"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6712 OF 2008
(Arising out of SLP(C) No. 16825 of 2007)

Parag Construction …. Appellant

Versus

State of Maharashtra & Ors. …. Respondents

J U D G M E N T

V.S. SIRPURKAR, J.

1. Leave granted.

2. A Division Bench Judgment passed by the Bombay High Court, dismissing the Writ Petition filed by the appellant herein is in challenge before us. By the said petition, the petitioners/appellants had challenged the acquisition of land, bearing Final Plot No. 22A, 22B and 22C of the Town Planning Scheme (hereinafter referred to as 'TPS' for short) of Borivali (East). In this Writ Petition, the following prayers were made:

> "(a) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of certiorari or any other

appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the proceeding adopted by the Respondent No. 7 under the Provisions of Maharashtra Regional Town Planning Act, 1966 in respect of land bearing final plots 22A, 22B and 22C admeasuring 13980 sq. yards of Town Planning Scheme Borivali-II, Borivali (E) and consider the propriety of the action taken by the Respondent No. 7 and quash and set aside the proceedings adopted by the Respondent No. 6 and 7 for the said land in year 1996;

(b) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Articles 226 of the Constitution of India directing the Respondents to forthwith stay their action pursuant to Letter of Intent issued by the Respondent No. 6 in favour of the Respondent No. 4 for development of land mentioned in the said letter dt. 18.04.2006 annexed as Exh. 'F' hereto and set aside the permission granted in the Letter of Intent issued in favour of the Respondent No. 4;

(c) that this Hon'ble Court be pleased to restrain the Respondent No. 2 from taking action pursuant to notice dt. 21.08.2006 issued to the Petitioners/appellants as Exh. 'P' hereto;

(d) pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to grant interim order restraining the Respondents, their servants, subordinates, officers and agents from in any manner acting upon the Letter of Intent dt. 18.04.2006 issued by the Respondent in favour of the Respondent No. 4 for development of the land mentioned therein under Slum Redevelopment Scheme:

(e) Not relevant.

(f) Not relevant.

(g) Not relevant."

3. The petitioners/appellants, inter alia, claimed that they had become the owner of land admeasuring 11944 sq. yards, bearing Final Plot No. 7A1, 7A3 and 7B and bearing Survey Nos. 88 and 89, (2) Final Plot No. 13A, bearing Survey No. 8 admeasuring 22,635 sq. yards and (3) Final Plot No. 22A, 22B and 22C bearing Survey No. 6 admeasuring 13,980 sq. yards in village Kanheri, Taluka Borivali, Mumbai Suburban District, total admeasuring 48569.59 sq. yards. The petition was in respect of land bearing Final Plot No. 22A, 22B and 22C admeasuring 13,980 sq. yards.

4. The petitioners/appellants claimed to have purchased the said property under the certificate of sale dt. 24.9.1981 issued by the Prothonotary and Senior Master, High Court of Bombay in suit No. 42 of 1972 pursuant to the Orders passed by the Learned Single Judge of the High Court on 11.10.1982 in Chamber Summons No. 450 of 1982.

5. The petitioners/appellants restricted their claim to a plot admeasuring 1485.89 sq. mtrs., shown by red colour boundary in a map attached to the petition. The petitioners/appellants further claimed that out of the total property purchased from the Court Receiver, land bearing Final Plot No. 13A of TPS of Borivali-II was acquired by the Land Acquisition Officer and they had been paid a sum of Rs.2,80,984/-

by way of compensation for the said acquisition. They further pointed out that there was some litigation in respect of land bearing Final Plot No. 7B, which was settled by filing Consent Terms in this very Court. They claimed that the land bearing Final Plot No. 7A1 and 7A3 of TPS of Borivali-II was used by the petitioners/appellants for construction of a building, namely, 'Ghanshyam Towers' and that the present petition was in respect of part of land which bears Final Plot No. 22A, 22B and 22C.

6. The petitioners/appellants further claimed that they came to know in May, 2006 that someone was trying to develop a portion of the said land under the Slum Rehabilitation Authority Scheme and hence, they had written a letter dt. 2.5.2006 to the Chief Executive Officer, Slum Rehabilitation Authority (hereinafter referred to as 'SRA' for short) to furnish the information. They claimed to have obtained a copy of the Letter of Intent dt. 18.4.2006, which was in favour of Respondent No. 4 Siddhivinayak Developers. It was claimed that the said letter was in respect of the land admeasuring 1485.89 sq. mtrs. under the Slum Development Scheme. It is precisely in respect of this land that the Writ Petition was filed. The petitioners/appellants further pointed out that this Letter of Intent in favour of Respondent No. 4 Siddhivinayak Developers was illegal, as the property in respect of which the rights were given to develop the same land, belonged to the petitioners/appellants and it was without any notice to the petitioners/appellants that the said property came to be allegedly acquired by the respondent No. 6, Municipal

Corporation of Greater Mumbai (hereinafter referred to as 'the Corporation' for short), and was further intended to be given away in favour of Siddhivinayak Developers for development. The petitioners/appellants further claimed that they received a notice dt. 27.6.2006 from the City Survey Officer Borivali, informing the petitioners/appellants that the said Authority would take measurements and would fix boundary of the disputed property on 5.7.2006, for which the petitioners/appellants had already raised objections vide letter dt. 1.6.2006 and thereafter, also by letter dt. 24.7.2006. The petitioners/appellants also pointed out that the whole exercise was illegal and that they had also filed a Small Causes Suit No. 3233 of 2006 in Bombay City Civil Court at Bombay. They pointed out that they tried to obtain ad-interim injunction on 14.7.2006, when it was pointed out by the defendants/respondents that the property {described in civil suit as part of Final Plot 22B (Pt.) in para 2 and in prayer clause (c)} was already acquired under the provisions of Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as 'the Act' for short) way back in the year 1996 and in the Revenue records also, the said property stood in the name of the Corporation except the Final Plot No. 22A, which was already allotted to one Shri Anant P. Velkar and 6 others. They averred that the City Civil Court refused to grant ad-interim injunction. They claimed that it was then, that they came to know that Final Plot Nos. 22B and 22C were allotted to the Corporation after the acquisition and the Corporation had paid the compensation of

Rs.91,214.35 to Shri Anant P. Velkar and 6 others, which could not have been given to them. The petitioners/appellants, therefore, challenged the entire action of the acquisition of the land bearing Final Plot No. 22B and 22C of TPS of Borivali-II by respondent No. 7, the Arbitrator under the provisions of the Act, on the ground that it was contrary to the provisions of the said Act.

7. In short, the petitioners/appellants claimed the right to a notice on the basis of their ownership through the sale certificate mentioned in the earlier part of the judgment and claimed the right to a notice on the basis of that all the further actions without any notice to the petitioners/appellants, were illegal and non-est. It was on this basis, that the whole proceedings of acquisition were challenged before the High Court. The petition was opposed by the SRA, the Corporation, as also by the Arbitrator, so also by 2 other respondents, namely, Ashtavinayak Cooperative Housing Society Ltd. and Siddhivinayak Developers on various grounds. Ultimately, the High Court has come to dismiss the Writ Petition, which judgment is in challenge before us.

8. Before the High Court, the respondents had raised the defence that the petitioners/appellants had already resorted to alternative remedy by filing Small Causes Suit No. 3233 of 2006 in Bombay City Civil Court at Bombay and when they failed to obtain any interim relief, they have approached this Court. The further plea raised was about the

laches. It was further pleaded that the concerned land had become a part and parcel of the TPS of Borivali-II and was never available for the Court sale. It was further pleaded that by the TPS, which came into effect on 15.04.1996, the concerned plot of land was allotted to respondent No. 6, the Corporation and under the said TPS, the said plot was reserved for public purpose and the compensation thereof was also paid to the owners after its acquisition and, therefore, there was no question of the petitioners'/appellants' right, title or interest in the land. It was pointed out that even prior to the publication of TPS of Borivali-II, an Arbitrator was already appointed under Section 72(1) of the Act and in pursuance of that, ultimately a scheme was finalized and published by him, which came into force from 15.4.1996 and, therefore, the petitioners/appellants could not claim any interest in that land.

9. The High Court traced the history and found on the basis of the affidavit filed by the Corporation along with the documents that when the arbitration proceedings in respect of the Scheme were initiated in the year 1972, then the concerned land was original plot No. 22, which ultimately became Final Plot Nos. 22A, 22B and 22C. It was found that Final Plot No. 22B was reserved in the TPS for Health Centre, while Final Plot No. 22C was reserved for garden and the Final Plot No. 22A had been allotted in lieu of original plot No. 22 to Shri Anant P. Valkar and 6 Ors. The High Court found that the arbitration proceedings were initiated by notification No. TPB-4762-M dt. 18.10.1962 and one

Mr. J.G. Keskar was appointed as Town Planning Officer. A public notice dt. 3.1.1963 was also given and hearing was also conducted by the Arbitrator on 29.4.1972. After Mr. J.G. Keskar, Mr. K.S. Keswani came to be appointed as Arbitrators, who again gave an opportunity to the interested parties for hearing on 22.4.1975 and the minutes of the said hearing dt. 22.4.1975 were signed by all the interested parties. After Mr. Keskar, Mr. Keswani dealt with the matter as an Arbitrator and thereafter, the final decision was issued by Mr. V.D. Kulkarni. Firstly, the draft Scheme was finalized on 07.07.1978 and then the final scheme was submitted by Mr. G.D. Karkare, the Arbitrator to the State of Maharashtra on 15.4.1983 for final sanction. It was so sanctioned by a Government Notification dt. 7.3.1996 w.e.f. 15.4.1996. The High Court noted that the occupants of the structures were also noticed and they had also appeared on 27.10.1975 and were heard in the matter. The High Court found that originally, the TPS of Borivali-II was sanctioned on 27.1.1931 and came into force w.e.f. 15.3.1931. The first variation of the TPS was initiated by Borivali Municipality on 11.9.1956 and on 1.2.1957, the area of Borivali Municipality merged in Bombay Municipal Corporation (‘the Corporation’ herein) and on 29.2.1960, the Corporation decided to vary the principal scheme. The State Government had also authorized the Collector of Bombay and Bombay Suburban District to make and publish a draft variation scheme and thus, on 26.9.1962, the draft variation scheme was sanctioned by the Government. There were, in all, five Arbitrators appointed, whose

names have come earlier in this judgment and ultimately, the last Arbitrator Mr. V.D. Kulkarni had finalized the draft scheme on 7.7.1978. The High Court noted that the matter was also dealt with by the Appellate Tribunal, which decided the appeal on 4.11.1982 and thereafter, the then Arbitrator Mr. G.D. Karkare submitted the Scheme to the State Government on 15.4.1983 after incorporating the decisions of the Appellate Tribunal, which was approved by the Government of Maharashtra on 7.3.1996 w.e.f. 15.4.1996. Thus, the High Court came to the conclusion that the Arbitrator had submitted the final Scheme to the Government, as required by Section 82(2) of the Act and it stood sanctioned. The High Court also took notice of the fact that the petitioners/appellants had filed a Civil Suit and they failed to obtain the injunction and thereafter, the present petition was filed. The High Court also noted the fact that Shri Anant P. Velkar and 6 others, who were the original owners, were allotted plot No. 22A in lieu of whole original plot No. 22, which was divided into plot Nos. 22A, 22B and 22C. The High Court further noted that the Suit in respect of that property was pending as Civil Suit No. 42 of 1972, in which there was a settlement on 27.6.1978 and it was only after the settlement and judgment in this Suit, that the petitioners/appellants allegedly purchased the property. However, even prior to this, the land in question got divested as per the TPS of Borivali-II of the Corporation and it was only then, that Shri Anant P. Velkar and 6 others were allotted Final Plot No. 22A and also accepted the compensation in lieu of the entire plot No. 22. The High

Court also noted that when the draft Scheme was finalized, the owners were already informed and they had fully participated. In short, the High Court came to the conclusion that even before the petitioners/appellants purchased the property from the Court Receiver on 24.9.1981, much water had flown under the bridge, in the sense that the draft Scheme was finally prepared and as such, the petitioners/appellants had no right or claim, so as to insist upon a notice, while taking over the possession of the property in question. The High Court also found that the petitioners/appellants could not have purchased this property, since it had already vested with the Corporation in terms of the order passed by the Arbitrator. The claim of the petitioners/appellants that they were in possession of the property, which was given to them by the Court Receiver, was also disputed by the respondents and rejected by the High Court. The High Court, ultimately, observed that if at all the petitioners/appellants had any claim, title or interest, it can be only against Velkar & Family, who were the original owners of the land and were parties in the Civil Suit No. 42 of 1972. However, the petitioners'/appellants' claim regarding Final Plot Nos. 22A, 22B and 22C, admeasuring 13,980 sq. yards, could not be entertained. This is how the petition came to be dismissed.

10. Shri Shyam Diwan, Learned Senior Counsel, appearing for the appellant, basically urged that the petitioners/appellants have and had good title and they alone were entitled to develop the property. In

support of this, the Learned Senior Counsel heavily relied on the Sale certificate dt. 24.9.1981, issued by the Bombay High Court, as also other incidental facts that at the time of acquiring Final Plot No. 13A, the petitioners/appellants' right was recognized in those land acquisition proceedings. He also pointed out that the petitioners/appellants had undertaken development and construction of plot No. 7B in pursuance to the Consent Terms entered in this very Court on 23.10.2002 and in those proceedings, the Corporation was a party. The Learned Senior counsel further invites our attention that a commercial building known as 'Ghanshayam Towers' was constructed by the petitioners/appellants on Final Plot Nos. 7-A1 and 7-A3 after duly obtaining the sanction from the Corporation. Lastly, the Learned Senior Counsel urged that the property cards maintained by the City Survey Office were also maintained by posting a suitable mutation entry dt. 23.1.1986, showing the name of the petitioners/appellants as a holder in place of Velkar & Family in respect of plot No. 22B and 22C.

11. After this assertion of ownership, the Learned Senior Counsel develops his further argument that there could be no lawful vesting of plot Nos. 22B and 22C, incorporated under Section 88 of the Act. The Learned Senior Counsel suggested that it was consistently the case of the Corporation that this vesting took place only from 15.4.1996 and in support of this stand three affidavits were filed before the High court, in which this very case was pleaded. The Learned Senior Counsel took exception to the proceedings before the Arbitrators, which were relied

upon by the Corporation. The Learned Senior Counsel went to the extent of saying that the record appeared to be concocted and did not represent a true state of affairs. On that basis, the case pleaded was that once there was lawful prior acquisition of the rights by the petitioners/appellants from the Court Receiver, there was no question of the petitioners/appellants not being given any notice and hence, the subsequent land acquisitions must fail, thereby, there would further be no question of the vesting of the property in the Corporation. The Learned Senior Counsel also took exception to the huge delay on the part of the State Government to sanction the Scheme, which was about 13 years. The Learned Senior Counsel, therefore, assailed the sanction to the proposed Scheme by the Arbitrator, also. The Learned Senior Counsel also suggested that there was no lawful vesting of plot Nos. 22B and 22C in the Corporation, even under Section 83 of the Act. The Counsel buttressed his arguments by suggesting that Section 83 was never resorted to or relied upon by the Corporation and there was nothing on record to suggest that the possession of the initial Final Plot No. 22B was ever taken by the Corporation. The Learned Senior Counsel also assailed the theory of advance possession taken under Section 83, on the ground that there was no lawful arbitral award or decision or sanction. Lastly, the Counsel argued that there was no document to show vesting of Final Plot No. 22C through the advance possession procedure. The so-called possession receipts, which were filed by the Corporation, were also seriously disputed and ultimately, the

Counsel argued that unless the Scheme was finally sanctioned by the State Government under Section 86, there could be no finality with respect to the TPS. In short, the contention was that since there was no vesting of the land under Section 83(3) and since before the alleged vesting on 15.4.1996, the property was purchased by the petitioners/appellants from the Court Receiver in whose custody the property was, the petitioners'/appellants' rights could not be jeopardized. Lastly, it was contended that respondent No. 3 and 4 had no rights, whatsoever, as they had no title and, therefore, the Letter of Intent dt. 18.4.2006 was liable to be withdrawn. We were taken through the various provisions of the Act. While commenting on the High Court judgment, the Learned Senior Counsel contended that the High Court had ignored the principles of natural justice, secondly, it had given palpably erroneous factual references and the High Court had also given an incorrect finding on the vesting of the property.

12. Shri Arvind V. Sawant, Learned Sr. Counsel, Shri Sanjay V. Kharde, Shri Pallav Shishodia, as also Shri Arun Pednekar, Learned Counsel, appearing on behalf of the contesting respondents like Ashtvinayak Cooperative Housing Society Ltd., SRA, the Corporation and the Arbitrator respectively, supported the judgment of the High Court. Again by relying on various provisions of the Act, the parties traced the history of the proceedings, which ultimately led to issue of a notification in 1996. The respondents also took us through the various

Sections, Rules, as also the Scheme Rules under the Act. Before we take up the rival contentions and the considerations, we would have to trace the history even at the cost of repetition and also consider the various provisions of the Act and the schemes thereunder.

13. The disputed land is, undoubtedly, a part of the TPS Borivali-II, which was sanctioned on 27.1.1931. On 26.9.1962, Draft TPS Borivali-II, which was of First Variation came into existence and ultimately, the earlier plot No. 22 was divided in 3 plots, being Final Plot No. 22A, 22B & 22C. The Final Plot No. 22A was allotted to Anant P. Velkar and six others, who were the original owners of the property, Final Plot No. 22B was reserved for health centre and Final Plot No. 22C was reserved for a recreational ground by sanction of Government dated 4.5.1993. The arbitration proceedings started on 18.10.1962. However, since the earlier proceedings were inconclusive, they were recommenced under the Act, which came on the anvil in 1966. Before the Arbitrator, a Vakalatnama was filed on behalf of the Velkar Family and they all appeared through advocate. They did not take any objection to the possession, being taken of Final Plot No. 22B. We find from the record that Mr. Vakil, Advocate, appearing on behalf of the Velkar Family was agreeable to possession of Final Plot No. 22B and 22C being taken over by the Corporation immediately under Section 83 of the Act. Civil Suit No. 42 of 1972 was filed for partition between the members of the Velkar Family and amongst the other properties, these three plots (Final Plot

Nos. 22A, 22B and 22C) came to be included. An endorsement was found by the Arbitrator on 22.04.1975 to the effect that plot No. 22A was allotted to Shri Velkar & 6 others, while rest of the land was acquired under the Scheme for Health Centre and garden, being Final Plot Nos. 22B and 22C respectively. In the Civil Suit, a consent decree came to be filed on 27.6.1978 and this decree also included the disputed properties, namely, all the three plots. A Court Receiver was appointed for effecting the partition as per respective share of the parties to the Suit. An order is found on the record of the Civil Suit to the effect that in the event, the Commissioner could not conveniently allot the properties to the concerned parties, such property should be sold by way of auction. Sh. Shishodia, learned counsel for the respondents, brought to our notice that there is no document or material evidence to show that the Court Receiver ever took even a symbolic possession of the property and thus, the property continues to be in possession of the parties.

14. On 4.10.1979, a notification appeared in the Gazette in exercise of powers under Section 83(2), directing the arbitrator to take possession of the original plot No. 22 (part), being Final Plot No. 22B. The Arbitrator took the possession of the Final Plot No. 22B (Pt.) and handed over the same to the Corporation. This happened on 16.6.1980. Even before this, notices were also sent on 8.2.1980 for taking the possession under Section 83(3). This date, i.e., 8.2.1980 is extremely

important, as it suggests that the action for taking the possession was already initiated, even before the auction by Civil Court. Though on 24.9.1981, the present appellant claimed to have acquired the property in the auction of this property along with other properties, there does not appear to be any document or evidence to show any follow up action, suggesting the taking of possession of Final Plot No. 22B or 22C on behalf of the petitioners/appellants from the Court Receiver. Some persons had filed the appeals before the Appellate Tribunal on 4.11.1982, but nothing happened to that. Ultimately, on 15.4.1983, the then Arbitrator drew the final scheme and tendered it to the Government for grant of sanction. It was on 22.6.1985, that these areas were declared as slums under the Maharashtra Slum Areas (Improvement Clearance and Redevelopment Act, 1971) (hereinafter called “Slum Act” for short). The Government exercised its power of extending the time on 6.3.1996 and ultimately, a notification came to be issued by the Government of Maharashtra on 7.3.1996, granting approval under Section 86(2) to the TPS with effect from 15.4.1996. By operation of Section 86(3), the TPS became part of the Act and under Section 88(a), all lands required by the planning authority vest absolutely in planning authority, i.e., the Corporation, free from all encumbrances and all the other rights in the original plot shall determine. It was on 18.4.2006 that the SRA issued a Letter of Intent in favour of the 4th Respondent herein. It was then that the Civil Suit was filed by the petitioners/appellants in the Civil Court, being Civil Suit No. 3233 of 2006 for cancellation of

above Letter of Intent and it was then that the petitioners/appellants asserted his ownership over the property described as Final Plot No. 22B(Pt.). The petitioners/appellants were informed that land bearing Final Plot Nos. 22B and 22C stood allotted to the Corporation, for which the compensation of Rs.91,214.35 was paid to the Velkar Family. As has already been suggested, the Trial Court did not grant injunction, wherein, the claim was made by the petitioners/appellants that the plaintiff's right in the land subsisted and was not affected by the acquisition thereof in favour of the Corporation. It was then that the Writ Petition came to be filed purportedly, challenging the Letter of Intent dt. 18.4.2006.

15. Shri Shishodia pointed out that there is one other Letter of Intent issued on 12.9.2006, which was in supercession of earlier Letter of Intent dt. 18.4.2006, however, the petitioners/appellants have not so far challenged the Revised Letter of Intent. We have deliberately stated the history in order to test the claim of the petitioners/appellants that they had acquired the title to the land in dispute and, therefore, any acquisition proceedings without notice to them, could not materialize. When we see the development of the proceedings under the Act, it would be seen that the first Arbitrator was Shri J.G. Keskar, who had issued notice to the concerned parties like Shri Velkar & 6 others. It must be noted here that at that juncture, petitioners/appellants were nowhere in the picture. In fact, petitioners/appellants came on the

picture only on the day when they purportedly purchased the property involved in the Suit on 24.9.1981, which was way beyond the earlier mentioned date of 8.2.1980, when the notices were already issued under Section 83(3) for taking possession. Learned Counsel Shri Shishodia, as well as Shri V. Savant and Shri Kharde, appearing for the respondents asserted before us that on 27.6.1978, this property, particularly, the Final Plot No. 22 could not have been in the hands of the Receiver as the Receiver could only hold the property, which belonged to the Velkar Family and much before that, the proceedings were concluded, at least the Draft final Scheme was passed, and the advance possession procedure was also adopted, thereby, there was no question of the Receiver being in possession of the concerned property or his giving the possession of the said property in favour of the petitioners/appellants. The petitioners/appellants, undoubtedly, may have purchased the other properties involved in the Suit, however, insofar as this particular property was concerned, the learned Counsel for the respondents insisted that the Receiver could not have been in possession of the property, nor could he have granted the possession of the properties to the petitioners/appellants. It is with that idea that the learned Counsel rightly submit that there is absolutely no proof anywhere that the petitioners/appellants were given the possession of the concerned property.

16. On this backdrop when we see the history of the proceedings under the Act, it is clear that Shri Keskar, who was the first Arbitrator was followed later on by Shri P.G. Sirdesai, Shri J.B. Kamat, Shri K.S. Keswani, Shri V.D. Kulkarni and it was Shri V.D. Kulkarni, who had finalized the Scheme on 7.7.1998. The High Court had also noticed this factor that the Appeal was decided by the Appellate Tribunal against the Draft Scheme on 4.1.1982 and thereafter, Shri G.D. Karkare, who had stepped into the shoes of Shri Kulkarni, had submitted the Scheme to the State Government on 15.4.1983 after incorporating the decisions of the Tribunal of Appeal and ultimately, it was this Scheme, which came to be finalized and approved by Government of Maharashtra on 15.4.1996 by way of first variation. On the Backdrop of this, the learned Counsel rightly contend that the claim of the petitioners/appellants to have become owner of the property, cannot stand.

17. Mr. Shyam Divan, Learned Sr. Counsel, appearing on behalf of the appellants very strenuously contended that apart from the certificate of the Court Receiver, the petitioners/appellants was in fact, put in possession on 13.12.1983 by the Court Receiver himself as per the possession receipt. He also pointed out that in respect of other properties, which were purchased, on Final Plot Nos. 7-A1 and 7-A3, the petitioners/appellants had constructed a building called ‘Ghanshyam Towers’. So also, in respect of a Final Plot No. 7B, there was some dispute which was settled by the consent terms dt. 23.10.2002 before

this Court. The contention is attractive, but, meritless. It will be seen that number of other properties, besides the concerned property were purchased by the petitioners/appellants and there is nothing to disbelieve that version that the petitioners/appellants were auctioned purchasers. However, that does not mean that the petitioners/appellants became the owner of the concerned properties in Final Plot No. 22 and more particularly, Final Plot No.22B and 22C. The prayer in civil suit related to Final Plot No.22B (Pt.) while the prayer in writ petition is delightfully vague. It is only in respect of Letter of Intent without mentioning specific plot number. It is obvious that the other properties were not part of the TPS or at least, they have not been shown as the part of the TPS. Even if it is accepted that the petitioners/appellants had became the owner and dealt with those properties that does not help the petitioners/appellants, insofar as the present property is concerned, as it was already a part of the TPS and the possession thereof was already taken under Section 83(3) by the Arbitrator. Shri Divan urged that Section 83(3) did not apply. Section 83 is as under:-

> "83. (1) Where a Planning Authority thinks that in the interest of the public, it is necessary to undertake forthwith any of the works included in a draft scheme for a public purpose, the Planning Authority shall make an application through the Arbitrator to the State Government to vest in it the land (without any building) shown in the draft scheme.
>
> (2) The State Government may, if satisfied that it is urgently necessary in the public interest to empower the Planning Authority to enter on such land for the purpose of executing any of such works, direct the

> Arbitrator, by notification in the official Gazette to take possession of the land, or may, after recording its reasons refuse to make any such direction.
>
> Provided that, no such direction shall be made without the Arbitrator giving a hearing to any person or Planning Authority affected by such direction, and considering the report of the Arbitrator in that behalf.
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> (3) The Arbitrator shall then give a notice in the prescribed manner to the person interested in the land the possession of which is to be taken by Arbitrator requiring him to give possession of his land to the Arbitrator or any person authorized by him in this behalf within a period of one month from the date of service of notice and if no possession is delivered within the period specified in the notice, the Arbitrator shall take possession of the land and shall hand over the land to the Planning Authority. Such land shall thereupon, notwithstanding anything contained in this Act, vest absolutely in the Planning Authority free from all encumbrances."

The contention was raised under sub-Section (3). The action of taking the possession under Section 86(2) by the Arbitrator could be done only when the Arbitrator gives a notice to the person interested in the land. The learned Senior Counsel contended that the petitioners/appellants were, undoubtedly, "person interested", as the petitioners/appellants came on the land via sale certificate in September, 1981. This is clearly an incorrect argument, for the simple reason that the petitioners/appellants merely purchased the properties of Velkar Family in the auction in September, 1981, however, there is nothing on record to suggest that the possession of those properties was given by the Receiver. Indeed it could not have been given, for the simple reason that the possession was already taken earlier in the year

1980 under the notice to Velkar family. Again the petitioners/appellants were not anywhere in the picture, so as to insist upon a notice. It is obvious that in the earlier proceedings under the Act, the representatives of Velkar Family were properly heard and the Arbitrator had proceeded perfectly in tune with the provisions of the Act. We do not have any reason to dispute the claim on behalf of the Corporation, as also the Arbitrator that the possession was taken in the year 1980 itself. If that is so, at that time, since the petitioners/appellants were not on the picture, there was no question of giving any notice to them or hearing them under Section 83(2). Shri Divan also, very heavily relied on the property cards maintained by the City Survey Office, which were amended by a mutation entry dt. 23.1.1986, which showed the name of the petitioners/appellants as the holders in place of the Velkars. We have no difficulty in accepting that the property cards were indeed amended, but that by itself, will not give any benefit to the petitioners/appellants, for the simple reason that a mere amendment in the property cards of City Survey Office cannot and could not create a title in favour of the petitioners/appellants. The entries may have a presumptive value, however, that would not be sufficient. We have already shown that the Velkar Family had lost the possession way back in 1980 itself and the concerned plot was included in the Draft Scheme. Under the circumstances, there was no question of the ownership and/or possession being transferred to the petitioners/appellants by the court receiver. If that is so, the amended property cards of City Survey

Office loose all the significance. It is needless to mention that this contradiction stands explained by the affidavits of city survey department and the Corporation and the officers of Corporation.

18. At this juncture, it will be better to consider some provisions regarding the TPS and its legal implication. Under Section 59(1)(a), the Planning Authority for the purpose of implementing the proposals in Final Development Plan, prepares the TPS for the area in its jurisdiction or any part thereof. Under Section 60, the Planning Authority declares its intention to make a TPS and within 30 days, publishes the declaration in the Official Gazette and a copy of the Plan is available for inspection to the general public. Under Section 61, a Draft Scheme is prepared. The limitation for it is 12 months. However, even if the Scheme lapses because of the elapse of time of 12 months, that is no bar for making fresh declaration. Section 65 provides for the power of the Planning Authority to reconstitute the plots, while Section 68 speaks about the power of the State Government to sanction the Draft Scheme. Under sub-Section (2), though there is a limitation provided, Section 68 (2) gives power to the State Government to extend the time within which the Draft Scheme can be sanctioned. Section 69 imposes restrictions on use and development of land after declaration of TPS. Section 71 deals with the disputed claims as to the ownership of any land included in the TPS or its declaration. Section 72 provides for the Arbitrator, who is to be appointed immediately after the publication of the Draft Scheme.

Section 72(3) deals with the duties of such Arbitrators. Section 73 gives finality to the decisions of the Arbitrator. We have already seen the features of Section 83 under which the advance procedure can be started for taking the possession. In the wake of all these provisions, we have examined the records at the request of Shri Shyam Divan, Learned Senior Counsel for the petitioners/appellants, including the possession receipts. Shri Divan tried to criticize the proceedings before Arbitrator and tried to show that the possession was not properly taken or given to Corporation, however, it is obvious that the petitioners/appellants cannot question all those claims because the petitioners/appellants were nowhere in the picture at that time. We are satisfied with the proceedings before the Arbitrator and we are also satisfied that the Arbitrator had already taken the advance possession under Section 86 (2) and 83(3) and had also forwarded a draft Scheme.

19. Lastly, Shri Divan tried to argue that the State Government in this case, had taken unduly long period of 13 years for sanctioning the Scheme. He pointed out that if the Scheme was sent in 1983, it was only sanctioned with effect from 15.4.1996, which was not possible. The Counsel urged that though the State Government has power to extend the period for sanctioning the Scheme, it could not be stretched to the unreasonable period of 13 years. We appreciate the argument, however, considering the fact that the area is from a very busy locality like Borivali, Mumbai, the legal complications because of the pending

suits and the unduly long time taken in finalizing the Scheme, we hold, that by itself, cannot invalidate the whole Scheme. In our opinion, therefore, the petitioners/appellants have not been able to *prime facie* prove the petitioners/appellants title or possession, vis-a-vis, the land in question. Some minor contentions were raised by Shri Divan regarding the breach of Section 82(2), as also, Rule 18 of the MRTP (Maharashtra Regional and Town Planning) Rules. However, all those challenges must fall in view of the fact that the petitioners/appellants had not been able to *prime facie* establish his contentions regarding title and possession. We do not mean to decide about the title of the petitioners/appellants, however, all these enquiries and our observations are only related to the Scheme and the claims made by the petitioners/appellants, that the acquisition proceedings of the land in question were bad, as they were not given any notice thereof. It is only with that angle, that our observations should be read. It will be perfectly open for the petitioners/appellants to establish their rights, if any, in relation to the land in question in proper forums.

20. This takes us to a further question as to whether this Writ Petition was tenable at all. It has been strenuously contended by Shri Savant, Learned Senior Counsel, Shri Shishodia and Shri Kharde, Learned Counsel, that the claims in Civil Suit and the Writ Petition were almost identical and the Civil Suit was still pending, when the Writ Petition came to be filed, after the injunction was refused to the

petitioners/appellants. The contention of the petitioners/appellants, however, was that the frame of the Suit and the frame of the Writ Petition are distinct. According to Shri Divan, Learned Senior Counsel for the appellant, no reliefs in the Civil Suit were directed in the proceedings under the Act, while the Writ Petition was in respect of the illegalities, which vitiated the proceedings under the Act. According to Shri Divan, the principal relief in the Writ Petition was directed against the arbitral proceedings by the Arbitrator, culminating in the final sanction of 1996 and since the directions dt. 18.4.2006 and the Survey Notice dt. 21.8.2006 were consequential reliefs, they were included in the petition. According to the Learned Counsel, the scope of the Suit was primarily directed at the bogus and fraudulent Letter of Intent, granted after inflating the number of occupants entitled to rehabilitation, and since the petitioners/appellants as the owners, had not granted any 'No Objection Certificate', there was no scope for giving any Letter of Intent to any other party for developing the plots. Shri Divan also argued that under Section 149 of the Act, there is a bar to the jurisdiction of the Civil Court and, therefore, the petitioners/appellants were justified in filing the Writ Petition. We would not go to the extent of saying that the Writ Petition was altogether barred, since the High Court had entertained the Writ Petition and had chosen to dispose it of on merits. We leave the question at that, as we have found that the High Court was right in dismissing the Writ Petition on merits, more particularly, holding that the petitioners/appellants could not assert their

entitlement to the notice, particularly, in view of the finalized proceedings of Arbitration under the Act.

21. We must also take into consideration the argument on the part of the respondents, that the petition was hopelessly belated. It cannot be disputed that the Government had finalized the Scheme on 6.3.1996 and 7.3.1996. It is difficult for us to believe that the petitioners/appellants asserting their title over the land and who are in the construction business themselves as the builders, could not and did not have the idea about the Scheme dt. 15.4.1996. It is also surprising that the petitioners/appellants have come to know about the Scheme etc. only when the Counter affidavit came in the Suit in reply to their injunction application. It is also difficult to believe that the petitioners/appellants had no idea, whatsoever, about the TPS, the Draft of which was sanctioned as back as on 26.9.1962. We find that the TPS was finalized on 7.7.1978 and right from 1972 to 1978, the proceedings before the Arbitrator were in progress. If the petitioners/appellants claimed to have come on the property by way of an auction purchase in the year 1981, which included Final Plot No. 22, it cannot be believed that the petitioners/appellants would have no idea about the state of affairs regarding the Scheme, which was already finalized in 1978. There is a clear reference to the Town Planning Scheme II of Borivali in the Certificate dated 24.09.1981 which is a basic document of the petitioners/appellants. It is again difficult to believe that

the petitioners/appellants did not have idea that the possession of this plot was already taken by the Arbitrator in the year 1980 itself from Velkars. At any rate, at that stage, when the possession was taken, if at all anybody had any grievance, it was the Velkars and not the petitioners/appellants, because the petitioners/appellants were nowhere on the scene on that date. Therefore, it could not lie in the mouth of the petitioners/appellants that the possession was illegally taken from Velkars or was not taken at all. There are enough documents on record to prove that the possession was actually taken and was thereafter handed over to the Corporation. Even at the cost of repetition, we may say that we have carefully seen the records regarding possession of the plot being taken and being given to the Corporation. On the other hand, there is nothing to suggest that the Court Receiver actually took the physical or symbolic possession of Final Plot No. 22C. At any rate, the appointment of the Court Receiver could not have affected the earlier pending proceedings before the Arbitrator. It also does not lie in the mouth of the petitioners/appellants, that there was no notification under Section 83(2). In fact, the notification under Section 83(2) dt. 21.9.1979 was duly published in official gazette on 4.10.1979. In the wake of this notification, if the petitioners/appellants came on the legal scene in the year 1981, they were bound to enquire about the properties which they had allegedly purchased in the Court auction. We are, therefore, convinced that the petitioners/appellants maintained a sinister silence right from 1983 till they ultimately filed the petition in the year 2006. We

are also surprised at the fact that though the petitioners/appellants claimed to have got mutation in the year 1986 on CTS Survey, they did not advert to the Corporation for mutation at any stage. All this brings us to a conclusion that the petition was hopelessly belated. Even on merits (presuming that the same could be considered), it is difficult to appreciate the petitioners/appellants' efforts to upset notification dt. 15.4.1996 by filing a Writ petition in 2006. We are, therefore, convinced that the petition had no merits and was rightly dismissed.

22. However, the matters did not stand there, as at the end of the arguments, Shri Divan also asserted that respondent No. 3 herein Ashtavinayak Cooperative Housing Society Ltd. (proposed), as also respondent No. 4 M/s. Siddhivinayak Developers did not have any locus in the matter and could not be given the development rights for the aforementioned plots. We have heard Shri Kharde, Learned Counsel appearing on behalf of the SRA on that question.

23. In view of several slum dwellers in Mumbai City and Mumbai Suburban Districts, since the slum dwellers had no basic amenities, the Government of Maharashtra decided to redevelop the slums and framed Development Control Regulation No. 33(10) (hereinafter called 'DCR'). The Maharashtra Government also amended the provisions of Maharashtra Slum Area (I.C & R) Act, 1971 and inserted a chapter 1A therein. SRA was established under Section 3A of the Slum Act for

implementation of the Slum Rehabilitation Projects in Mumbai City. At the same time, Government of Maharashtra also amended the provisions of Maharashtra Regional and Town Planning Act, 1960 ('the Act' herein) and by these amendments, the powers of Planning Authority were given to SRA for implementation of Slum Rehabilitation Projects. This is how the SRA came into picture. The said Authority has issued guidelines for implementation of the Schemes, under which the eligible slum dwellers, i.e., 70% or more, have to form a society and appoint a Chief Promoter. The said Chief Promoter has to collect all the documents such as 7/12 extracts and PR Card of the plot on which the slum is situated. Under the said Scheme, the Chief Promoter has to submit an application in prescribed form Annexure 1, which describes the details of the ownership of land, plot area, existing hutments, amenities, Floor Space Index available and number of tenements to be constructed. Annexure 2 to this application includes the details of the plots, declaration of slum by the notification, structures on the plot, details of slum dwellers, who have given consent in writing to the proposed Slum Rehabilitation Scheme etc. The said Annexure 2 is required to be certified by the land owning authority, in this case, the Corporation. Annexure 3 prescribes the assessment of financial capability of the Promoter. SRA scrutinizes the proposal submitted by the Chief Promoter and Architect and then issues a Letter of Intent.

24. It is pointed out by the Learned Counsel for the SRA that in this case, respondent Nos. 3 and 4 submitted the proposals for Final Plot No. 22B in the year 2005. As the TPS was implemented for the said area, it was apparent from the remarks obtained by the Architect that the ownership of the plot was that of the Corporation. Accordingly, the Corporation has issued Annexure 2 on 7.7.2005. It is asserted that the SRA after scrutinizing the proposal issued the Letter of Intent on 18.4.2006, which was subsequently revised, and the revised Letter of Intent was issued on 12.9.2006. It was pointed out by the Counsel that respondent No. 4 developer had obtained all the necessary permissions required under the Act and the Regulations and respondent No. 4 had shifted the slum dwellers since 2006 to transit camps and the expenses is borne by respondent No. 4. It was pointed out by the Counsel that it was the right of the slum dwellers to choose their developer and appoint him for the same by passing resolution in its meeting. In short, under the Scheme, the Government or the land owners have no right to impose a developer on the slum dwellers. The Learned Counsel was also at pains to point out that under Section 14(1) of the Slum Act, if the land owner was not prepared for allowing the development of the slums on the encroached plot, the Slum Authority has the power to acquire the property and proceed with the Scheme as per the wish of 70% of the slum dwellers. It was pointed out by the Learned Counsel that only after all these formalities, a Letter of Intent was issued in favour of Ashtavinayak Cooperative Housing Society Ltd. (proposed) and M/s.

Siddhivinayak Developers, respondent Nos. 3 and 4 herein respectively, who on their own expenses have arranged for the transit accommodation of the slum dwellers in the said plot. Both Shri Savant, as well as Shri Kharde, counsel for the respondents, pointed out that for last two years, the slum dwellers are living at the expenditure of the 4th respondent M/s Siddhivinayak Developers. This is apart from the fact that the slum dwellers, who were uprooted from their tenements, were now living at the far off place, suffering utmost on that account. Learned Senior Counsel Shri Savant, urged that all these proceedings under the Act would suggest that the Letter of Intent was issued properly. Shri Savant also pointed out and referred to the provisions of Section 83(3) of the Act, to point out that while M/s. Parag Construction, the appellant herein, came on the scene on 24.9.1981 under the sale certificate dt. 21.9.1981, the Final Plot No. 22B had already vested in the Planning Authority, i.e., the Corporation under Section 83(3) of the Act, the possession of which was taken way back in 1980. He pointed out that once the Arbitrator takes possession of the land and hands over the land to the Planning Authority, such land vests absolutely in the Planning Authority, free from all the encumbrances. The Learned Senior Counsel rightly argued that the land which was handed over to the Planning Authority, i.e., the Corporation, had vested in the Planning Authority, free from all the encumbrances, including subsequent encumbrances of the petitioners/appellants. We have already dealt with this aspect earlier in the judgment and have already held that the land

had vested into the Planning Authority, particularly, after the sanction under Section 86, as also under Section 88(a) of the Act.

25. The Learned Counsel also invited our attention to Section 88(b), whereby, all rights in the original plots, which have been reconstituted, are determined and the reconstituted plots became subject to the rights settled by the Arbitrator. We have already approved the proceedings before the Arbitrator. We have referred to all these contentions in order to appreciate as to whether the appellants can find fault with the proceedings under the SRA and more particularly, against the 3rd and 4th respondent herein. We do not find any reason to interfere with any of those proceedings.

26. As a desperate attempt, Shri Divan filed an affidavit on behalf of the appellants that appellants should be permitted to develop the specified land in the Letter of Intent dt. 18.4.2006 as per the terms and conditions specified in the said Letter of Intent, for which the petitioners/appellants shall deposit a sum of Rs.1 crore or such amount as directed by this Court within 2 weeks from the date of the order with the Chief Executive Officer (CEO) of respondent No. 5, SRA and that the CEO may be permitted to utilize the aforesaid amount to the extent required to compensate respondent No. 4 towards any expenses that may have been incurred by them, pursuant to the Letter of Intent towards rehabilitation of the slum dwellers, upon rendering of accounts

by the said respondent. We will not go into this aspect, particularly, at this juncture, as we are concerned with the legality or otherwise of the challenged judgment.

27. This is apart from the fact that the said affidavit has been met with stiff opposition from M/s. Siddhivinayak Developers, who claimed that they have already spent Rs.2.5 crores excluding the interest till date, towards the expenses of formation of society, shifting of slum dwellers, rental of slum dwellers, various security deposits and legal expenses in defending present litigation and other expenses. It is asserted by the 4th respondent that they have been working on this project for more than 3 years and under the circumstances, such an order should be made by this Court. As has been stated earlier, we refuse to go into this question. It will be for the parties to negotiate, if they want to, subject to the approval of the SRA. With these observations, the appeal is dismissed, but without any orders as to the costs.

……..J.
(Lokeshwar Singh Panta)

……..J.
(**V.S. Sirpurkar**)

New Delhi;
November 19, 2008.