and to do all such other acts and things as will be necessary for achieving the object of rehabilitation of slums. In this case, the SRA was faced with a situation where the slum dwellers were suffering for more than 25 years and, therefore the action taken by SRA to remove Susme for the unjustified delay was totally justified.

52. A perusal of the various provisions of the Slum Act would show that normally in a case falling under the Slum Act, it is the owner of the land, whether it be the Government, a statutory authority or a private person, who will be interested in the development work. Normally, the occupiers will be encroachers of slum land. Therefore, there will be

a conflict of interest between the occupiers and the owner. The owner, in turn, will always engage a developer/builder to carry out the development work. In case the owner gives a power of attorney to the developer, as in the present case, the developer now has two identities – (i) the power of attorney holder of the owner and (ii) the developer. As far as the present case is concerned, the Society is made up of the members who are occupiers and this Society has given power of attorney to the developer-Susme. Therefore, the developer Susme is actually having a dual role of owner and developer. Both the letters of intent have been issued in favour of the Society, Susme and the architects of Susme. Susme could not have carried out the development work on the basis of its agreement with the Society. It needed the permission of the SRA. Therefore, SRA can obviously revoke such permission.

WHETHER IN THE NOTICE ISSUED UNDER SECTION 13(2) THE ISSUE OF 70% CONSENT WAS RAISED:

53. Shri Darius Khambata, learned senior counsel, has raised another contention that there is no allegation in the notice under Section 13(2) of the Slum Act that Susme has violated any provisions of the Act, Regulations or Scheme in not getting consent of 70% of the slum dwellers. We have gone through all the three notices and find that, in fact, in the notices there is no specific allegation in this behalf. On the other hand, Shri Gopal Subramanium, learned senior counsel appearing for J.G. Developers, urges that in the last notice reference has been made to violation of DCR and this will obviously include violation of requirement of consent of 70% slum dwellers.

54. We are unable to accept the contention of Shri Gopal Subramanium, learned senior counsel. When a notice is issued to a party it must be clearly told what are the allegations which it must meet. The notice should be clear and unambiguous.

55. There was no allegation in the notice(s) that the right to develop granted in favour of Susme was liable to be revoked because it had not obtained consent of 70% of the slum dwellers. The reference to Regulation 33(10) also did not specifically raise the issue of 70% consent. Susme was never put to notice by the SRA that its right to develop the land may be cancelled because of not having consent of 70% slum dwellers. It was confined to the issue of delay. We answer this issue accordingly.

A 56. However, we are of the view that while considering the issue of delay, the SRA was justified in making reference to the various communications made by Susme and its architects seeking time to obtain consent of 70% slum dwellers and, therefore, while dealing with the issue of delay, we shall take into consideration all these matters.

B **WHETHER SUPPORT OF 70% OF THE SLUM DWELLERS IS MANDATORY AND WHETHER SLUM DWELLERS ARE ENTITLED TO WITHDRAW THEIR CONSENT:**

57. It would be important to note that under DCR of 1991, which were initially applicable to this project, a Scheme for rehabilitation could C be initiated where more than 70% of the eligible hutment dwellers on the land agreed to the redevelopment scheme by becoming members of a cooperative society. Thereafter, the Scheme was to be considered by the authorities for implementation. Relevant portion of the DCR reads as follows:

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> "INITIATION OF THE SCHEME:- Where more than 70% of the eligible hutment dwellers on the land agree to join the redevelopment scheme and become members of the co-operative society, the scheme should be considered for implementation."

58. Under Development Control Regulations 33(10) of 1991, the E essential requirement was that at least 70% of the slum dwellers had to form a society with a view to redevelop the slum area. In case 70% slum dwellers did not join, there could be no rehabilitation scheme. As far as the present case is concerned, it is not disputed that more than 70% slum dwellers had formed the respondent no. 3-Society. It is the F admitted case of the parties that 800 out of 867 slum dwellers formed respondent no. 3-Society, which is 92.27%.

59. DCRs of 1991 were amended in 1997. Clause 1.15 of Appendix (IV) of the amended DCR provided that 70% or more of eligible hutment dwellers in a slum must agree to join a rehabilitation scheme before it G can be considered for approval. This clause reads as follows:

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

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

Clause 1.16 of Appendix (IV) of this DCR reads as follows:

"In respect of those [eligible] hutment-dwellers on site who do not join the Project willingly the following steps shall be taken:-

(i) Provisions for all of them shall be made in the rehabilitation component of the scheme.

(ii) The details of the actual tenement that would be given to them by way of allotment by drawing lots for them on the same basis as for those who have joined the Project will be communicated to them in writing by the Managing Committee of the Co-operative Housing Society. [If it is registered or the developer and in case of dispute decision of the CEO/SRA shall be final and binding on all the parties concerned.

(iii) The transit tenement that would be allotted to them would also be indicated alongwith those who have joined the Project.

(iv) If they do not join the scheme within 15 days after the approval has been given to the Slum Rehabilitation Project on that site, then action under the relevant provisions including sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 as amended from time to time, shall be taken and their hutments will be removed, and it shall be ensured that no obstruction is caused to the scheme of the majority of persons who have joined the scheme willingly."

60. It is thus obvious that under the amended DCR, not only 70% or more of the eligible hutment dwellers must first agree to join a rehabilitation scheme before it is taken up for consideration, but the owner/developer or cooperative society must also enter into individual agreements with each of these eligible hutment dwellers. We may also point out that the amended DCR in clause 1.16 of Appendix IV provides that even in respect of those eligible hutment dwellers who do not join the project willingly, the developer/builder has to make provision for

A accommodation of these hutment dwellers in the scheme. They are entitled to the same benefits as the hutment dwellers who actually join the scheme. They are also entitled to similar transit accommodation as is allotted to those who willingly join the scheme. Further, the regulations also provided that if such hutment dwellers do not join the scheme and do not accept the transit accommodation or the completed premises, then they can be removed from their hutments and it will be ensured that these hutment dwellers do not cause any hindrance to the project.

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61. Very lengthy arguments were addressed by learned counsel on the issue whether 70% support of the slum dwellers is mandatory. A large number of authorities have also been cited but, in our view, it is not necessary to refer to the various authorities because the bare provisions of law are sufficient to decide this issue. A bare reading of DCR of 1991 makes it absolutely clear that under the said DCR at least 70% of the slum dwellers/occupiers have to get together and form a Society for the purpose of slum re-development scheme. Therefore, unless 70% slum dwellers agree to form a Society, the provisions of the Slum Act could not be invoked to frame an SRD scheme. Under the amended DCR of 1997, there is a change and the change is that now the developer/owner was required to enter into agreements with 70% of the slum dwellers and unless 70% of the slum dwellers agree, the slum rehabilitation scheme cannot be entertained. The magic figure remains at 70%. The idea behind it is that more than 2/3 of the occupiers must agree for the rehabilitation scheme.

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62. As pointed out above, even if the remaining minority slum dwellers do not agree to be part of the scheme, the owner/developer is duty bound to make adequate arrangements for their rehabilitation under the scheme and they can join the scheme, and can take benefit of the scheme even at any later stage. We are, therefore, of the considered view that 70% consent of the occupiers is mandatory. As clarified above, we are not dealing with this aspect in relation to the order of the SRA because the notice under Section 13(2) did not raise this issue. However, we are clearly of the view that under the 1997 DCR the owner is required to produce individual agreements with 70% slum dwellers before the scheme can be taken up for consideration.

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63. The circulars issued by the SRA, specially Circular dated 21.08.1997, 19.09.1998 and Circular No. 27 permit conversion of old

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approved SRD Scheme to new SRA Scheme under the provisions of Clause No.10.1 of Appendix IV of DCR. In the present case, the scheme was initiated under the old DCR of 1991. There is no manner of doubt that the Society was formed by more than 90% of the occupiers.

64. The migration was done to the Scheme of 1997. There is no clear cut provision in the 1997 DCR as to how this migration has to be done. Since there is no clear cut provision, we may presume that while migrating, it was not necessary for Susme to have individual agreements with 70% of the slum dwellers. We may, however, point out that it was Susme who applied for migration to the new Scheme, obviously because the new Scheme gave greater benefits to the developer. When migration was done, it was on the clear cut understanding that after the migration, the provisions of amended DCR would be applicable. When this application of the Society and Susme for conversion was taken up, it was noticed that one of the main objections was that there were no individual agreements with the slum dwellers.

65. Later, Susme submitted agreements of 450 of the eligible slum dwellers and stated in writing that the remaining to make up 70% would be submitted before start of Phase II of the construction. Fresh letter of intent dated 27.01.1998, in terms of the new DCR, was issued in favour of Susme and approved in accordance with Clause No.33(10) and Appendix IV of amended DCR subject to certain conditions.

Clause 19 of the letter reads as follows:

> "That you shall submit the Agreements with the photographs of wife and husband on the agreements with all the eligible slum dwellers before issue of CC for sale bldg., or 3 months as agreed by developer whichever is earlier. And the name of the wife of the eligible occupier of hut shall be incorporated with joint holder of the tenements to be allotted in rehabilitation building."

66. A bare perusal of this condition makes it clear that Susme was directed to submit agreements with all the eligible slum dwellers before commencement certificate for sale building was issued or within three months, as agreed by it. It has been urged by Shri Darius Khambata, learned senior counsel that, as per this condition, the agreements have to be submitted only at the stage when the commencement certificate is to be issued. It would also be important to note that even before the

A rehabilitation building numbers 5 and 6 were completed, Susme was granted TDR to the extent of 40% of the construction of building nos. 5 and 6, which they sold in the open market. The relevant portion of the note dated 16.02.1998 is extracted hereinbelow:

> "Further as per policy & DCR 33(10) it is necessary that
B agreements with more than 70% slum dwellers as per new scheme is required. This was pointed out to CEO (SRA) during discussion, when CEO (SRA) instructed to submit agreements with 70% slum dwellers before second phase of T.D.R. Developers have informed that out of 869 slum dwellers, they have submitted 450 agreements to the office of S.R.A. (52%)."

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When Susme applied for permission to sell the TDR, the SRA ordered that 70% agreements should be submitted before Phase II TDR and, further, Susme was informed by the SRA that it has only submitted the agreements with 450 slum dwellers which comes to barely 52%. The Bombay High Court, therefore, rightly recorded that Susme accepted
D the condition of 70% consent requirement when it accepted these conditions and sold the TDR. Thereafter, on 03.11.1998, occupation certificate was issued in favour of Susme with regard to two rehabilitation buildings. Relevant portion of communication dated 03.11.1998 reads as under:

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> "That the 70 percentage individual agreements with slum dwellers shall be submitted before further approval/CC."

67. On 24.12.1998, the SRA permitted Susme to take 90% benefit of the TDR equivalent. Relevant portion of this note reads as follows:

> F "As per policy it is necessary that agreements with minimum 70% slum dwellers for new scheme is required. It is also mentioned in the previous report sidelined 'x' at page 35. Architect has to submit 70% agreements before granting Phase-II TDR. At present 52 (*sic 520)* agreements (60%) out of 869 are submitted in this office as mentioned in the letter of Architect as at
> G page…….However, these two Rehab Bldgs are physically occupied and list of documents rehoused is submitted at P-164 to 171 Phase II T.D.R. can be recommended if agreed.
>
> In view of above pending requirement if CEO (SRA) agreed TDR equivalent to 0.90 x 3720.90 = 3348.81 (1295 SQ.MT. released in

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Phase I + 2051.81 sq.mt. to be released & Phase II) sq. mt. Phase II TDR will be recommended to M.C.G.M. "

68. It was noted that Susme was required to submit agreements with 70% of the slum dwellers. On 07.07.1999 Susme, through its architects, sent a letter to respondent no. 1 forwarding 580 individual agreements of the members of the Society and also undertook to submit the remaining, to make 70% in due course. SRA pointed out in its letter dated 25.07.2001 addressed to Susme that out of the agreements submitted, only 372 were correct.

69. Here, it will be pertinent to note some other relevant facts. On 11.05.1999, some slum dwellers filed Writ Petition No. 1301 of 1999, challenging the letter of intent dated 27.01.1998 in favour of Susme on various counts including the ground that Susme had failed to obtain consent of 70% or more of the eligible slum dwellers. This petition was dismissed on 13.12.1999 and we have quoted the relevant portion of the Bombay High Court in the earlier part of the judgment. According to Susme, in view of this judgment, it was not required to obtain 70% consent of the slum dwellers. We do not think this is what was said by the High Court. We may note that the main contention by the appellant before the High Court was that the consent of 70% of the slum dwellers was not required under the 1991 Scheme. The High Court held, and rightly so, that under the 1991 DCR what was required was that 70% of the slum dwellers joined the Society, which was interested in the rehabilitation of slum dwellers and there was no requirement that there should be consent from 70% slum dwellers. The High Court did not discuss at all, the issue whether 70% consent was required under the 1997 Scheme. This judgment will have no bearing on the present case.

70. As we have already indicated above, in a migration from 1991 Scheme to 1997 Scheme, obviously 70% individual agreements cannot be obtained prior to submission of the Scheme. However, while granting migration, the SRA can lay down conditions and such conditions can also be laid down during the course of the Scheme. From the facts narrated above it is more than amply clear that the SRA envisaged, and Susme clearly understood, that it had to obtain consent of 70% of the slum dwellers. Even in the resolutions of the Society authorizing Susme to take up the development work entered after DCRs were amended it was clearly mentioned that amended Regulation 33(10) would govern

A the agreements. Susme cannot now say that it is not governed by the amended regulations. Even the letters issued by the architects of Susme clearly indicate that they would make up the balance to achieve 70% agreements. The main dispute is by when this should have been done. Initially, time was given till commencement certificate of the sale building was issued. This was a meaningless condition because if this condition B was to be applied after the rehabilitation buildings had been built, then having the consent of the slum dwellers would be an exercise in futility because by then they would have been thrown out of their dwellings. We can, at best, understand this to mean commencement of the rehabilitation buildings. The slum dwellers are interested with the C rehabilitation buildings and not with the free sale buildings. Later on, when applying for permission to trade their development rights, Susme clearly understood and undertook that it would furnish the consent forms of 70% of the slum dwellers. The architects of Susme, in fact, deposited 580 individual agreements but out of these, only 372 were found to be correct. Thereafter, Susme took a U-turn and, relying upon the judgment D of the Bombay High Court in CWP No.1301 of 1999, took a stand that it was not required to submit agreements with 70% slum dwellers. This stand was not legally tenable. Susme cannot be permitted to back out of its commitments. The agreements with 70% slum dwellers should have been provided within a reasonable time and, though almost 20 years E have elapsed since the second letter of intent was granted in favour of Susme, it has till date failed to submit such agreements. We may again reiterate that we are not dealing with this issue for the purpose of removing Susme but only for the purpose of showing that Susme delayed the project because it failed to get consent from 70% of the occupiers.

F **WHETHER SUSME DELAYED THE CONSTRUCTION OF THE SCHEME, AND IS, THEREFORE, NOT ENTITLED TO ANY RELIEF:**

71. With regard to the issue whether the appellant is responsible for the delay in implementation of the Scheme, at the outset, we may G note, that both the SRA and the High Court have dealt with this issue in detail and come to a concurrent finding of fact that Susme was responsible for the delay in implementation of the Scheme. Since this is a finding of fact and dealt with in detail by the High Court, we are not required to examine this contention in detail. However, at the insistence of the learned senior counsel for Susme we have gone through the voluminous H

record. From the facts which are set out in this regard it is apparent that Susme first entered into an agreement with the Society on 27.02.1986 committing to complete the project in 5 years. Unfortunately, from 1986 to 1991, nothing was done and the only excuse is that some public interest litigation was pending. On 25.03.1991, the DCRs were brought into force. On 09.10.1992, the appellant obtained permission for development of the property on certain conditions. It would be important to note that in the letter of 09.10.1992, while granting permission, it was stated that the developer should produce agreement of all the existing occupiers within six months and the development work is to be completed within two years, though the time could be extended for genuine reasons. Admittedly, no work was done during this period also. On 05.04.1995, letter of intent was issued in favour of Susme. In this letter also, there was a stipulation that Susme should produce the agreement with all the slum dwellers. Thereafter, Susme entered into a fresh agreement with the Society. During this period of 9 long years, not an inch of construction was raised nor any portion of the property developed. Thereafter, in a meeting of General Body of the Society held on 12.11.1995, a resolution was passed that each slum dweller be provided 225 sq. ft. carpet area. This was accepted by Susme and crystallized in the agreement dated 07.01.1998. Between 15.01.1996 to 01.02.1996 Susme obtained 'intimations of disapproval' which, in fact, are sanctions for construction for 15 rehabilitation buildings and started construction of two rehabilitation buildings nos. 5 and 6. Susme's proposal for conversion of SRD Scheme to SRA Scheme was approved in January, 1998 and fresh letter of intent was issued in favour of Susme on 27.01.1998. During this period, two rehabilitation buildings were constructed but nothing further was done. There is virtually no explanation as to why the remaining rehabilitation buildings were not constructed during this period except to state that fresh plans were never approved. It is more than obvious from the facts narrated above that Susme never earnestly pursued the authorities for approval of the plans and the reason is not far to seek – the reason being Susme did not have consent/agreements of 70% slum dwellers. It is more than obvious that Susme was buying time on one excuse or the other. On 18.01.2000, the SRA called upon the appellant to submit revised plans in respect of rehabilitation buildings within 10 days of the receipt of the letter. In reply thereto, the architects of Susme sent a letter on 27.01.2000 expressing their intention to start Phase II of the project but, at the same time, sought waiver of the requirement of obtaining 70%

A consent from the slum dwellers. This clearly shows that Susme was using this excuse to delay the construction. On 05.01.2001, Susme addressed a letter to the SRA praying that the plan submitted in 1997 be approved. Thereafter, the SRA did not consider Susme's proposal since, according to the SRA, the proposal was affected by the Coastal Regulations Zone (CRZ) Notification.

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72. On 07.07.2001, Susme and the Society filed Writ Petition No. 2269 of 2001, in the Bombay High Court seeking removal of the remarks which indicated that part of the property of the Society was being affected by the CRZ Notification. A perusal of the writ petition and the other documents clearly shows that the entire property was not affected by the CRZ Notification, but only a part thereof. On 07.08.2002, in the petition filed by Susme and the Society, the Bombay High Court passed an order, relevant portion of which reads as follows:

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> "Prima facie, having perused the affidavit of Dr. Munshil Gautam filed before this Court on 24th June, 2002 and the documents annexed thereto it does appear that the property in question is affected by CRZ regulations. Respondent No. 2 and 3 have already placed Coastal Zone remark which is of course impugned in the present petition but until the petitioners are granted relief as prayed, the petitioners cannot raise any construction in the area which is covered by CRZ regulation. We accordingly observe that during the pendency of petition the petitioners shall not raise any construction in the property in question which is affected by CRZ regulation."

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73. It is apparent from the aforesaid order that stay was granted not to raise construction in the area which is covered by the CRZ Notification. No material has been brought on record to show that the entire plot was covered by the CRZ Notification and it is amply clear that only a portion of the plot was covered by the CRZ Notification and nothing prevented Susme from raising construction on that portion of the land which was not affected by the CRZ Notification. On 09.05.2005, Susme's architects sought approval of plans for transit accommodation. This permission was granted on 18.08.2005, but a condition was laid down that 70% agreements must be submitted before the existing structures are demolished. On 14.03.2006, the SRA issued notice to Susme to stop work on various grounds including non-submission of demarcation from the competent authority permitting the transit camp to

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be set up. Thereafter, on 05.09.2006, Susme and the Society entered into another agreement and on 03.04.2008, respondent no. 1 revoked the order dated 29.05.2006, after Susme obtained permission from the State Government allowing the transit camps to remain. It is apparent that sometime in the year 2005, it was clarified by the concerned authorities that Susme's construction was not affected by the CRZ Notification. It is obvious that only a portion of the land was affected by the CRZ Notification and nothing prevented Susme from constructing the buildings which were to be constructed on land not falling within the CRZ Notification. However for reasons known only to Susme, it withdrew the Writ Petition No.2269 of 2001 only on 07.04.2008. It was only thereafter that respondent no. 3-Society passed a resolution on 29.03.2009, terminating the development agreement with Susme. Even after that, the SRA on 15.06.2009 issued a letter that the Society's request for change of developer need not be considered. On 14.09.2009, the Society entered into agreement with respondent no. 4 - J.G. Developers Pvt. Ltd.. Thereafter, civil litigation started. It has also been urged on behalf of Susme that, in the meantime, a one man Commission was constituted and due to the constitution of this Commission, work was affected.

74. After going through all the material placed on record, we are clearly of the view that the finding given by the SRA that the appellant was responsible for the delay, is a finding based on appreciation of material on record. It cannot be said to be a perverse finding. It is a finding of fact and, therefore, the Bombay High Court was justified in coming to the conclusion that it could not set aside this finding of fact in writ jurisdiction. We may, however, add that since lengthy arguments were addressed, we have ourselves gone through the various documents and though there may have been a few stop orders and a few occasions when Susme may not have been able to raise the construction but, by and large, Susme was itself guilty of delaying the construction for no reason at all. We, therefore, hold that Susme was rightly held responsible for the delay in implementation of the rehabilitation scheme and, as such, we find no error in the impugned order.

WHETHER SUSME IS ENTITLED TO CONTINUE WITH THE SCHEME:

75. With regard to the issue whether the appellant is entitled to continue with the Scheme; in view of the findings given above, we are

clearly of the view that Susme is not entitled to continue with the rehabilitation Scheme on account of the fact that it has been responsible for the delay in completion of the project for an inordinately long time. Susme has not been able to explain the delay. We are dealing with slum dwellers and Susme cannot take the benefit of technical points to defeat the rights of the slum dwellers. The claim of Susme that it had the support of 70% slum dwellers, was contested before Justice Srikrishna and his findings clearly reveal that Susme does not have the support of 70% of the slum dwellers. We are of the view, that since the notice by the SRA to Susme did not make any specific allegation with regard to Susme not having 70% consent, that portion of the order of the SRA, setting aside the right to develop the land on the ground of lack of 70% consent, may have been beyond the scope of the notice. However, this issue was argued before the HPC and the High Court and on rival claims being made, this Court vide order dated 27.03.2015, referred this dispute to Justice Srikrishna, who has submitted his report.

76. In writ proceedings, the petitioner must show that both in law and in equity it is entitled to relief. In this case, both equity and law are against Susme. It has dealt with slum dwellers in a highly inequitable manner. The law and the conditions of the letter of intent as well as the conditions imposed in the various letters issued by the SRA clearly required Susme to produce agreements with at least 70% of the slum dwellers. This, Susme has miserably failed to do. We may also add that though Susme may have remained the same entity in name, there have been, at least, three changes in the promoters of Susme and these transfers of shareholdings obviously must have been done for consideration. It is more than obvious that Susme, as a legal entity, was treating the slum dwellers only as a means of making money and, therefore, we are clearly of the view that Susme is not entitled to any relief.

IN CASE SUSME IS NOT ENTITLED TO CONTINUE WITH THE SCHEME WHETHER RESPONDENT NO. 4 J.G. DEVELOPERS IS ENTITLED TO CONTINUE WITH THE REHABILITATION SCHEME:

77. The next issue is whether J.G. Developers is entitled to any relief and can be permitted to continue with the rehabilitation scheme. In this behalf, we may note that the conduct of J.G. Developers is not above board. It is more than obvious that when respondent no. 3-Society

entered into a development agreement with respondent no. 4, the members were given a false hope and dream that the size of their flats would go up.

78. Under the terms of this agreement, J.G. Developers agreed to provide permanent alternative accommodation of 344 sq. ft./419 sq. ft. carpet area to the slum dwellers. J.G. Developers also entered into individual agreements and under these agreements, it agreed to provide 344 sq. ft./419 sq. ft. carpet area to some residents. It is obvious that a false promise was held out by J.G. Developers that the carpet area of the flat would be increased from 269 sq. ft. to 344 sq. ft./419 sq. ft.. Obviously, the slum dwellers, who had been waiting for 23 long years for a flat admeasuring 269 sq. ft. would happily accept the offer of a flat of 344/419 sq. ft..

79. From the communications addressed by the SRA, it is obvious that J.G. Developers was legally not entitled to make this offer. It is submitted by Shri Gopal Subramanium, learned senior counsel that J.G. Developers was willing to sacrifice its free sale area to give a larger flat. However, he has failed to submit even one document to show that the SRA had agreed to this proposal of the J.G. Developers. In fact, the communication sent by SRA clearly shows that the proposal was not accepted. It is, therefore, obvious that J.G. Developers had hoodwinked the members of the Society in entering into an agreement with it by holding out a false promise that they would be given much larger flats. As such, we are unable to accept the request of respondent no. 4- M/s. J.G. Developers, to be permitted to continue with the project. We may also note that the Society has terminated its agreement with the J.G. Developers. We are not going into the question whether this has been done rightly or wrongly, but the fact is that the agreement stands terminated. We may also note that in the voting conducted by Justice Srikrishna, J.G. Developers failed to get the consent of 70% slum dwellers and, in fact, it has got less than 1/2 of the votes, as compared to Susme, and its support is even less than 30%.

80. It was urged before us that agreements once entered into and the consent once given, cannot be withdrawn. We are totally in agreement with the same. However, if the consent is obtained by misrepresentation of facts, then that is no consent. Now, when the position stands clarified that the slum dwellers would get flats of 269 sq. ft. area only, J.G. Developers has failed to get support of even 30% of the slum dwellers.

A 81. In view of the above discussion, we are clearly of the view that J.G. Developers is not entitled to continue with the project and is not entitled to any relief.

LAW LAID DOWN BY THE BOMBAY HIGH COURT:

B 82. Our attention was drawn to various judgments of the Bombay High Court that consent once given by the slum dwellers should not be permitted to be withdrawn. It was also brought to our notice that the Bombay High Court has consistently held that voting *inter se* developers should not be done. It has been the consistent view of the Bombay High Court that in case voting is done, then this will lead to developers trying C to buy out the slum dwellers and then no rehabilitation scheme would attain fruition. We totally agree with the aforesaid views of the Bombay High Court. We must remember that slum dwellers normally belong to the poorest section of the society. They can be tempted to change their mind. In the present case itself, the slum dwellers shifted from Susme to J.G. Developers for two reasons – (i) Susme had delayed the project D and (ii) J.G. Developers made a promise that it would give a flat of 344 sq. ft./419 sq. ft. area, which promise was obviously a false promise. The view of the Bombay High Court that consent once given should not be permitted to be withdrawn, is absolutely the right view. Otherwise, a person may give consent one day, withdraw it the second day and review E the consent the third day, leaving the Scheme in a perpetual state of flux. For the aforesaid reasons, we agree with the Bombay High Court that there should be no *inter se* bidding between the builders. The proper course is that the scheme of the developer who is the first choice, should be placed before the slum dwellers and if it gets 70% votes, then the Scheme can be considered, but if it does not get 70% consent, then F obviously, the second developer can be considered. However, competitive bidding should not be done because that can lead to a very unholy practice of developers trying to buy out the slum dwellers, which is also not in the interest of the rehabilitation scheme.

G 83. As far as the present case is concerned, this Court while passing the order dated 27.03.2015, made a departure because of the peculiar facts of this case. The present case because of its own unique facts cannot be treated as a precedent in other cases with regard to action taken in this case.

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CONCLUSION:

84. In view of the above discussion, we arrive at the following conclusions:

1. That the order dated 27.03.2015 was passed in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India and is an order binding on the parties;

2. That vide order dated 27.03.2015, this Court wanted Justice B.N.Srikrishna to find out whether Susme or J.G. Developers had the consent of 70% slum dwellers;

3. That, as a result of the Report submitted by Justice B.N. Srikrishna, both Susme and J.G. Developers have failed to show that they enjoyed support of the 70% of the slum dwellers;

4. That, in the peculiar facts and circumstances of this case, where the owners and occupiers are virtually one, the SRA had the jurisdiction to invoke the provisions of Section 13(2) of the Slum Act to revoke and set aside the right to develop and cancel the letter of intent granted in favour of Susme. Even if it be assumed that Section 13(2) is not applicable, then the SRA could have exercised this power under Section 3A (3)(c) and (d) of Slum Act.

5. That the notice issued by the SRA to Susme was only on the ground of delay and the issue of obtaining 70% consent was not specifically raised in the notice. Consequently, the order dated 24.02.2012 passed by the SRA in so far as it rejects the case of Susme for lack of 70% consent is beyond the terms of the notice. Therefore, this part of the judgment of the Bombay High Court, holding that Susme was aware about this allegation, is not accepted and is set aside;

6. That, Susme was responsible for the delay in implementation of the Scheme and construction of the buildings and, therefore, the SRA was justified in setting aside the appointment of Susme as developer and impliedly cancelling the letter of intent issued in its favour vide order dated 24.02.2012;

7. That, Susme has failed to show that it has the consent/agreements of 70% of the slum dwellers even today and, therefore, is not entitled to any relief from this Court; and

A 8. That J.G. Developers obtained the consent of the members of the Society by holding out a false promise of a larger flat and, therefore, the agreements entered into by J.G. Developers with the slum dwellers are legally unconscionable and not enforceable and, as such, J.G. Developers is also not entitled to continue with the Scheme.

B **RELIEF**:

85. This, as pointed out earlier, is a very unusual case. We have held that both the contesting developers are not entitled to any relief. It is our duty to ensure that these owners who also happen to be slum C dwellers do not live in sub-human conditions for eternity.

86. We are not only disappointed with the conduct of Susme, but also with the conduct of those persons who were the office-bearers of the Society whichever faction they may belong to. It is more than obvious that the two rival developers and the office-bearers of the Society were D playing with the lives of large number of slum dwellers. We are not going into this issue in detail but, if we were to carefully examine the various agreements entered into by Susme with the Society, we find that though the members may have been entitled to larger flat in each subsequent agreement but, in fact, it was the builder, who was the biggest gainer as the advantage of higher FSI was cornered by the builder. Only E a small portion of this advantage was being transferred to the slum dwellers and a large portion was being retained by the builder. Another important aspect is that, in this case, it is the occupiers who, through the Society, are also the owners of the land. In our view, in addition to the flats which they would be entitled to as slum dwellers or occupiers or F encroachers of land, they should have been given some benefits as owners of the land. When a slum, owned by any authority or person, is handed over to the developer, in addition to rehabilitating the slum dwellers, the developer also has to compensate the owner. We see no reason why, in the present case, the slum dwellers, who are the owners, should also not be given some adequate compensation for the land which they G own. It is these 800 plus slum dwellers, who own this 23018.50 sq. mtrs. of land, which would be valuing thousands of crores of rupees and, therefore, we see no reason why the slum dwellers, who also happen to be the owners of the land, should also not be compensated for the price of the land.

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87. This is a case where the earlier Bench of this Court had invoked its power under Article 142 of the Constitution of India and we also feel that it is a fit case for invocation of this Court's jurisdiction under Article 142 of the Constitution of India. Hence, in exercise of this Court's power under Article 142 of the Constitution of India, we issue the following directions/orders for doing complete justice:

1. That the SRA shall within three weeks of the receipt of this order, invite letters of interest from renowned builders/ developers, who have the capacity and experience to take up such a large project by issuing advertisements in not less than three newspapers having wide circulation in Mumbai, one each in English, Hindi and Marathi;

2. The advertisement may be brief but all necessary details must be incorporated in the advertisement. The details of the project including a copy of this judgment should be made available on the website of the SRA;

3. After the letters of interest are submitted, the SRA shall consider which is the best offer and while considering the best offer, it shall ensure that the terms offered to the occupiers are in no manner disadvantageous to them when compared to the last offer made by Susme in regard to the area of flat offered, the nature of construction and other facilities available on the site. The SRA must, while evaluating the proposals, take into consideration the past record of the party/person expressing interest: it shall also take into consideration the financial viability of such party/person and, therefore, it may ask such party/ person to submit all the documents to support their financial viability. In case of any doubt, the SRA can move appropriate application before this Court;

4. The persons who express interest must be willing to give an assurance that they will submit plans within one month of the approval of their proposal and all the concerned authorities must, within 15 days thereafter, raise objections, if any, giving the successful bidder a chance to remove the objections, if any, within one month thereafter;

5. Thereafter, the concerned authorities should ensure that the plans are approved and sanctions granted latest within two

A months of the submission of the original plans. The successful developer should undertake to complete the rehabilitation of part of the project to rehabilitate all eligible occupiers/slum dwellers within a period of two years from the date of sanction of the plan. The successful bidder must give a bank guarantee of Rs. 200,00,00,000/- (Rupees Two Hundred crores only) to ensure that it does not violate the terms and conditions of the rehabilitation scheme. In case of violation of the terms and conditions of the rehabilitation scheme without reasonable cause, the SRA will be entitled to invoke the bank guarantee, after giving notice to the developer;

6. Keeping in view the fact that the slum dwellers are also the owners, the developers may also indicate what benefit they will give to the members of the Society either in cash or in kind by means of giving additional built up area out of their own free sale area to such members of the Society;

7. The SRA shall monitor the progress of the Scheme to ensure that it is completed within the time granted by this Court;

8. No Court or authority shall pass any order which will in any manner affect the implementation of the directions/orders issued by us;

9. The Society, its members, the SRA and all concerned will render complete assistance to the builder/developer, who is awarded the project by the SRA; and

10. That all pending litigation shall be disposed of in view of the aforesaid orders passed by us and shall be disposed of by the Court(s) accordingly.

88. We may also point out that vide order dated 12.10.2017 this Court directed that elections to respondent no. 3-Society be conducted on or before 31.12.2017. These elections were held on 17.12.2017 and a new Managing Committee was constituted. This Managing Committee held its first meeting on 31.12.2017 and has filed an affidavit on 03.01.2018 praying that the mandate recorded in the Report of Justice B.N. Srikrishna be implemented. It has also referred to the proposed amendment to the DCR whereby the requirement for consent is being reduced from 70% to 50%. We have taken this affidavit on record. It does not in any manner affect the view which we have taken.

89. Pending application(s), if any, stand(s) disposed of. A

90. The SRA to file status report by 31.03.2018. List on 09.04.2018.

Nidhi Jain Directions issued.