

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 165 OF 2007

Murlidhar Teckchand Gandhi & Ors. .. Petitioners
vs.
State of Maharashtra & Ors. .. Respondents

Mr. Milind Sathe – Senior Advocate with Mr. R. S. Datar i/b. Mr. R. D. Mishra for Petitioners.

Mr. E. P. Bharucha – Special Counsel / Senior Advocate with Mr. Milind More - Additional Government Pleader for Respondent Nos. 1 to 3.

Mr. Y. R. Mishra with Mr. P. M. Bhagat for Respondent Nos. 4 to 64.

**CORAM : S. C. DHARMADHIKARI AND
M. S. SONAK, JJ.**

Date of Reserving the Judgment : 11 February 2016.

Date of Pronouncing the Judgment : 01 March 2016.

JUDGMENT : (Per : M. S. Sonak, J.)

1] The challenge in this petition is to the acquisition of the petitioners property bearing CTS No. 165, 165/1 to 51 admeasuring 2668.11 sq. meters, at Village Kanjur, Taluka Kurla, Mumbai (said property) vide Notification No. DAL/2002/LR-459/SLUM-1 dated 31 May 2006 issued under Section 14 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act).

2] In the years 1976, 1986, the said property was declared as 'slum area' in terms of Section 4 of the Slum Act. However, the

declarations were set aside by the Slum Tribunal, on certain grounds, which are not relevant for deciding the issues raised, in the present petition. The said property was once again declared as 'slum area' by Notification dated 20 August 1997. The petitioners appeal questioning said declaration was dismissed by the Slum Tribunal by its order dated 12 December 1997. Thereupon, the petitioners instituted a writ petition no. 851 of 1998 challenging the Slum Tribunal's order dated 12 December 1997. On 11 June 1998, this Court, in the said writ petition, made an ad interim order, restraining the implementation of or taking of any steps / action in pursuance of declaration dated 20 August 1997 and the Slum Tribunal's order dated 12 December 1997. The ad interim order was confirmed on 15 June 1998, in terms of prayer clause (C) , which reads thus :

“(C) that this Hon'ble Court pending the hearing and final disposal of this petition be please to stay the operation of the said Declaration order dated 20/8/1997 which was published in the Government Gazette dated 21/8/97 and the said.”

3] On 3 July 1998, the Competent Authority i.e. the respondent no.3 issued show cause notice under Section 14(1) of the Slum Act requiring the petitioner to show cause as to why the said property be not acquired. A notice to the same effect, was also published in the newspapers on 11 July 1998. The petitioners through their Advocate, submitted their response, *inter alia* pointing out that there

was an interim order dated 15 June 1998 made in writ petition no. 851 of 1998, challenging the declaration of the said property as a '*slum area*'. The record indicates that no further steps were taken in the matter by the respondent no. 3 for almost three years thereafter and until the dismissal of the petition and vacation of interim order.

4] The learned Single Judge of this Court, by judgment and order dated 17 April 2001, dismissed the writ petition no. 851 of 1998 instituted by the petitioners. Further, by judgment and order dated 31 July 2001, the Division Bench of this Court in appeal no. 413 of 2001, dismissed the petitioners appeal against the judgment and order dated 17 April 2001. Finally, on 15 July 2002, the Hon'ble Supreme Court, dismissed the petitioners Special Leave Petition against the judgment and order dated 31 July 2001. As a result of all this, the interim order made on 15 June 1998, stood vacated.

5] Upon consideration of the cause shown by the petitioners, the respondent no. 1 issued Notification dated 31 May 2006 (Impugned Notification) under Section 14(1) of the Slum Act for acquisition of the said property. An award was also made by the Deputy Collector under Section 17 (5) of the Slum Act determining the compensation payable, in respect of the acquisition on 10 January 2007. The

petitioners, on 11 January 2007, instituted the present petition questioning the Impugned Notification as also, all actions, in pursuance of the same.

6] On 31 January 2007, the Chief Lands Surveyor is stated to have taken possession of the said property under a panchnama and by issuance of a possession receipt. On 14 February 2007, the petitioners instituted appeal no. 2 of 2007 before the Slum Tribunal, questioning the compensation determined and sought enhanced rates. However, on 12 March 2007, the petitioners withdrew the said appeal with liberty to file it afresh.

7] On 23 August 2007, this Court, issued Rule and interim relief in terms of prayer clause (c) in the present petition. The impugned Notification dated 31 May 2006 was accordingly stayed.

8] Mr. Milind Sathe, the learned Senior Advocate for the petitioners has made the following submissions in support of the present petition :-

(A) That the very initiation of acquisition proceedings by issue of show cause notice dated 3 July 1998 under Section 4(1) of the Slum Act, was without jurisdiction, in as much as on the said date, the Notification dated 20 August 1997 declaring the said property as '*slum area*' was no longer in existence,

due to the interim order dated 15 June 1998 made by this Court in writ petition no. 851 of 1998. The existence of a declaration that the said property is a '*slum area*' is a mandatory predicate, in the absence of which, the power of acquisition under Section 14(1) of the Slum Act, can never be exercised. For these reasons, Mr. Sathe urged that the impugned Notification dated 31 May 2006, made in pursuance of the show cause notice dated 3 July 1998, is a nullity and is required to be declared as such;

(B) In the alternate, Mr. Sathe submitted that in the present case there has been no compliance with the provisions contained in Sections 5, 11, 12(7) and 13 of the Slum Act prior to the exercise of powers under Section 14 of the Slum Act. Relying mainly upon the decision of this Court in the case of *Ramkali Kushawaha (Kachhi) & Ors. vs. The Deputy Collector (Enc) & Competent Authority, Kurla-I & Ors.*¹, Mr. Sathe submitted that powers of acquisition could never have been exercised without compliance with the provisions contained in Sections 5, 11, 12(7) and 13 of the Slum Act, which, in terms, confers a preferential right upon the land owner to either improve the slum area or to redevelop the same;

1 2004 (2) ALL MR 320

(C) That, in the present case, the said property has not been declared as '*slum rehabilitation area*' under Section 3C of the Slum Act. Therefore, the respondents, cannot legitimately claim that Chapters II and III of the Slum Act, which contain Sections 4 to 10 of the Slum Act, are inapplicable, when it comes to acquisition of the said property by resort to the provisions contained in Section 14 of the Slum Act. Mr. Sathe therefore contended that the impugned acquisition, in the present case, must fail for non compliance with the provisions contained in Sections 5, 11, 12(7) and 13 of the Slum Act; and

(D) Finally, Mr. Sathe contended that acquisition in the present case was at the instance of the respondent no. 4 – developer, and therefore same was malafide. In this regard, reliance was placed upon the decision of the Hon'ble Supreme Court in the case of *Royal Orchid Hotels Limited & Anr. vs. G. Jayarama Reddy & Ors.*², to submit that power of eminent domain cannot be over stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the land owners of their constitutional rights to property with a view to favour private persons.

2 (2011) 10 SCC 608

9] Mr. E. P. Bharucha, the learned Senior Advocate appearing for the respondent nos. 1 to 3 and Mr. Mishra, the learned counsel for respondent nos. 4 to 64 countered the submissions of Mr. Sathe by submitting that '*stay order*' neither wipes out the existence of the slum declaration, nor, was the same, in the facts and circumstances of the present case, a bar to the issuance of a show cause notice to the petitioners, requiring them to show cause as to why the said property be not acquired under Section 14 of the Slum Act. Mr. Bharucha, pointed out that ultimately the petitions, in which, the stay order had been made were dismissed and such dismissal was upheld by the Division Bench as well as the Hon'ble Supreme Court. In such circumstances, the respondents are entitled to be placed in the same position in which they were, before, the stay order was made. In this regard, the learned counsel placed reliance upon the decision of the Supreme Court in the case of *Kanoria Chemicals and Industries Ltd. & Ors. vs. U. P. State Electricity Board & Ors.*³

10] Mr. Bharucha and Mr. Mishra, further submitted that the material on record amply bears out that several opportunities were afforded to the petitioner to take steps to either improve the slum area or to redevelop the same. However, the petitioners failed to avail any such opportunities. In these circumstances, it was

3 (1997) 5 SCC 772

contended that at least the petitioners cannot complain about the alleged non compliance with the provisions contained in Sections 5, 11, 12(7) and 13 of the Slum Act, in the matter of any preferential right to either improve or redevelop the slum area. Finally, the learned counsel for the respondents submitted that the acquisition is by no means vitiated by any malafides or colourable exercise of power and therefore, the decisions upon which reliance has been placed by Mr. Sathe, are inapplicable to the facts and circumstances of the present case.

11] Rival contentions now fall for determination.

12] In so far as Mr. Sathe's first contention is concerned, reference, will be appropriate to the provisions contained in Section 14 of the Slum Act, which *inter alia* provide that where on any representation from the Competent Authority, it appears to the State Government that, in order to enable the Authority to execute any work of improvement or to redevelop any slum area or any structures in such area, it is necessary that such area, or any land within adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the official gazette, a notice to the effect that the State Government has decided to acquire the land in pursuance of the

section. Provided that, before publishing such notice, the State Government or as the case may be, the Competent Authority may call upon by notice, the owner of, or any other person who, in its or his opinion may be interested in, such land to show cause in writing why the land should not be acquired with reasons therefor, to the Competent Authority within the period specified in the notice, and the Competent Authority shall, with all reasonable despatch, forward any objection so submitted together with his report in respect thereof to the State Government and on considering the report and the objections, if any, the State Government may pass such order as it deems fit. Sub Section (1A) of Section 14 provides that acquisition of land for any purpose mentioned in sub section (1) of Section 14 shall be deemed to be a public purpose. Sub section (2) of Section 14 provides that the notice as aforesaid is published in the official gazette, the land shall, on and from the date of which the notice is so published vest absolutely in the State Government free from all encumbrances.

13] In the present case, there is no dispute that the said property was declared as '*slum area*' by notification dated 20 August 1997. Mr. Sathe however contends that such declaration was '*stayed*' by this Court by its interim order dated 15 June 1998 made in writ petition no. 851 of 1998. On this basis, Mr. Sathe contends that the

very initiation of acquisition proceedings under Section 14(1) of the Slum Act, was clearly *ultra vires* and therefore, the Impugned Notification dated 31 May 2006 made by the State Government, in pursuance of show cause notice dated 3 July 1998, is a nullity and has no existence in the eyes of law. There are several reasons as to why this contention of Mr. Sathe cannot be accepted.

14] In the first place, it is to be noted that Section 14(1) of the Slum Act only requires that the acquisition is in respect of the property, which is declared as '*slum area*' under Section 4 of the Slum Act. The acquisition, in the present case, has been effected vide the impugned notification dated 31 May 2006 and the award made in pursuance thereof. As on the date when the impugned notification dated 31 May 2006 came to be issued, there is no doubt that the said property was a '*slum area*' under Section 4 of the Slum Act. By the said date, writ petition no. 851 of 1998 instituted by the petitioners had already been dismissed and such dismissal had also attained finality in view of the dismissal of appeal by the Division Bench and the dismissal of Special Leave Petition by the Hon'ble Supreme Court. During operation of the interim order, only a show cause notice was issued to the Petitioners, requiring them to show cause as to why said property be not acquired by resort to Section 14 of the Slum Act. In the light of the Petitioners response,

the concerned Respondents did not take any further steps in the matter or proceed with the acquisition of the said property under Section 14 of the Slum Act. It is only after Writ Petition No. 851 of 1998 was finally dismissed and the interim order made therein, vacated, that steps were taken for acquisition of the said property. There is really no dispute that the ultimate acquisition of the said property was effected, when there was no doubt whatsoever as to the status of the said property being '*slum area*' in terms of Section 4 of the Slum Act. Accordingly, there is no jurisdictional infirmity in the making of Impugned Notification.

15] Secondly, there is a qualitative difference between '*setting aside*' of the slum declaration dated 20 August 1997 and any grant of '*stay*' upon the operation of such declaration. The mere grant of any '*stay*' upon the operation of declaration, does not wipe out the very existence of such statutory declaration made under Section 4 of the Slum Act. The grant of '*stay*', at the highest implies that the declaration may not be operative from the date of making of the impugned order. However, this is far cry from suggesting that the declaration stands wiped out from existence. In case of *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI CINOD Secretariat, Madras*⁴, the Supreme Court has held that while considering the effect of an interim order staying the operation

4 (1992) 3 SCC 1

of the order under challenge, a distinction has to be made between quashing of the impugned order and stay of operation of an order. Quashing of an order results in restoration of position as it stood on the date of the passing of the order, which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. This position has been reiterated by the Supreme Court in case of *Kanoria Chemicals (supra)*.

16] Thirdly, in the present case, writ petition no. 851 of 1998, in which, the Petitioners had obtained the interim order, has since been dismissed and the interim order vacated. In the case of *Amarjeet Singh & Ors. vs. Devi Ratan & Ors.*⁵, the Hon'ble Apex Court has held that no litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim orders stand nullified automatically. A party cannot be allowed to take any advantage of its own wrongs by getting an interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus*

5 (2010) 1 SCC 417

curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court.

17] In the case of *Kanoria Chemicals (supra)*, the contention similar to the one raised by Mr. Sathe came to be rejected. In the said case, the Uttar Pradesh State Electricity Board (UPSEB) by Notification dated 21 April 1990 revised electricity rates/tariffs under Section 49 of the Electricity (Supply) Act, 1948. The Notification, *inter alia*, provided for payment of interests in case the bill amount is not paid within the specified period. In writ petitions questioning the validity of the Notification, an interim order staying the effect of Notification dated 21 April 1990 was made by the Allahabad High Court to operate during pendency of such writ petitions. The writ petitions were ultimately dismissed on 1 March 1992. Thereupon, the Petitioner-consumer paid the difference amount between pre-revised and revised electricity rates, but declined to pay the late payment surcharge in terms of clause 7(b) of the Notification dated

21 April 1990, *inter alia*, on the ground that the entire Notification dated 21 April 1990, including clause 7(b) thereof, which dealt with late payment surcharge, had been stayed by the Court, during pendency of the writ petitions. The UPSEB, however, raised demands for late payment surcharge and several petitions were once again filed by the consumers, resisting such demands. The Allahabad High Court dismissed the petitions and the consumers, appealed to the Supreme Court. The question before the Supreme Court, *inter alia*, revolved around the effect of 'stay order' issued by the Allahabad High Court during pendency of petitions questioning the Notification dated 21 April 1990 and clause 7(b) thereof, dealing with late payment surcharge.

18] The Supreme Court, explained and distinguished its earlier decision in case of *Adoni Ginning Factory Vs. Secretary, A.P. Electricity Board*⁶, and cautioned against reading the said decision as having laid down any proposition that the grant of a stay of Notification revising the electricity charges, has the effect of relieving the consumers of their obligation to pay late payment surcharge/interest upon the amount withheld by them, even after, their petitions are dismissed ultimately. The Supreme Court observed that holding otherwise, would mean that even though the electricity board, which was the Respondent in writ petitions

6 (1979) 4 SCC 560

succeeded therein, is yet deprived of late payment surcharge, which was due and payable under the Notification. This would be a case where the Board would suffer prejudice on account of the orders of the Court and for no fault on the part of the Board. The Board, would then, succeed in writ petitions and yet loose in the matter of recovery of late payment surcharge. The Supreme Court, in terms held that such construction would neither be legal nor equitable.

19] The Supreme Court, in paragraph '11' of *Kanoria Chemicals* (*supra*) has observed thus:

11. *The learned counsel for the appellants in the appeals before us rely upon the portions underlined in the above passage as a decision supporting their contention that where the operation of government order is stayed, no surcharge can be demanded upon the amount withheld. We find it difficult to agree. In our respectful opinion, the underlined portions do not constitute the decision of the court. They merely refer to the fact that the Board itself did not make a demand for surcharge amount in respect of the period covered by the stay under its own understanding of the effect of the stay order granted by the High Court and that it was justified in its opinion. The demand was, the Court pointed out, in respect of the period covered by the order of injunction granted by this Court. This Court held expressly that the grant of an injunction does not relieve the consumers of their obligation to pay the charges at the enhanced rates and, therefore, the demand for surcharge/interest for such period is not illegal. The portions underlined cannot be understood as laying down the proposition that in respect of the period covered by the stay, no demand can be made. No such proposition can be deduced from the said passage for the reason that the liability for the said (sic period) was not at all in issue in the said decision. Unless put in issue and pronounced upon, it cannot be said that there was a decision on the said issue. There was no lis between the parties with respect to the period covered by the stay order of the High Court. If so, it cannot be said that any decision was rendered*

by this Court on the said issue or aspect, as it may be called. We, therefore, agree with the High Court that Adoni Ginning¹ cannot be read as laying down the proposition that the grant of stay of a notification revising the electricity charges has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them even when their writ petitions are dismissed ultimately. Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply — which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law. No such proposition flows from Adoni Ginning¹. It is a matter of common knowledge that several petitioners (their counsel) word the stay petition differently. One petitioner may ask for injunction, another may ask for stay of demand notice, the third one may ask for stay of collection of the amount demanded and the fourth one may ask for the stay of the very notification. Such distinctions are bound to occur where a large number of writ petitions are filed challenging the same notification. The interim orders made by the Court may also vary in their phraseology in such a situation. Take this very case: While the consumers had asked for stay of operation of the government order revising the rates, those very consumers asked for an injunction when they came to the Supreme Court. Furthermore, as pointed out rightly by the High Court, the orders of stay granted by the High Court in writ petitions questioning the validity of the Notification dated 21-4-1990 were not uniform. In the case of writ petition filed by the Eastern U.P. Chamber of Commerce and Industry, Allahabad, the operation of the notification was stayed while in the case of the writ petition filed by the Employers' Association of Northern India, it was directed that "effect shall not be given to the Notification dated 21st April, 1990 as against the petitioner", while clarifying at the same time that

“in the event of failure of the writ petition, the petitioner shall deposit with the relevant authority within a period of one month from the date of dismissal of the writ petition the difference between the amount of electricity dues to be paid hereinafter by the petitioners under our orders and the sum which may be calculated on the basis of the impugned notification”. The words “sum which may be calculated on the basis of the impugned notification” in the later order clearly mean and include the late payment surcharge as well. The acceptance of the appellants’ argument would thus bring about a discrimination between a petitioner and a petitioner just because of the variation of the language employed by the court while granting the interim order though in substance and in all relevant aspects, they are similarly situated. It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification — the operation of which was stayed.

(emphasis supplied)

20] In the case of *Indian Council for Enviro-Legal Action vs. Union of India & Ors.*⁷, the Hon'ble Apex Court has held that it is bounden duty and obligation of the court to neutralise any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction

⁷ (2011) 8 SCC 161

of the court. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party. The stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risk and costs of the party obtaining the stay. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Any leniency would seriously affect the credibility of the judicial system. Unscrupulous litigants must be prevented from taking undue advantage by invoking jurisdiction of the court. No litigant can derive benefit from the mere pendency of a case in a court of law. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

21] In case of *Ram Krishna Verma vs. State of U.P.*⁸, the Hon'ble Supreme Court examined the issue while placing reliance upon its earlier judgment in [*Grindlays Bank Limited v. ITO*](#)-AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the

8 (1992) 2 SCC 620

interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. A similar view has been reiterated by this Court in *Mahadeo S. Shelke v. Pune Municipal Corpn.*- (1995) 3 SCC 33.

22] In case of *South Eastern Coalfields Ltd. Vs. State of M.P.*⁹, the Hon'ble Supreme Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably

9 (2003) 8 SCC 648

commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.

23] In the aforesaid decision of *South Eastern Coalfields Ltd.* (*supra*), the Hon'ble Supreme Court at paragraph 28 observed thus:

"28.Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the Court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated....."

24] The aforesaid judgments are passed on the application legal maxim *sublato fundamento, cadit opus*, which means in case a foundation is removed, the superstructure falls.

25] In case of *Badrinath v. State of T.N.*¹⁰, the Hon'ble Supreme Court has held that it is settled legal proposition that the forum of writ court cannot be used for the purpose of giving interim relief as the only and the final relief to any litigant. It is not permissible for a party to file a writ petition, obtain certain orders during the pendency of the petition and withdraw the same without getting proper

¹⁰ (2000) 8 SCC 395

adjudication of the issue involved therein and insist that the benefits of the interim orders or consequential orders passed in pursuance of the interim order passed by the writ court would continue. The benefit of the interim relief automatically gets withdrawn/neutralized on withdrawal of the said petition. In such a case concept of restitution becomes applicable otherwise the party would continue to get benefit of the interim order even after losing the case in the court. The court should also pass order expressly neutralizing the effect of all consequential orders passed in pursuance of the interim order passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits. ([*Vide Abhimanyoo Ram v. State of U.P.*- \(2008\) 17 SCC 73](#))).

26] In this petition, we are not required to apply the above noted principles strictly. We rest our conclusion only on the broad principle that an interim order of stay in the present case does not wipe out the declaration of the subject property as slum. If that is the legal position then, the Petitioner derives no benefit or advantage from the same.

27] In the fact situation with which we are concerned, to permit the Petitioners to build any argument on the basis of interim order dated 15 June 1998 in writ petition no. 851 of 1998, would virtually amount to permitting the Petitioners to take undue advantage of the interim order obtained by them, even though, the writ petition in which the same was obtained has been ultimately dismissed. As observed in the case of *Kanoria Chemicals (supra)* and several other decisions referred to above, this would be neither permissible, nor equitable. The Respondents, who have succeeded in Writ Petition No. 851 of 1998, cannot, despite such success, have their acquisition voided, merely because show cause notice dated 3 July 1998, requiring the Petitioners to show cause as to why the said property be not acquired, was issued when the interim order dated 15 June 1998 staying the operation of 20 August 1997 declaring the said property as 'slum area' was in operation. Admittedly, in the present case, by the time the Impugned Notification dated 31 May 2006 was issued, there was no controversy whatsoever, that the said property was "slum area" in terms of Section 4 of the Slum Act. There is accordingly, no legal infirmity in the issuance of Impugned Notification dated 31 May 2006.

28] Mr. Sathe's second and third contentions are interconnected and therefore, are disposed of together. There is no dispute in the

present case that there was no Notification as contemplated by Section 3-C of Slum Act issued by the Chief Executive officer of the Slum Rehabilitation Authority. Therefore, Mr. Sathe may be right in his submission that the provisions of specified Chapters of the Slum Act, as modified in terms of Section 3-D of the Slum Act might not apply to the said property. Section 3-B of the Slum Act empowers the State Government or the Slum Rehabilitation Authority (SRA) concerned with the previous sanction of the State Government, to prepare a general Slum Rehabilitation Scheme for areas specified under sub-section (1) of Section 3-A for Rehabilitation of slums and hutment colonies in such area. The said property, in the present case, is undoubtedly, a property situated in the area specified under Section 3-A of the Slum Act and further, even a general Slum Rehabilitation Scheme, as contemplated by Section 3-B of the Slum Act is in place. However, Section 3-D of the Slum Act provides that on publication of Slum Rehabilitation Scheme under sub-section (1) of Section 3-B, the provisions of other Chapters of Slum Act shall apply to any area declared as the slum rehabilitation area, subject to certain modifications. Since, the said property has not been declared as '*Slum Rehabilitation Area*' , Mr. Sathe is right in his contention that the provisions of other Chapters of Slum Act, will apply to the said property, in their original and not modified form. The question which therefore arises for determination is whether

the compliance with the provisions contained in Sections, 5, 11, 12 (7) and 13 of the Slum Act is necessary prior to exercise of powers of acquisition under Section 14 of the Slum Act and further, whether in the facts and circumstances of the present case, there has been any such compliance.

29] Mr. Sathe, has placed reliance upon the decision of the learned Single Judge of this court in case of *Ramkali Kushawaha (supra)*, to contend that the powers of acquisition under Section 14 of the Slum Act, can never be exercised without prior compliance with the provisions contained in Sections 5, 11, 12 (7) and 13 of the Slum Act, which, in terms, confer a preferential right upon the land owner to either improve the slum area or to redevelop the same himself. Mr. Sathe pointed out that the decision in case of *Ramkali Kushawaha (Kachhi) (supra)*, was confirmed in Appeal No. 324 of 2004 decided on 14 February 2011 and even, the Special Leave Petition against the same was dismissed on 27 July 2012.

30] Upon careful consideration of the decision in the case of *Ramkali Kushawaha (supra)*, we are not sure if the same is indeed an authority for the proposition which Mr. Sathe has canvassed. However, even if we proceed on the basis that *Ramkali Kushawaha (supra)* is an authority for the proposition that a landowner has any

preferential right to either improve or redevelop the slum area, before the powers of acquisition under Section 14 of the Slum Act can be put into motion, in the facts and circumstances of the present case, we are satisfied that there is overwhelming material, which establishes that the Petitioners in the present case were offered more than ample opportunities for either improving the slum area or to redevelop the same, before the Impugned Notification dated 31 May 2006 under Section 14 of the Slum Act came to be issued. There is accordingly, no legal infirmity in the Impugned Notification dated 31 May 2006.

31] In the aforesaid regard, reference is first required to be made to the provisions contained in Section 4 of the Slum Act, which empowers the competent authority to declare any property or area as '*slum area*', where it is satisfied that such area is source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise. Such power can also be exercised where the buildings in any area, used or intended to be used for human habitation are in any respect, unfit for human habitation, or by reasons of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light of sanitation facilities or any

combination of these factors, detrimental to the health, safety or convenience of the public of that area. Before, declaring any area as '*slum area*', the competent authority, is also required to have regard to the condition of the buildings, repairs, stability, freedom from damp, natural light and air provision for water-supply, provision for drainage and sanitary convenience, facilities for the disposal of waste water and such other parameters set out in Section 4(2) of the Slum Act.

32] The Section 5 of the Slum Act empowers the competent authority, to call upon the owner or mortgagees of the property in slum areas, which are capable of being improved to submit their objections and suggestions, in the matter of executing of works of improvements by the competent authority. Section 11 of the Slum Act, empowers the competent authority to declare slum area as '*slum clearance area*' and thereafter make a clearance order under Section 12 of the Slum Act. Section 13 of the Slum Act, empowers the competent authority to itself redevelop the clearance area, if the authority is satisfied that it is necessary in the public interests to do so. This has to be preceded by reasonable opportunity to the owner. In the present case, as noted earlier, there is ample material on record, which suggests that the Petitioners were afforded more than ample opportunities to undertake execution of works for

improvement as also redevelopment of the said property, before the exercise of powers of acquisition under Section 14(1) of the Slum Act. Therefore, even if we are to proceed on the basis that the landowner is required to be called upon to execute works of improvement or be offered opportunity to redevelop the slum areas, before such slum areas can be acquired by resort to the provisions contained in Section 14 of the Slum Act, in the facts and circumstances of the present case, there is ample material on record to establish that such opportunities were time and again offered to the Petitioners, who have failed to avail the same. In such circumstances, the Petitioners, can hardly complain regards alleged non-compliance with the provisions contained in Sections 5, 11, 12(7) and 13 of the Slum Act.

33] In the present case, the competent authority upon record of satisfaction that the said property indeed complied with the parameters requisite for its being declared as a '*slum area*', made the statutory declaration under Section 4 of the Slum Act on 20 August 1997. The Petitioners' appeal against the same was dismissed by the Slum Tribunal on 12 December 1997. The Petitioners' writ petition no. 851 of 1998 was dismissed by the learned Single Judge of this Court on 17 April 2001. The appeal against the same was dismissed by the Division Bench on 31 July

2001. Finally, even the Supreme Court, dismissed the Petitioners' special leave petition on 15 July 2002. From all this, it is quite clear that the Petitioners, who claim to be owners of the said property, had permitted the said property and the structures therein to deteriorate to such an extent that the competent authority, had no realistic option, other than to declare the said property as a slum area under Section 4 of the said Act. The material on record indicates that from time to time opportunities were afforded to the Petitioners to improve the conditions in the said property or even to undertake redevelopment therein, but the Petitioners availed neither.

34] The Slum Tribunal, in its judgment and order dated 12 December 1997, whilst dismissing the Petitioners' appeal no. 87 of 1997, questioning slum declaration dated 20 August 1997 has recorded findings that the said property comprised about six chawls having about 339 occupants. The structures, the rooms and the roofs in particular were decayed and in dilapidated conditions. There is reference to about eight W.Cs., out of which almost five were rendered unusable. Two W.Cs. had no doors and three were over flooded with human excreta. There were no septic tanks and the waste was drained in open nallaha, which itself, was over flowing with filth and constituted health hazard. The entire area

emitted foul smell and pollution was writ large. The internal roads were narrow and not properly maintained. There were no street lights. The height of the structures, denied its occupants natural light. In short, there were no basic amenities, the conditions were insanitary, squalid, overcrowded. There was no proper ventilation, there was foul smell and pollution, the conditions constituted serious health hazards and the area was unfit for human habitation. Despite all this, the Slum Tribunal has recorded that the tenants/occupants of the structures had expressed willingness to having the said property redeveloped by the Petitioners themselves and had even assured cooperation for such purpose. The Slum Tribunal, went to the extent of itself granting the Petitioners opportunity to take appropriate steps to develop the property under the Slum Rehabilitation Schemes before any action is taken to acquire the said property by resort to the provisions contained in Section 14 of the Slum Act. The observations in paragraphs 22 and the operative portion of the judgment and order dated 12 December 1997, made by the Slum Tribunal, would bear out this position. They read thus :

22. However, to give chance to the Appellant landlord to take appropriate steps to develop the property one one or other scheme . I therefore, hereby permit the Appellant to take steps to develop the said plot No. 165, 165/1 to 51 of Village Kanjur by adopting any steps towards development of the plot within 3 months from the date of order, failing which, the competent authority should take steps to initiate proceedings under sec.14(c) of the said Slum Act and permit

the occupiers of the Co-op. Housing Society, i.e., Mata Vaishnodevi Co-op. Housing Society, to develop the said plot in accordance with the schemes to which they are bound.

23. *In the premises, I therefore, pass the following order:*

“ Declaration of slum of property bearing C.T.S. No. 165/65- 1 to 51 declared as Slum by Notification No. ENC/DCK/I/WS/168/SR-200 OF 1997 dated 20.8.1997 published in the Maharashtra Government Gazette on 21.8.1997 is hereby confirmed.

Ad-interim stay granted is hereby vacated.

Appellant be permitted to adopt any of the Scheme for re-development within a period of there months from to date of order, failing which the Competent Authority should adopt proceedings under Sec. 14(1) of the Maharashtra Slum Area (I.C. & R.) Act, 1971 and thereafter, hand over the plot for development to Mata Vaishnodevi Co-op. Housing Society to develop the said plot in accordance with law.

However, I propose no order as to cost.

Appeal dismissed.

(emphasis supplied)

35] Similarly, even in the writ petition no. 851 of 1998 instituted by the Petitioners questioning, *inter alia*, the aforesaid judgment and order dated 12 December 1997 made by the Slum Tribunal, a Court Commissioner was appointed to inspect the said property and make a report about the condition of the said property, particularly with regard to the amenities like W.C.s, water supply, electricity connection etc. The Commissioner, has made his report, which more or less, is in consonance with the reports taken into consideration by the Slum Tribunal in its judgment and order dated 12 December 1997.

36] The learned Single Judge of this Court, by judgment and order dated 17 April 2001, has upheld the judgment and order dated 12 December 1997 made by the Slum Tribunal and consequently, the declaration dated 20 August 1997. The learned Single Judge of this Court has noted that there was due compliance with principles of natural justice and fair play before the slum declaration dated 20 August 1997 was made. Besides, there is record that on two occasions earlier, there were attempts to declare the said property as '*slum area*' under Section 4 of the Slum Act. However, the attempts were frustrated on some technical grounds. The learned Single Judge has observed that from the defects pointed out, it was quite clear that there was absolutely no improvement of any nature undertaken by the Petitioners to improve the condition of the said property and the structures therein, so as to render the same habitable. The learned Single Judge specifically rejected the Petitioners' contention that there were no specific notices issued to the Petitioners to remedy the defects or the conditions by observing that on two occasions earlier, the show cause notices had been issued to the Petitioners; reports were prepared in presence of the Petitioners ; accordingly, there was no necessity of sending them special notice to make good the defects. The learned Single Judge has observed that the Petitioners never made any efforts to provide basic human needs for reasonable habitable condition and despite

being made fully aware of the conditions and they did not set right the defects and the conditions. The learned Single Judge, in this context, has observed that “*he had more than ample opportunity to take every necessary steps to provide for basic amenities to avoid third time the action by the authorities*”. With all such observations, the Petitioners' writ petition no. 851 of 1998 was dismissed.

37] The Petitioners, carried the matter in Appeal No. 413 of 2001, which was dismissed by the Division Bench of this Court on 31 July 2001. Before the Division Bench, the Petitioners had specifically questioned the Slum Tribunal's order dated 12 December 1997, by which, it had *inter alia*, permitted the authorities to take action under only Section 14 of the Slum Act for acquisition of the said property, in case, the Petitioners fail to avail the offer to rectify the condition or redevelopment the said property. Even the Division Bench, made enquiries with the learned counsel appearing for the Petitioners, as to whether the Petitioners were prepared to undertake redevelopment and if so, to submit proposals in that regard. The Division Bench has however, noted that the Petitioners had no scheme ready and were unable to furnish any proposals. In this regard, reference is necessary to the observation in paragraph '6' of the judgment and order of the Division Bench made on 31 July 2001 :

6. The learned Advocate for the appellants next submitted that the Tribunal has exceeded its jurisdiction while passing the final order dated 12.12.97. He submitted that there could have been no order passed under Section 14(1) of the Maharashtra Slum Areas (I.C. & R.) Act, 1971 without notice to the appellants, We find that there is no substance in this submission. It is based on wrong reading of the order. The Tribunal has confirmed the declaration of slum but permitted the appellants to adopt any fo the schemes for redevelopment within a period of three months from the date of order. In case the appellants fail, then it was stated that the Competent Authority should adopt the proceedings under Section 14(1) of the said Act and thereafter hand over the plot for development to Mata Vaishnodevi Co-op. Housing Society to develop the said plot in accordance with law. Therefore, proceedings are to be adopted on failure of the appellants and thereafter plot is to be handed over to the Co-operative Society of the tenants. It is not an order under Section 14(1). When we made enquiry, the learned counsel for the appellants stated that there is no such scheme ready with the appellants even today giving details how the redevelopment would be carried out, plan of an architect and the amount required for the same.

(emphasis supplied)

38] From the aforesaid, including in particular portion to which emphasis is supplied, it is quite clear that the Petitioners were afforded more than ample opportunities to either rectify the conditions at the site or to themselves carry out redevelopment under the SRA scheme, but the Petitioners were unprepared to do so. In a light of such overwhelming material on record, the Petitioners, can hardly complain about any lack of opportunity to execute works of improvement or to carry out redevelopment in the said property themselves. Time and again, the Petitioners were issued show cause notices as to why said area be not declared as

'slum area' . Time and again, opportunities were granted to the Petitioners to execute works of improvement. Time and again, opportunity was granted to the Petitioners to undertake redevelopment as per the available SRA scheme. The Slum Tribunal, specifically offered the Petitioners such opportunity and deferred action under Section 14 of the Slum Act, only in the event, the Petitioners fail to avail of such offer. Similar opportunities was also offered at the stage of disposal of Petitioners' appeal by the Division Bench. All this was prior to the acquisition of the said property by resort to the provisions contained in Section 14 of the Slum Act. In the facts and circumstances as borne out from the record therefore, the Petitioners are not justified in contending that the Impugned Notification dated 31 May 2006 is in excess of jurisdiction or legally infirm for any alleged non-compliance with the provisions contained in Sections 5, 11, 12 (7) and 13 of the Slum Act.

39] Insofar as Mr.Sathe's contention based on *malafides* is concerned, it is to be noted that there are hardly any pleadings on this aspect in the petition. It is settled position is law that vague and casual allegations suggesting that a particular action was taken with an ulterior motive cannot be accepted without proper pleadings and sufficient proof. A bald assertion, in the course of arguments that the

acquisition was made to favour some party, is hardly sufficient even to investigate into the allegation of *malafides*. In the absence of proper pleadings and proper material in support thereof, it is not possible to embark upon a roving enquiry into the matter. The allegation of *malafides* are normally, easy to make rather than make out. Further, even the burden of proving *malafides* is upon the person making the allegations and such burden, is generally quite heavy. Neither express nor implied malice can be inferred or assumed in such matters. In case of ***Gulam Mustafa Vs. State of Maharashtra***¹¹, the Supreme Court, speaking through Krishna Iyer, J. , in the context of allegation of *malafides* has observed that “*it is the last refuge of a losing litigant*”.

40] The fact situation in case of *Royal Orchid Hotels Limited (supra)* offers no parallel to the fact situation in the present case. There are neither any pleadings nor is there any material in support of the contentions that the acquisition is vitiated by the *malafides* or that the entire exercise was fraudulent or was undertaken to deprive the Petitioners of their constitutional rights to the property. As noticed earlier, from time to time opportunities were granted to the Petitioners to execute works of improvement in or upon the said property or to undertake redevelopment as per the SRA Schemes. It is only after the Petitioners failed to opt for either, statutory powers under Section 14 of the Slum Act came to be exercised.

11 (1976) 1 SCC 800

Accordingly, there is no merit in the vague and unsubstantiated allegations of *malafides*.

41] For all the aforesaid reasons, this petition is dismissed. Rule is discharged. Interim orders stand vacated. There shall however, be no order as to costs.

[M. S. SONAK, J.]

[S.C. DHARMADHIKARI, J.]

42] At this stage Mr. Datar appearing for the Petitioners prays that there is an interim order operating in this Petition which should be continued for a further period of three months so as to enable the Petitioners to consider the position and if necessary, approach the higher Court.

43] This request is opposed by the counsel appearing for other side, particularly those awaiting fruits of some development and rehabilitation.

44] Having found that the statutory prescription is of publication in the official gazette a notice within the meaning of sub-section (1) of section 14 and from such publication, the vesting and absolutely in the State free from all encumbrances takes place. If that publication has taken place, we do not think that the request of Mr. Datar can be accepted. The request is refused.

[M. S. SONAK, J.]

[S.C. DHARMADHIKARI, J.]