

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPEAL NO.77 OF 2013(WZ)**

**CORAM :**

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR  
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE  
(EXPERT MEMBER)**

**In The Matter of:**

- 1. SHRI. ARVIND V. ASWAL.**  
S/o Vijaybharat U. Aswal,  
10, Mohmd. Ali Chawl,  
Sai Chowk, Shashtri Nagar,  
Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 2. SMT. SANDHYA S. KULKARNI,**  
Room No.3, Kissan Avati chawl,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 3. SMT. SUMITRA A. NAGI,**  
w/o Late Shri. Anandsingh K. Nagi  
Room No.10, Rawal Chawl,  
Sai Chowk, Shashtri Nagar  
Balrajeshwar Road,  
Mulund (west)  
Mumbai 400 080.

**4.SMT. SAKHUBAI D. LANDGE.**

W/o Late Shri. Dattu K. Landge,  
Room No.8, Rawal Chawl,  
Shashri Nagar, Balrajeshwar Rd,  
Mumbai (West), Mumbai-400 080.

**5.SMT. SHAKUNTALA, G. BHUVAD.**

Room No.2, Kasar Chawl,  
Shashri Nagar, Balrajeshwar Road,  
Mulund (west)  
Mumbai 400 080.

**6. SMT. MEENA S. LOHAR.**

Room No.2, Kasar Chawl,  
Shashri Nagar, Balrajeshwar Road,  
Mulund (west)  
Mumbai 400 080.

**7. SMT.LAXMI K. MANJREKAR.**

Room No.7, Transit Camp,  
Shashri Nagar, Balrajeshwar Road,  
Mulund (west)  
Mumbai 400 080.

**8. SHRI. HANUMAN T. JAGDALE.**

Room No.7, Transit Camp,  
Shashri Nagar, Balrajeshwar Road,  
Mulund (west)  
Mumbai 400 080.

**9. SHRI. CHUDAPPA K. LOHAR.**

Room No.4, Mohmd. Ali Chawl,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.

**10. SHRI. MUKUND B. LANDGE.**

Room No.5, Azad Chawl,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.

**11. SHRI. MANMOHAN N.NALAWADE.**

Room No.2, Ram Pyare Chawl,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.

- 12. SMT. RUKHMANI TAKKAR.**  
w/o Late Ganpat S. Takkar  
Room No.3, Jagdale Chawl,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 13. SHRI. VINAYAK V. BANE.**  
S/o Late Smt. Vasanti V. Bane  
Room No.11, Kasar Chawl,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 14. SHRI. VINOD S. PADIYAR.**  
S/o Sakharam. J. Padiyar  
Room No.1, Jangam Chawl, Sai Chowk,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 15. SHRI. KHALID AHMED BAKSHULLA ANSARI.**  
S/o Late Shri. Bakshulla Wajidali  
D/105, 1<sup>st</sup> Floor, Sai Sadan,  
Shri. Pandit SRA CHS, Shashtri Nagar,  
Bal Rajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 16. SHRI. SANTOSH TUKARAM KORE.**  
S/o Tukaram Vitthal Kore  
Room No.4, Kadam Chawl,  
Shashtri Nagar, Balrajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 17. SHRI. PRABHAKAR HANAMANT JAGDALE.**  
R.No./1, Jagdale Chawl,  
Shashtri Nagar,  
Bal Rajeshwar Road  
Mulund (w)  
Mumbai-400 080.
- 18. SMT. SUMAN VITTHAL PANGARE.**  
W/o Shri. Vitthal Haribhau Pangare  
Room No.9, Manubhai Chawl,

Shashtri Nagar, Bal Rajeshwar Road  
Mulund (w)  
Mumbai-400 080.

**19. SHRI. ANANT DADU KAMBLE.**

Room No.5, Kasar Chawl,  
Shashtri Nagar,  
Bal Rajeshwar Road  
Mulund (w)  
Mumbai-400 080.

**20. SHRI. MOHAN VISHWANATH TALEKAR.**

S/o Shri. Vishwanath Abaji Talekar  
Kasar Chawl, Shashtri Nagar,  
Bal Rajeshwar Road  
Mulund (West)  
Mumbai-400 080.

**21. SMT. RABUDEVJI BAHADURSINGH VISHWAKARMA.**

W/o Late Shri. Bahadursingh  
T. Vishwakarma  
Room No.9, Rawal Chawl,  
Shashtri Nagar, Bal Rajeshwar Road  
Mulund (w)  
Mumbai-400 080.

**22. SHRI. SURENDRA HARINATH YADAV.**

S/o Shri. Harinath G. Yadav.  
D/303, 3<sup>rd</sup> Floor, Sai Sadan,  
Shree Pandit SRA CHS,  
Shashtri Nagar, Bal Rajeshwar Road.  
Mulund (w).  
Mumbai-400 080.

**23. SHRI. UTHMAN KRISHANAN PANICKER.**

No.8, Manubhai Chawl,  
Shashtri Nagar, Bal Rajeshwar Road.  
Mulund (w).  
Mumbai-400 080.

**24. SHRI. RAJENDRA S. LOHAR.**

S/o Late Smt. Chabidevi S. Lohar.  
R.No.1, Mohammadali Chawl,  
Shashtri Nagar, Bal Rajeshwar Road.  
Mulund (w).  
Mumbai-400 080.

**25. SHRI. MANOJ VIJAYBHARAT ASWAL.**

No.9, Mohammadali Chawl,  
Shashtri Nagar, Bal Rajeshwar Road.  
Mulund (w).  
Mumbai-400 080.

**26. SHRI. BHAGWAN RAMCHANDRA SABAT.**

No.7, Mohammadali Chawl,  
Shashtri Nagar, Bal Rajeshwar Road.  
Mulund (w)  
Mumbai-400 080.

.....**APPELLANTS**

**VURSES**

**1. ARIHANT REALTORS.**

101, Nilkanth Nagar,  
BPS Cross Road,  
Opp. Bank of India.  
Mulund (w),  
Mumbai-400 080.

**2. MEMBER SECRETARY.**

State Level Impact Assessment Authority,  
217, 2<sup>nd</sup> Floor, Ministry of Environment,  
Mantralaya Mumbai-400 032.

**3. MEMBER SECRETARY,**

State Level Expert Appraisal Committee  
217, 2<sup>nd</sup> Floor, Ministry of Environment,  
Mantralaya Annexe,  
Mumbai-400 032.

**4. MS. VALSA NAIR SINGH.**

Secretary Environment,  
Govt. of Maharashtra  
217, 2<sup>nd</sup> Floor, Mantralaya Annexe,  
Mumbai-400 032.

**5. THE STATE OF MAHARASHTRA.**

Through Its Environment Department,  
Mantralaya, Mumbai-400 032.

**6. SLUM REHABILITATION AUTHORITY.**

5<sup>th</sup> Floor, Griha Nirman Bhavan,  
Bandra (East).  
Mumbai-400 051.

**7. PANDIT (SRA) CO-OPERATIVE HOUSING SOCIETY.**

Shashtri Nagar, Bal Rajeshwar Road.  
Mulund (w).  
Mumbai-400 080.

**8. UNION OF INDIA.**

Through its Secretary,  
MoEF,  
New Delhi.

**.....RESPONDENTS**

**COUNSEL FOR APPELLANT(s):**

Ms. Parul Gupta, Mr. Tushar Kochale,

**COUNSEL FOR RESPONDENT(s):**

Mr. Vipin Kamdi, Mr. R.B.Mahabal, for Respondent No.1.  
Mr. Mukesh Verma, Mr. Pravesh Thakur, for Respondent  
Nos. 2 to 4.  
Mr.D.M.Gupte, a/w Supriya Dangre, for Respondent Nos. 2  
to 5.  
Mr. Preshit Surshe for Respondent No.6.  
Mr. Sankalp Kashyap, Ms. Manisha Bhandari, Mr. Abhay  
Parab, for Respondent No.7.  
Ms. Neelam Rathore for Respondent No.8.

**Date: April 8<sup>th</sup>, 2015**

**J U D G M E N T**

**1.** The Appellants named above, impugn the Environment Clearance (EC) bearing No.EAC-3512-SAR/501/TC-2, dated 20<sup>th</sup> February, 2013, issued by the



Environment Department, State of Maharashtra in favour of Respondent No.1, for construction of Residential-cum-Commercial project under Slum Rehabilitation Authorities (SRA) scheme on plot CTS No.4/6(pt), 4/7(pt), 7,7/1 to 3, 9(pt), 9/1 to 4, 10(pt) (CTS No.4/7 (pt), situated at Mulund (W) Mumbai. They also seek certain other incidental reliefs, including provision of greenbelt of 748.60sq.m and forty (40) number of parking places for their rehab buildings and STP for Rehab buildings, which are constructed for their Housing-Scheme.

**2.** There is no dispute about fact that the lands referred to above, had been declared as 'slum area' on 18.9.1975 and on 15.6.1996 respectively under the provisions of Maharashtra Slum Area (Improvement, clearance and Rehabilitation) Act, 1971. The property in question is declared as 'slum' on private lands under Section 4(1) of the said Act. Therefore, it came under the provisions of SRDH Scheme of the planning authority viz Municipal Corporation of Greater Mumbai (MCGM) with FSI being 2.5 as a special case for development of Slum Dwellers Housing Scheme (SDHS). On January 20<sup>th</sup>, 1997, the Additional Collector (A&C Bombay and BSD) issued certificate to the Members of Pandit (SRA) CHS Ltd, for their eligibility in respect of the

re-development project. On 8-1-1998 LOI was issued by SRA in the name of Pandit (SRA) Co-operative Housing Society Ltd.

**3.** Briefly stated, shorn of issues regarding violation of the Municipal Laws, the Appellants challenge impugned EC on the ground that construction activity had been commenced even before the EC was granted and, as such, the Respondent No.1, committed substantial violation of the EC conditions, as well as, caused environmental degradation. The Appellants further challenge impugned EC on the ground that construction work was directed to be stopped on 9.11.2011 by the Competent Authority, yet Respondent No.1 M/s Arihant Realtors, did not pay any heed to stop the work and proceeded with the work, which impeded their right to have necessary R.G. area for their project. Further case of the Appellants, is that parking area available to project occupied by them, is reduced due to the second phase of project of the Respondent No.1 in Pandit (SRA) CHS Ltd. They further allege that minimum 40 car parking slots are mandatory for their part of the housing society. But adequate parking space is not provided and it is practically impossible now to do so, because the occupants of rehab buildings are being forced to park their



vehicles in public i.e. open space left around the buildings i.e. R.G. area. So far as R.G area is concerned, the same is not contiguous and is divided in three (3) wings, which has caused environmental damage due to non-availability of fresh air, passage of light and ventilation to their buildings. The gap/space between their buildings bearing Nos. 'E' to 'D' being only of 3ft. which impacts adversely, because adequate light is not available for area inside the buildings, nor air is passing properly. Thus, Respondent No.1 has violated the norms of environment, which ought to be taken into account and EC deserves to be quashed and other reliefs sought by them may be granted.

**4.** Respondent No.1, resisted the Appeal on various grounds. His main contention is that SRA buildings were being taken up for construction by another builder/Project Proponent. He, subsequently, took over said project work from the earlier developer by name Siddhi Vinayak construction, who had done the work till 2009. Originally, the project was being carried out only by M/s Om-Sai Developers till 2000. Earlier developers had completed the buildings styled as Wing 'B' 'C' and 'D' up to about 90%. There was status quo issued by the City Civil Court in 2004, which was continued till 2009. Thereafter,

he obtained Environmental Clearance (EC) on 20<sup>th</sup> February, 2013. He proceeded with the work, only after clarification of O.Ms dated 6.6.2013 and 19.6.2013, and letter of Secretary, Environment Department to State Expert Appraisal Committee (SEAC), and State Environmental Impact Assessment Authority (SEIAA) dated 29.6.2013, communicating order passed by the Hon'ble High Court in case of "Saumya Buildcon". There is no variance between EC conditions communicated to him. He denied that parking is not provided as per the Rules. According to him, the buildings 'B' 'C' and 'D' are transit accommodations, therefore, there is no legal obligation to provide parking for these three (3) buildings. He alleges that rehab buildings need not be provided with car parking, because there is no such provision for it. He denied allegations that STP, is not provided to those rehab buildings. He further denied that R.G area is inadequate and improper. He contended that the Appeal is barred by limitation and is untenable. Therefore, Respondent No.1, sought dismissal of the Appeal.

**5.** By filing reply affidavit of Mr. Pimparkar – Scientist-I, Environment Department refuted all the material averments of the Appellants. Affidavit of Mr. Pimparkar,

shows that the conditions were imposed in the EC to provide STP and greenbelt before the impugned EC was granted. The affidavit of Mr. Pimparkar is brief and does not give proper information regarding status of the project.

**6.** At the outset, we may clarify that we are not required to deal with the issues regarding violations of the Municipal Laws. It is not therefore, necessary to examine whether any violation of DC Rules is done by Respondent No.1. The domain under the NGT Act, 2010, is to examine environmental issues. There is bifurcation of jurisdictional issues. Such legal position can be clarified and will be borne in mind, having regard to the ratio laid down in case of **Parshuram Ukarpar & Anr Vs State of Maharashtra &**

**Ors-**

**7.** Coming to the main environmental issues involved in the Appeal, it may be stated that the Appellants are dwellers of slum area/residential accommodation, which were required to be constructed for the purpose of implementation of the SRA scheme. First phase of the SRA scheme is covered by the buildings, which have been constructed for occupation and use of the present Appellants. Second EC and the buildings indicated as building Nos. "B" "C" "D", are required to be delivered to the

Govt. for use of Project Affected Persons (PAP); namely; the Members of Pandit CHS Ltd. It is pertinent to note that tenements in the SRA buildings are 480 in number. These buildings are supplied with drinking water by the Municipal Corporation of Greater Mumbai (MCGM). There is electricity supply available to these buildings. The case of Respondent No.1, inter-alia, is that he took over the project in question from Omsai Developers in the midst of commissioning of the project. Therefore, he is not responsible for deficiencies, which might have occurred in providing inadequate parking spaces, inadequate R.G. area and STP for entire construction project of SRA scheme in question. The proposal of SRA scheme, regarding "Pandit (SRA) CHS Ltd, residential- cum commercial project" was discussed by SEAC, Maharashtra in its meeting dated 29<sup>th</sup> and 30<sup>th</sup> November and 1<sup>st</sup> December, 2012. The description of scheme is shown as buildings bearing Wing Nos. 'A to D'= GR + 7, Wing 'E' = GR+8, out of them Wing 'B' comprises of GR+1 and 2<sup>nd</sup> business office + 3 to 5<sup>th</sup>, it may be of provided parking Floors + 6 to 22 and 23 Floor + 24 to 27 Residential Floors. The proposed construction was of six (6) buildings, including one sale place and five (5) rehab buildings. The observations of SEAC are significant. It is observed:

The project proposal was discussed on the basis of the presentation made, the documents and the present photographs of project site showing right of way to the project site submitted by the proponent. All issues related to environment, including air, water, land, soil, ecology and biodiversity and social aspects were discussed.

During discussion, following points emerged:

1. Project proponent informed that earlier owner initiated and completed construction of Wing B,C & D as per the LOI approved without obtaining the prior environmental clearance. Hence, Environment Department/ SEIAA, after due verification, may initiate action against violation under Environment (Protection) Act, 1986.
2. PP to submit LOI of the earlier project and revised LOI of June 2012.
3. PP to submit revised parking area calculations as per the NBC Norms.
4. PP, in addition to the proposed energy saving measures, to install solar panels to generate power, explore the possibility of installing lift irrigation system and revise energy saving plan accordingly.

After deliberation, Committee decided to recommend the proposal for Environmental Clearance to SEIAA, subject to compliance of above points.

**8.** Having regard to above observations, it is amply clear that implementation of 'Pandit (SRA) CHS Ltd'



residential-cum-commercial scheme' was found to be improper in view of various deficiencies noted by the SEAC. Respondent No.1 was called upon to submit LOI of the earlier project and revised LOI of June, 2012. It may not be out of place to mention here that Respondent No.1, desired to seek advantage of O.M. dated 7<sup>th</sup> February, 2012, issued by the MoEF, for the purpose of remodeling/revision of the project and thereafter make 'Pandit (SRA) CHS Ltd' residential-cum-commercial scheme' functional by making the construction at the site. Even prior to the EC, relevant environmental issues, including air, water, land, soil, ecology and biodiversity verification including revised parking area calculations, as per National Building Construction (NBC) Norms, was necessary and action against Respondent No.1, under provisions of the Environment (Protection) Act, 1986, also was to be initiated for his highhandedness caused during the construction work, but he completed the construction up to the plinth level pending the EC. So, it was recommended that SEIAA, after due verification may initiate action against violations against the Environment (Protection) Act, 1986, against Respondent No.1.

9. We may, however, point out that during course of 54<sup>th</sup> Meeting of SEIAA, held on 3<sup>rd</sup> /4<sup>th</sup> January, 2013, the issues were discussed as regards action to be taken and parking area calculations, as per NBC Norms. What was considered by SEIAA, as satisfactory reasons to drop such recommendation of SEAC, regarding action to be initiated under the Environment (Protection) Act, 1986? It is interesting to note that SEIAA, only relied upon clarifications given by the Respondent No.1 in the meeting that proposal was initiated in 1998, when the conditions for requirement for obtaining EC, were quite different than conditions and long delay has taken place due to Court Cases, amongst three (3) developers regarding transfer of rights, which was decided by the Hon'ble Supreme Court. The Respondent No.1 pleaded that since the work was initiated long back and delay has occurred for above reasons, there is no violation of the Environment (Protection) Act, 1986. The other conditions stipulated by SEAC, were reportedly complied with. Needless to say, SEIAA did not find it necessary to verify whether the construction was done by Respondent No.1 up to the plinth level without obtaining the EC, or that it was the act of any earlier developer. Be as that may be, action could have been

taken under Section 5 of the Environment (Protection) Act, 1986. There is no reason as to why recommendations of SEAC were given go-by in the context. Fact remains that word of Respondent No.1, was accepted by SEIAA as gospel truth in this context.

**10.** We find that during discussion of minutes of SEIAA, the revised parking calculation was also not done by the Authority, nor it was furnished by Respondent No.1 to satisfaction of SEIAA by giving any revised plan with which the scheme was to be implemented. Thus, 'Pandit (SRA) CHS Ltd' residential-cum-commercial scheme' was given push to go ahead without any kind of deduction or permutation and combination method in the parking area and any kind of revision of calculations of parking area, as per NBC Norms , though the same had not been furnished by Respondent No.1. The description of particulars in the EC, described as item No.6, in the minutes of meeting of SEIAA, go to show that the calculations of parking area as per NBC Norms , was ignored either inadvertently or with some oblique motive. Otherwise, such categorical recommendations of SEAC, could not have been overlooked by the SEIAA, without any substantial reason. Only one

basement was provided in the sale building in the EC issued by SEIAA.

**11.** In the above backdrop, we shall meticulously examine the Joint Report submitted by the Court Commissioners, who were appointed by this Tribunal to visit the site. This Tribunal appointed Advocate Mr. V.P. Patil and Prof. J.S.Main by consent of the parties to visit the site of 'Pandit (SRA) CHS Ltd' for inspection of the property. They visited the site in order to conduct the survey as directed by this Tribunal. They noted that the buildings 'B' 'C' 'D', are complete and used as transit facility for residents of 'Pandit (SRA) CHS Ltd'. They further noted that buildings 'A' and 'E' are under construction as per information given by the Respondent No.1 and building 'E' will be complete by March, 2015 and building 'A' will be completed by June, 2015. Thereafter, occupants of standing buildings 'B' 'C' 'D' will be shifted to buildings 'A' and 'E'. Respondent No.1, after such construction and shifting of occupants of transit accommodators Respondent No.1, will handover buildings 'B' 'C' 'D' to Govt. for use of PAP. The Court Commissioners noted that there is no provision made for parking slots for rehab buildings as required in the revised EC. As stated before, no such

provision is made while considering the revised EC by SEIAA inspite of recommendation of SEAC to examine the issue of parking slots, in accordance with NBC Norms. The Commissioners also noted that sewage in buildings 'B' 'C' 'D' is treated in septic tank to the extent of part thereof and part thereof is collected by MCGM for final disposal. Respondent No.1's authorized agent or partner by name Mr. Sanjay Patil, assured the Court Commissioners that STP will be fully commissioned and sewage treatment will be completely done within short span. It was found that R.G area is less than required open space as per the norms, having regard to area of construction. The required R.G area is 600.10sq.m. but provided R.G. area is only 378.49sq.m. An area of 138sqm at one place is provided as R.G. area. Obviously, R.G area is not contiguous and is divided at three (3) places. Out of said R.G. area, one part of R.G. area consisting 59.61sq.m. is situated beyond Nullah, where there is encroachment and that R.G area is not accessible to the residents. Resultantly, actual R.G. area available to the residents of SRA, scheme is 318.88sqm. Respondent No.1, has thereby reduced recreational facility of the Appellants and others practically to the extent of about half area, than required as per the Law. The purpose of R.G.



area is to allow fresh air to the residents, playground for children and recreational area for old men/women as well as Youngers. They are deprived of such recreational area and, as such, they are deprived of enjoying dignified life due to illegal acts of Respondent No.1. This is not only denial of dignified life to them, but is an act of endangering environment which is part and parcel of maintaining proper balance between life-cycle interlinked with human life, biodiversity, air, water and all other natural faculties around human beings, which are associated with existence of human as well as existence of surrounding. The inspection work was carried in presence of both the parties and, therefore, it cannot be said that parking facility is wholly internalized and any public place is included as permissible slots for parking. Though, certain objections are filed by Mr. Vinod Padiyar to the joint Inspection Report, yet, we are of the opinion that such objections are not maintainable, inasmuch as both the commissioners have unanimously observed that the second EC does not comprise of any calculation of parking area inspite of recommendations of SEAC. Needless to say, both the Court Commissioners have no reason to give any incorrect information to the Tribunal. Both of them are independent

persons. One of them is an Advocate, practicing in the High Court and is pretty senior. Another is Professor and there was no opposition to their appointment as the Court Commissioners. The objections to such joint Report of Commissioners are unnecessarily, likely to cause aspiration on their credibility, which we think is improper. If we will allow such practice to go on, the final decision making process will be endless and the litigants may go to the extent of challenging credibility of justice delivery system, without any reason or rhyme, as and when adverse decision is rendered. Unfortunately, now-a-days, such practice is growing. Of course, in our opinion, Advocate Mr. Kochale appears to be fair. It may be noted that initially LOI of SRA scheme was approved on 6.1.1998 and subsequently two (2) buildings in the lay-out of rehab buildings with five (5) wings, namely; A to E, and sale building had been approved. LOI for rehab building 'A' was approved on 18.12.2010 and the construction permission was granted on 19.4.2011. IOA for rehab building 'E' was approved on 7.7.2011 and plinth approval was granted on 28.4.2011. The photographs Ex. 17, shows that Nullah is flanked by retaining walls of considerable height. It appears that filthy water and effluents are discharged in the said Nullah. It goes without

saying that water of said Nullah is contaminated, unuseful and polluted. The R.G beyond Nullah is, therefore, of no use for SRA scheme. The provision for R.G area beyond Nullah is no sort of cheating the residents and occupants of SRA scheme of which the Appellants are beneficiaries.

**12.** On behalf of Respondent No.1, it is vehemently argued that whatever earlier developer had done was responsibility of the said developer for which present Respondent No.1, cannot be held responsible and that no action should be taken against him. It is argued that some of the spaces were already constructed before the project was handed over to the Respondent No.1 and hence, the Respondent No.1 was helpless when deficiencies had been already caused like commencement of construction up to plinth level. It is argued that R.G. area and Nullah was already planned by the previous developer, which plan was approved by the competent authority and hence, the Respondent No.1 cannot be held liable to provide more R.G area as sought by the Appellants. It is further argued that the prayers of the Appellants are now, likely to turn the hands of clock back, which would cause greater financial loss not only to Respondent No.1, but to poor people, who are the beneficiaries of the SRA scheme. Consequently,

learned Advocate for Respondent No.1, would submit that the Appeal deserves to be dismissed.

**13.** Countering above arguments, learned Advocate Shri. Kochale contended that the construction work was stopped by MCGM due to complaint made by Shri. Padiyar, but subsequently, the Respondent No.1 proceeded with construction up to plinth level without obtaining EC. He argued that the Respondent No.1, failed to provide parking area notwithstanding such defect pointed out during meeting of SEAC, may be it was not provided in the EC. Yet, it was mandatory to follow the DC Rules, which categorically made him liable to provide such area. He further argued that STP was not provided by Respondent No.1, and mere fluttery assurances should not have been accepted by the SEIAA. He contended that during pendency of the construction work adequate septic tank ought to have been provided by Respondent No.1, along with soak pits, in order to maintain environmental safeguards. Failure of Respondent No.1, to maintain such safeguards, is environmental degradation. According to Shri. Kochale, learned Advocate, the Respondent No.1, acted irresponsibly and caused environmental degradation, which is being hood-winked by the authorities like the Respondent Nos. 3

to 8 and, therefore, strict action may be directed to be taken against him by this Tribunal.

**14.** In our considered opinion, the Respondent No.1, cannot take any shelter under the guise of his taking up implementation of SRA scheme for reason of acts done by earlier developers viz Omsai developers, inasmuch as he is supposed to take over the scheme with liabilities and benefits as per the Transfer of Property Act, as well as the common Laws. He cannot shy away from the responsibility and would be permissible to say that he is entitled only to the benefits of the scheme taken over by him. He must accept the benefits as well as losses whichever might have occurred, as a result of implementation of the SRA scheme in question. He cannot play hot and cold in this context. The defence set up by him, is, therefore, rejected. Considering the report of Court Commissioners, Respondent No.1, is required to provide R.G. area of 600sq.m which he has reduced to the extent of 318sq.m. He has paved R.G area of 232.36sq.m. In fact, the paved area of R.G is also incorrect and improper. Respondent No.1, has not provided greenbelt, as required under the norms. There was no reason for SEIAA, to dislodge objections raised by SEAC. The SEAC, categorically



recommended that it was necessary to revise parking norms as per NBC Norms , not only that Respondent No.1, did not submit such revised parking area calculations as per NBC Norms , but SEIAA gave complete go-by to the requirement of parking area while granting impugned EC. The impugned EC, is, therefore, improper and without application of mind. Though, it is found to be illegal, having regard to the fact that most of the SRA buildings are ready for occupation and many poor people are being accommodated in such buildings, it would be harsh to quash and set aside the EC, which would be rather against the principles of natural justice. For, all the affected occupants of such rehab buildings are not parties before the Tribunal. They are not heard. Moreover, the rationale decision in such a matter, is required to be taken, which may prevail even though there is some impropriety committed by the Authorities. As stated before, some of the part of project was completed by the developers namely; M/s Omsai developers and it is possible that SRA scheme implemented in the first phase at that time to certain extent before the project was taken over by Respondent No.1. The impropriety on the part of authorities, should not cause heavy loss to Respondent No.1, which may ultimately cause eviction of occupants of transit

dwellers, who are expecting shifting to the buildings constructed for their rehabilitation. Under these circumstances, in our opinion, the construction and EC obtained by Respondent No.1, for SRA scheme, shall be treated as *fate-accompli*. The prayers 'A' and 'B' made by the Appellants in the Appeal cannot be, therefore, granted.

**15.** The Applicants who are claimants of parking spaces of the Appellant society, are required to be accommodated in the remaining construction of the parking area shall be provided to them at stilt and first floor without considering other parts of the said buildings of Pandit SRA CHS Ltd, because rights of the Appellants existed before Pandit SRA housing Scheme came into existence and was under consideration for development by the developer (Respondent No.1), who could have made changes in the plan of construction for provision of parking spaces, as per requirement of both the Housing societies.

**16.** So far as R.G. area is concerned, the Respondent No.1, shall provide required R.G. area of 748.66sq.m. as well as parking spaces as per NBC Norms, after approval of SEIAA for which SEIAA, may reconsider the proposal and revise the EC.

We partly allow the Appeal and direct that:

- (A)** The EC proposed is remitted to SEIAA for reconsideration to the extent of fixation of parking spaces and the greenbelt as well as R.G. area. The impugned EC be remitted to SEIAA for reconsideration and till then it shall be deemed as inoperative. The Respondent No.1 shall not carry out any construction work for the period of three (3) months in respect of present buildings till the issue regarding above three (3) aspects, are decided by SEIAA, for the purpose of which the impugned EC is remitted to the Authority for reconsideration. The SEIAA shall distribute the parking slots as per NBC Norms first to the Appellant's HGCS and later on to Pandit HGCS, as per the availability of such parking spaces for allotment.
- (B)** SEIAA, also shall reconsider re-alignment of R.G. area and if any space is not available then one of the vacant flat from available accommodation from sale building, shall be converted to R.G. facilities, providing facilities like Community Hall, Table Tennis, Library, Gym etc. which can be accommodated in the area available.
- (C)** SEIAA, shall not grant further permission (EC), to remaining part of construction until all the conditions

are found to have been satisfactorily complied with by the Project Proponent. Unless such verification of the EC in question is done it shall remain in abeyance to the extent of remaining part of construction, excluding construction, which is already done. The SEIAA shall particularly ensure that proper STP facilities are made available to rehab buildings of the Appellants and that Nullah is cleared, as well as is covered with proper iron mesh to avoid dumping of MSW.

**(D)** In case of any occupant, who is eligible and entitled to have parking space for tenement, is ready and willing to surrender the same, he shall be paid proper compensation after due negotiations, but the same shall not be unreasonable and shall be as per market price prevailing in the area.

With above directions, the Appeal is accordingly disposed of. No costs.

....., **JM**  
**(Justice V. R. Kingaonkar)**

....., **EM**  
**(Dr.Ajay A.Deshpande)**

**Date: April 8<sup>th</sup>, 2015.**

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