

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

WRIT PETITION NO. 1781 OF 2015

Vinoo Khetsey Momaya	}	Petitioner
versus		
Slum Rehabilitation Authority	}	
and Ors.	}	Respondents

Mr. Venkatesh Dhond - Senior Advocate
with Mr. Vishal Kanade i/b. Mr. Vinay S.
Bandiwadekar for the Petitioner.

Mr. Rishikesh Soni with Mr. Tejas
Gokhale i/b. M/s. Ashok Purohit and Co.
for Respondent No. 1.

Mr. Milind More - Additional Government
Pleader for Respondent Nos. 2 and 5.

Mr. S. G. Surana i/b. Mr. Madhur S.
Surana for Respondent No. 3.

Mr. Pravin Samdani i/b. Mr. C. N. Gole for
Respondent No. 4.

**CORAM :- S. C. DHARMADHIKARI &
M. S. SONAK, JJ.**

DATED :- FEBRUARY 12, 2016

P.C. :-

The Petitioner is challenging a communication dated
11th May, 2015, copy of which is annexed to the Writ Petition.
That, according to the Petitioner, goes contrary to the State's own
policy as also the original acquisition proceedings.

2) The Petitioner does not dispute that 4998.60 square meters, which is a part of the larger property situated and more particularly described in para 3 of the Petition was notified for acquisition under section 14 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

3) In paras 10, 11 and 12 of the Writ Petition, the details of the acquisition proceedings and particularly the notice under section 14 are set out. It is conceded that the Government took possession of the acquired land.

4) It is stated that within 4998.60 square meters land there are structures admeasuring only 3213.35 square meters and open plot of land is admeasuring 1786.25 square meters. This open plot did not have any structures thereon. This is a situation according to the Petitioner on the date of filing of the Petition. The remaining part of the larger property admeasuring 2059.1 square meters is with the Petitioner and is earmarked for development plan reservation of a recreation ground. An award has also been made and even compensation pursuant to the same was payable to the Petitioner. The Petitioner may not have accepted the compensation amount, but the argument is that after all these acquisition proceedings concluded by the award dated 4th February, 1997, recently, the Petitioner noticed that the

Respondents are, in the garb of a Slum Rehabilitation Scheme, usurping the open plot of land. That is how the Petitioner refers to the documents in para 16 onwards to the Writ Petition.

5) The Petitioner also questions the Letter of Intent in favour of a Developer and issued at the instance of the Respondent No. 3 Society.

6) The allegations are that now the open plot would also be taken as a part of the scheme or project and the FSI thereof would be wrongfully and illegally utilised.

7) Though Mr. Dhond, learned Senior Counsel appearing for the Petitioner sought to raise diverse contentions on this alleged usurpation, we inquired at the threshold from Mr. Dhond as to how the Petitioner has any right in the property and how a Writ Petition can be entertained at the instance of the Petitioner.

8) Admittedly, the Petitioner did not question the acquisition proceedings. They have gained finality in the year 1997. The Petitioner has been divested of his right, title and interest in the land some decades back. In the garb of the land being valuable and situated in a city like Mumbai so also noticing some development and construction thereon that the Petitioner has moved this Court. However, we have not been shown any

statutory or legal right which the Petitioner can claim and particularly of a restoration of land back to him, which stands acquired and duly vested in the State. That on account of it is the part of land being encroached, the State is utilising it and the alleged open portion for implementation of a Slum Rehabilitation Scheme does not entitle the Petitioner to move the present Petition and seek a Writ of Mandamus as is claimed in terms of prayer clause (a)

9) Once the Petitioner seeks the declaration in terms of prayer clauses (a) and (b) and a Mandamus in terms of prayer clauses (c) and (d), then, he must establish a legal right. For, Mandamus cannot be issued de hors such right. Once the Petitioner fails to establish such right, then, we cannot assist him in Writ Jurisdiction, which is equitable and discretionary. The Writ Petition is devoid of merits and is dismissed.

(M.S.SONAK, J.)

(S.C.DHARMADHIKARI, J.)