

Bombay High Court

Ms.Anjali Iyer I/B Mr.Vinod ... vs Mr.G.W.Mattos, A.G.P. For State on 10 December, 2009

Bench: A.M. Khanwilkar

: 1 :

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2038 OF 2009

1. Shri Zhahid Ali S.Haque,

An adult, Indian Inhabitant,

resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai 400 055.

2. Shri Mushtaque Ali Mansab Ali,

An adult, Indian Inhabitant,

resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai 400 055.

3.Shri Musadik Ali Mazhar Ali,

An adult, Indian Inhabitant,

resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai 400 055.

4.Shri Muqadar Ali Mausin Ali,

An adult, Indian Inhabitant,

resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,
Nehru Nagar, Santacruz (E),
Mumbai 400 055.

5.Smt.Beig Abidunn Nisa,
An adult, Indian Inhabitant,
resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,
Nehru Nagar, Santacruz (E),
Mumbai 400 055.

: 2 :

6.Shri Deen Mohd. K. Khan,
An adult, Indian Inhabitant,
resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,
Nehru Nagar, Santacruz (E),
Mumbai 400 055.

7.Shri Sabir Mohd.Yusuf,
An adult, Indian Inhabitant,
resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,
Nehru Nagar, Santacruz (E),
Mumbai 400 055.

8.Shri Ibrahim Pir,
An adult, Indian Inhabitant,
resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai 400 055.

9.Smt.Ayesha Anjum,

An adult, Indian Inhabitant,

resident of Nehru Nagar Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai 400 055.

10.Smt.Swaleheen Shaikh,

An adult, Indian Inhabitant,

resident of Basera Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai - 400 055.

11.Shri Azhar R.Ansari,

An adult, Indian Inhabitant,

resident of Basera Co-op.

Hsg.Soc.Ltd., Golibar Road,

: 3 :

Nehru Nagar, Santacruz (E),

Mumbai - 400 055.

12.Shri Gulam Mustafa

An adult, Indian Inhabitant,

resident of Basera Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai - 400 055.

13.Shri Shaikh Shanuali Shaikh,

An adult, Indian Inhabitant,

resident of Basera Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai - 400 055.

14.Shri Shamim Ahmed,

An adult, Indian Inhabitant,

resident of Basera Co-op.

Hsg.Soc.Ltd., Golibar Road,

Nehru Nagar, Santacruz (E),

Mumbai - 400 055.

Versus

1.State of Maharashtra,

[Summons to be served on the

Learned Government Pleader

appearing for State of Maharashtra

under Order XXVII, Ruule 4, of the

Code of Civil Procedure, 1908].

2.The Administrator and the Divisional

Commission-Konkan Division, Mumbai.

3.The Union of India,

Through the Secretary,

: 4 :

Ministry of Environment & Forest,

New Delhi.

4.The Maharashtra Pollution Control Board,

Sion, Mumbai-400 022.

Khapridev Co-operative Housing Society Ltd., Parmanand Wadi, G.D.Ambekar Marg,

Parel (E), Mumbai - 400 012.

5.The Chief Officer & The Competent Authority, Mumbai Housing & Area Development Board,

A MHADA Unit, Grihanirman Bhavan,

Bandra (E), Mumbai - 400 051.

6.The Executive Engineer, Bandra Division,

Mumbai Housing & Area Development Board

(A MHADA Unit), Grihanirman Bhavan,

Bandra (E), Mumbai - 400 051.

7.The Slum Rehabilitation Authority,

Through its Chief Executive Officer,

Grihanirman Bhavan, Bandra (E),

Mumbai - 400 051.

8.Basera CHS Ltd., Golibar Marg,

Santacruz (E), Mumbai.

9.Nehru Nagar CHS Ltd., Golibar Marg,

Santacruz (E), Mumbai.

10.M/s.Shivalik Ventures Pvt.Ltd.,

Plot No.746, Stani Fernandis Wadi,

D.S.Babrekar Road, Dadar (W),

Mumbai - 400 028.

11.The Municipal Corporation of

Greater Mumbai,

Through Municipal Commissioner,

: 5 :

MCGM Head Office, Mahapalika Marg,

Mumbai - 400 001. ...Respondents

Ms.Anjali Iyer i/b Mr.Vinod B.Wagh for Petitioners. Mr.G.W.Mattos, A.G.P. for State.

Ms.M.P.Joshi for Respondent No.4.

Mr.J.G.Reddy for Respondent No.7.

Mr.V.A.Thorat with Mr.P.K.Dhakephalkar i/b Divekar & Co.for Respondent No.10.

Mrs.V.S.Gharapure for Respondent No.11 (BMC).

CORAM : SWATANTER KUMAR, C.J. AND

A.M.KHANWILKAR, J.

JUDGMENT RESERVED ON : 1st DECEMBER, 2009.

JUDGMENT PRONOUNCED ON : 10th DECEMBER, 2009.

JUDGMENT (PER KHANWILKAR, J.) :

1. The Petitioners claim to be occupants of structures situated on plot bearing City Survey Nos.13, 17, 19, 24, 27, 29, 30, 33, Golibar, Santacruz (East), Mumbai. It is common ground that the plot on which the said structures are situated has been notified as a slum area. Besides the structures occupied by the Petitioners, there are in all 5079 slum dwellers.

The Competent Authority has approved the proposal submitted for Slum Rehabilitation Scheme in relation to total area of plot admeasuring

112582.02 sq.mtrs., so as to accommodate the eligible slum dwellers in the : 6 :

Rehabilitation Scheme. The occupants of the structures standing on the said plot are members of two separate Societies being Basera Cooperative Housing Society Ltd. and Nehru Nagar Cooperative Housing Society Ltd.

The Petitioners 1 to 9 are members of Nehru Nagar Cooperative Housing

Society; whereas, Petitioner Nos.10 to 14 are members of Basera Co-operative Housing Society. Significantly, out of 14 Petitioners, only 6 Petitioners i.e. Petitioners 1 to 5 and 10, are eligible for rehabilitation as per the Annexure II. The other Petitioners who have been found to be ineligible have challenged the decision, which proceedings are still pending.

2. The present Petition, however, arises out of the rejection of the objection put forth by the Petitioners to stop the further development work on the plot, as is being undertaken by the Respondent No.10. The challenge was on the ground that no construction activity or for that matter demolition of the existing structures can be proceeded with in absence of prior environmental clearance, as per the Environment Impact Assessment Notification No.S.O. 60 (E) dated 27th January 1994 read with amendment Notification dated 7th July 2004, issued by the Ministry of Environment and Forests (MoEF) (Respondent No.3), under the provisions of the : 7 : Environment (Protection) Act, 1986. That objection was taken by the Petitioners before the Administrator and Divisional Commissioner, Konkan Division, Mumbai, who in turn, disposed of the Appeals preferred by the Petitioners on the following basis:

"It is gathered from the facts on record that the respondent Nos.2 & 3 (hereinafter referred as the respondents) are implementing the Slum Rehabilitation Scheme (SRS) on plot No.746, Staney Fernandes Wadi, D.S.Babrekar Marg, Dadar (W), Mumbai-400028 and the appellants are residing in the structures affected by the SRS. It is also gathered that the appellants in the Appeal No.312 are shown as eligible as per Annexure II whereas the appellants in Appeal Nos. 313 and 314/09 are ineligible. As stated in the appeal Nos. 313 & 314, the said appellants have approached the SRA against declaring them ineligible. Since the appellants were not vacating their structures to pave the way for the SRS, they have been directed by the impugned orders to vacate the same within 7 days.

In the appeals as well as during the arguments, the learned counsels of the appellants have sought to challenge the impugned orders primarily on one ground only i.e. the SRS is being implemented without any Environmental Clearance from the Ministry of Environment which mandatory as per Environmental Impact Assessment Notification dated 14-9-2006. The learned counsel of the appellants argued and contended that any development work in the absence of the said clearance would be illegal and on the complaints lodged by

the residents of the area of SRS, the Maharashtra Pollution Control Board has issued the show cause notice to the respondent developer on 9-4-2009. The learned counsel of the appellant reasoned that the respondents should follow due process of law by obtaining the mandatory environmental clearance before uprooting the appellants from their structures.

The learned counsel of the respondent developer filed the reply on 8-7-2009 wherein the features, characteristics and importance of the SRS being implemented by them have been highlighted. It has also been stated that the transit accommodation or the rental amount in lieu thereof have been made available to all the eligible slum dwellers who are required to be shifted. For the ineligible slum dwellers as per Annexure II, it has been suggested that the said ineligible appellants should approach the appropriate forum for redressal of their grievances, if any. During the arguments, the counsel for respondent developer also assured and undertook to provide : 8 :

even the ineligible appellants also with transit accommodation or rent in lieu thereof, pending the decision on their representation for eligibility from the SRA.

The respondent developer has also stated that out of the total 258 slum dwellers involved in the society in Appeal No.312, 226 slum dwellers have already vacated their structures. He has further stated that, from the society involved in appeal Nos. 313 & 314 also, out of the total 84, 71 slum dwellers have vacated their structures. He therefore argued that the SRS is getting adversely affected on account of non-vacation of structures by the non-cooperative appellants involved in the instant appeals.

As far as the prior environmental clearance in terms of abovementioned Notification dated 14-9-2006 is concerned, the learned counsel of the respondent developer has stated that the State Expert Appraisal Committee (SEAC) has recommended the grant of the said clearance. The learned counsel of the respondent developer argued on this issue during the hearing.

While reacting to the arguments advanced by the learned counsel of the respondent developer on the issue of obtaining the environmental clearance, the learned counsel of the appellants stated that the respondent developer has purposely and knowingly suppressed the vital fact from the concerned authority that he had already constructed buildings and the said scheme was not a proposed scheme but already has been implemented. He also referred to the representation dated 15-6-2009 made to the Member Secretary, State Environment Impact Assessment Authority (SEIAA), Department of Environment, Mantralaya, Mumbai seeking rejection of the respondent developer's application of environmental clearance on account of false statements made by the respondent developer before the SEIAA. He also produced the copy of the decision held in 10th meeting of the SEIAA on 26-6-2009. It is seen therefrom that the SEIAA has taken the cognizance of the representation of the learned counsel of the appellants and has also sent the same to the SRA for confirmation vide their letter dated 8-7-2009 as per the abovesaid decision.

After having considered all the facts put before me by the parties in the appeals, the documents attached thereto and the arguments during the final hearing, it is observed that no other grounds have been cited for not vacating the structures occupied by the appellants except the absence of prior environmental clearance. Therefore in my view, except the said ground, the appellants should have no problem in vacating their structures and shifting to the transit accommodation or else in accepting the option of rent as extended by the respondent developer in lieu of transit accommodation. As stated above by the respondent developer's counsel, the : 9 :

respondent developer is also ready to provide transit accommodation or rent to the ineligible appellants also till the time their eligibility gets decided. I think this is a very fair and generous offer and the ineligible appellants should prove their bonafide intentions by accepting the same.

As far as the question of environmental clearance is concerned, I am of the view that the concerned authority i.e. SEIAA is already seized of the matter. As is observed hereinbefore, the SEIAA has already referred the representation of the learned counsel of the appellants to the SRA for confirmation. Therefore it would be advisable if the action related to eviction of the appellants in pursuance of the impugned order is taken after confirmation of the SRA and/or the grant of environmental clearance by the authority.

In view of the above observations, since there are no other grounds for not vacating the structures by the appellants, the impugned order can be implemented if the respondent developer is able to show that he possesses the necessary environmental clearance. Accordingly it is felt that the abovementioned appeals deserve to be disallowed subject to the availability of the environmental clearance from the appropriate authority. Therefore the Competent Authority is hereby directed to first ascertain the availability of the environmental clearance to the SRS from the concerned authority. If the environmental clearance is available, the Competent Authority shall give 7 days' notice to the appellants to vacate their structures and if on receipt of the said notice, the appellants fail to comply the directions, the Competent Authority shall be free to take further necessary action as per the impugned order.

With the directions as given above, the appeals stand disposed of. Parties be informed accordingly." (emphasis supplied)

3. As a consequence of the above order, the Respondent No.10 pursued the matter with MHADA for taking over vacant possession of the structures occupied by the Petitioners and similarly placed persons who were yet to vacate the structures in their occupation. The Executive Engineer/Bandra Division, Mumbai Board of MHADA issued notice dated 29th September 2009 which was duly served on the occupants of the : 10 : respective structures including the Petitioners. The English translation of the relevant extract of the said communication reads thus:

"Sub : To take action at Basera CHS Golibar Rd.Santacruz (east) Mumbai under Maharashtra slum (improvement clearance & redevelopment) Act 1971. u/s 33, 38.

Ref : 1) Order by Chief Officer and Competent Authority/Mumbai board, No./Land./Mumbai Board/33,38/BASERA/2012/09, Dt.30/6/09

2) J.Kr.Ka.A./Ba.V./Mumbai Board/1332/09, Dt.30/6/09

3) Order By Administrator and Divisional Commissioner Konkan Division against Appeal No.312, 313, 314. dt: 11/09/09.

Sir/madam,

Please refer to the above references.

M/s.Shivalik Ventures Pvt.Ltd. has reported to this office that since letter dated 17/09/09, till date you have not vacated your hut. w.r.t. Order by Administrator and Divisional Commissioner Konkan Division DT:

11/09/09. you are hereby informed that within 7 days of receipt of this letter you should vacate your hut at your own cost and you should take possession of gala no.302.bldg. no.1 of the transit camp provided by M/s.Shivalik ventures pvt.Ltd. and you should hand over the vacant hut to the developer. OR under Maharashtra slum (improvement clearance & redevelopment) Act 1971. u/s 33, 38, without giving any prior notice your hut will be demolished, please make a note of this.

Yours sincerely,

Executive Eng./bandra div.mum.board."

4. The present Writ Petition under Article 226 of the Constitution of India primarily challenges the above order passed by Respondent No.2 as well as the notice issued by Respondent No.6. The Petition was filed in this : 11 : Court on 5th October 2009. When the matter was moved for the first time before us on 14th October 2009, we were prima facie impressed with the grievance made by the Petitioners that the Petitioners claim to be occupying structure situated on the above numbered plots. Whereas, the Administrator while disposing of the Appeals, considered the matter in relation to plot No. 746 at Staney Fernandes Wadi, D.S.Babrekar Marg, Dadar (West), Mumbai-400 028, as can be discerned from 3rd Paragraph of the impugned decision. That decision was the basis for issuance of impugned eviction notices. In the circumstances, while issuing notice in the Writ Petition, we ordered the parties to maintain status-quo in regard to the above numbered plot. Later on, the matter was moved before us on 16th October 2009 when Counsel appearing for the Respondents made grievance that the Petitioners persuaded this Court to grant interim relief in respect of the subject plot on the basis of untenable ground that the Administrator considered the matter only in respect of plot No.746; whereas, the proposed action of eviction was in respect of the above numbered plot. Considering the arguments, we modified our order dated 14th October 2009 and limited the effect thereof only to the structures occupied by the Petitioners herein. The Respondents

have filed reply affidavit to counter the grievance made by the Petitioners.

Insofar as the Plot number mentioned in the impugned decision of the : 12 : Administrator as Plot No.746, it is stated that the description so given was a clerical error. The said address is in fact the office address of the Respondent No.10 and not the plot in relation to which Slum Rehabilitation Scheme has been sanctioned by the Competent Authority. Whereas, the Slum Rehabilitation Scheme is in relation to the above numbered plot and the structures occupied by the respective Petitioners are admittedly situated on the said plot. It is further stated that the Administrator realising that clerical error has crept in, in the impugned Judgment, issued Corrigendum on 15th September 2009 to clarify that the order passed by him was in relation to plot at Village Bandra (East), Taluka Andheri, C.T.S.No.27(pt.) and 30(pt.). After the Corrigendum was brought on record, the grievance of the Petitioners was that the Corrigendum is an afterthought. It was argued that if the Corrigendum was to be in place, there was no reason for the Authority to not refer to that document in the subsequent communications. The fact remains that the existence of Corrigendum issued by the Administrator-Respondent No.2 cannot be doubted. The same has been issued in ordinary course of business after realising that clerical error had crept in in the impugned Judgment while describing the subject property. There is no reason to doubt the genuineness and authenticity of this Corrigendum.

: 13 :

5. To get over this position, it was argued on behalf of the Petitioners that issuance of Corrigendum was in the nature of exercise of review power which has not been bestowed on the Administrator under Section 35 of the

Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971. This argument does not commend to us. For, issuance of Corrigendum to rectify the clerical error which has occurred in the impugned Judgment, by no standard, can be said to be exercise of review power. On this finding, it is unnecessary to examine the further question posed as to whether the Administrator has any authority to review his own order. Accordingly, there is no substance in this submission.

6. On discarding the grievance regarding issuance of Corrigendum by the Respondent No.2, it would necessarily follow that the order passed by the Respondent No.2 which is impugned in this Writ Petition was in respect of structures in occupation of the Petitioners herein situated on plot at Village Bandra (East), Taluka Andheri, CTS No.27 (pt.) and 30(pt).

Accordingly, the first grievance of the Petitioners which weighed with us for grant of ad-interim relief in favour of the Petitioners, albeit modified later on, does not survive for consideration. : 14 :

7. The crucial question that needs to be addressed in the present Petition as raised by the Petitioners is: whether the Developer - Respondent No.10 can be allowed to commence and proceed with any work of development on the plot in question in absence of prior environmental clearance as required by the Notification dated 27th January 1994 read with Notification dated 7th July 2004. For considering this issue, it may be apposite to note that the Slum Rehabilitation Scheme was approved on the basis of Redevelopment Scheme submitted by two separate Societies-Basera Cooperative Housing Society Ltd. and Nehru Nagar Cooperative Housing Society Ltd. The same was approved by the Competent Authority on 7th September 2006. The Respondent No.10 was authorised to undertake the

Redevelopment Scheme on terms and conditions specified by the Competent Authority while approving the said Scheme. The Letter of Intent was issued by the Slum Rehabilitation Authority on 7th September 2006 and the Commencement Certificates were issued on 30th March 2007 and 28th August 2007. After inclusion of the adjoining area in the present project while issuing revised Letter of Intent on 17th November 2007, the Slum Rehabilitation Authority had insisted for environmental clearance as per provisions of Notification S.O. 1533 (E) dated 14th September 2006. The : 15 : Respondent No.10 submitted application to the Ministry of Environment and Forest dated 19th November 2007 and soon thereafter commenced the part of the work. Since during inspection, the Sub-Divisional Officer of the Respondent No.4 Board noticed that three buildings of seven storey for the transit camp, six buildings of seven storey for residential-cum-commercial purpose were ready for occupation and about 1,000 huts were demolished and the remaining work was in progress, show-cause notice was issued to the Respondent No.10 to stop the development activity. In response to the show cause notice, the Respondent No.10 submitted explanation by letter dated 18th May 2009. In the meantime, the request for environmental clearance made by the Respondent No.10 was considered by State Level Impact Assessment Authority in its 10th and 11th meeting. As a consequence of the decision taken in the said meeting, the Respondent No.10 was informed by the Environment Department vide letter dated 17th August 2009 mentioning that proposal to accord environmental clearance submitted on its behalf has been accepted on terms and conditions specified in the said communication. In the said communication, it is clearly mentioned that the environment clearance is being issued without prejudice to the Court case

pending in the Court of Law and/or any proposed legal action latter after verification against the construction of the structures/violations by invoking : 16 : powers under Section 19 of the Environment (Protection) Act, 1986 and the Rules made thereunder for commencing construction without obtaining prior environment clearance. The Board-Respondent No.4 has filed affidavit in this Court stating that Notification dated 27th January 1994 has been superseded by the subsequent Notification dated 14th September 2006 bearing Notification S.O.1533 (E). Further, the latter Notification with regard to construction project including Slum Rehabilitation Authority Project is covered under category B in Item 8 thereof. It has found that in the present case, the construction work or development work was started by Respondent No.10 on the suit plot after 14th September 2006, for which reason, the project is not covered by Notification pressed into service by the Petitioners dated 27th January 1994. The affidavit filed on behalf of Respondent No.4 Board spells out this position. Para 4 of the said affidavit reads thus:

"4. I say that by amendment to the Notification S.O.60(E) dated 27th January 1994 in schedule-I along with other amendments "New construction projects" under entry "31" as well in paragraph 3 para (g) is inserted. However as per para (g) of the Notification was not applicable to "any construction project falling under entry 31 of the Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below". Now in super session of the Notification number S.O. 60(E) dated 27th January 1994 notification S.O.-1533 (E) dated 14th September 2006 has been issued which under Category B in item 8 of the : 17 :

Schedule covers construction project including Slum Rehabilitation Scheme project too. I say that it is a slum rehabilitation project. Since, the construction work was started after 14.9.2006, the present project is not covered in Notification S.O. 60(E) dated 27th January 1994 and covered under new EIA Notification 2006. Therefore, the State Government has granted environment clearance under that Notification dtd.14.9.2006. The slum rehabilitation project amounts to a Resettlement of Colony as mentioned in para 2 of the Petition." (emphasis supplied)

8. Indeed, the Petitioners have criticized the above stand taken by the Respondent No.4-Board on the ground that it is vague. The fact remains

that the activities undertaken by the Respondent No.10 on the suit plot, the same would be governed by Notification dated 14th September 2006. In that, the Letter of Intent was issued in favour of the Respondent No.10 by the Slum Rehabilitation Authority on 7th September 2006 and the Commencement Certificates were issued on 30th March 2007 and 28th August 2007. It is not the case of the Petitioners that the development work on the suit plot had actually commenced even before the issuance of the above noted Commencement Certificate. Suffice it to observe that the Environment Department, after due consideration of all aspects including the representation of the Petitioners that the request of Respondent No.10 should be thrown out at the threshold for having suppressed material fact, have issued environmental clearance on 17th August 2009 in respect of the Slum Redevelopment Scheme undertaken by Respondent No.10. We are : 18 : informed that the validity of the said environmental clearance has been put in issue before the Appellate Authority in the proceedings under that Act. However, so long as the said environmental clearance remains in force, the grievance of the Petitioners that in absence of environment clearance in respect of the project in question, the Respondent No.10 could not take any precipitative steps and proceed with the development work, would not survive for consideration. This, however, does not mean that we are expressing any opinion one way or the other on the correctness of the view taken by the Authority for issuance of environmental clearance in favour of Respondent No.10. All questions in that behalf will have to be addressed in appropriate proceedings.

9. Reverting to the controversy raised by the Petitioners, the limited controversy was of impermissibility of commencement and continuation of

with the development work on the plot in absence of environmental clearance issued by the Competent Authority. That ground is no more available to the Petitioners as of now. In any case, the order which is impugned in this Appeal, if read as a whole, in our opinion, is a benign order, making it clear that the Competent Authority shall take steps to vacate the structures occupied by the Petitioners only after being satisfied : 19 : that environmental clearance from the appropriate Authority has been issued. For the nature of order passed by the Administrator, the concern expressed by the Petitioners has been fully addressed. In that, the limited grievance of the Petitioners before the Administrator was that in absence of environmental clearance by the appropriate Authority, the development work of the project cannot be commenced, much less, continued. No other grievance was made before the Administrator nor has been raised before us. In that sense, there is nothing to challenge in the order passed by the Administrator dated 11th September 2009.

10. The next question is: whether the notice issued by the Executive Engineer-Respondent No.6 dated 29th September 2009 can be said to be legal and valid? We have already adverted to the said notice in the earlier part of this Judgment. The notice makes reference to the order passed by the Competent Authority dated 30th June 2009, communication dated 30th June 2009 and more particularly the order passed by the Administrator dated 11th September 2009. However, nothing is stated in this notice that before issuance of notice of eviction, the Respondent No.6 was satisfied that environmental clearance has been issued in respect of the subject Project by the appropriate Authority, as was directed by the Administrator in the : 20 : impugned decision dated 11th September 2009. The fact that environmental

clearance has already been issued on 17th August 2009 which is in anterior point of time, would not make any difference. It is not possible to presume that the same was duly considered by the Respondent No.6, unless the notice recorded that fact. It was imperative for the Respondent No.6 to be satisfied in that behalf and then record his satisfaction in the impugned notice dated 29th September 2009. For, that was the only issue to be kept in mind before taking precipitative steps including of evicting the Petitioners and similarly placed persons. We would, therefore, set-aside the impugned notice Exhibit 'F' dated 29th September 2009 as issued by the Executive Engineer-Respondent No.6, with liberty to the Respondent No.6 to issue a fresh notice in accordance with law, keeping in mind the observation made by the Administrator in his decision dated 11th September 2009.

11. According to the Respondent No.10, the objection raised by the Petitioners is only to obstruct the development project on untenable ground for reasons best known to them. As a matter of fact, out of 258 structures registered with Nehru Nagar Co-operative Housing Society, more than 235 slum dwellers have already either taken rent for making their temporary accommodation arrangement or accepted the transit accommodation : 21 : provided by the Respondent No.10 and have vacated their respective structures. Similarly, out of the total 84 structures registered under Basera Cooperative Housing Society, 77 slum dwellers have vacated their respective structures on accepting either rent or transit accommodation. In other words, 90% of the slum dwellers have already vacated their structures. It is the case of the Respondent No.10 that as a matter of fact, the Petitioners 9, 10 and 14 herein have already accepted rent for making their temporary alternative arrangement but have refused to vacate their

structures. Moreover, the Authority has found only six Petitioners i.e. Petitioners 1 to 5 and 10 as eligible as per Annexure II. For all these reasons, the grievance of the Petitioners cannot be countenanced. It is, however, unnecessary for us to delve upon these issues. It is noticed that the Administrator has already issued directions to the appropriate Authority to proceed in the matter only after being satisfied that environmental clearance has been issued in respect of the project in question. That decision is not challenged by the Respondent No.10. In that sense, the appropriate Authority will have to abide by the said direction and in any case, the direction would bind the private parties.

12. While parting, we place on record the stand reiterated by the : 22 : Respondent No.10 as was taken before the Administrator that it was willing to provide alternate transit accommodation or the rental amount in lieu thereof to all the Petitioners, whether found to be eligible or otherwise, pending the decision on their representation for eligibility from the Slum Rehabilitation Authority. In view of this assurance given by the Respondent No.10, we fail to understand as to why the Petitioners should still resist the proposed project that too after issuance of environmental clearance accorded to it, which was the only grievance made before the Administrator.

13. For the above reasons, we have no hesitation in partly allowing this Writ Petition. We uphold the opinion recorded by the Administrator (Respondent No.2) in his decision dated 11th September 2009 (Exhibit E). We, however, set-aside the eviction notice issued by the Executive Engineer (Respondent No.6) dated 29th September 2009 (Exhibit F), with liberty to the Respondent No.6 to issue fresh notice to the concerned Petitioners in accordance with law only after recording its satisfaction about

the fact that environmental clearance from the appropriate Authority in respect of the subject project is in force.

14. We make it clear that this Judgment is not an expression of opinion : 23 : either way on the merits of the issues involved in or arising from the opinion of Environment Department according environmental clearance to the subject project, or for that matter, on the ineligibility of Petitioners 6 to 9 and 11 to 14, as those issues will have to be addressed in the pending proceedings before the appropriate forum. All questions in that behalf are left open.

15. We accept the assurance given by the Respondent No.10 through Counsel that transit accommodation or the rental amount in lieu thereof will be offered to all the Petitioners but insofar as Petitioners who have been found ineligible as per Annexure II, that offer would be subject to the decision of the Appellate Authority on their representation regarding eligibility.

16. Accordingly, this Petition is partly allowed on the above terms with no order as to costs.

Sd/-

CHIEF JUSTICE

Sd/-

A.M.KHANWILKAR, J.