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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2326 OF 2012**

Naeem Allauddin Merchant ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Mohammed Wasim Qureshi, with Mr. Jaydeep Raut, i/b Mr. Vinod Naik, *for the Petitioner.*
Mr. Milind More, AGP, *for Respondent Nos. 1 and 2.*
Mr. Vijay Patil, *for Respondent No. 3-SRA.*
Mr. S.G. Surana, *for Respondent No. 4.*
Mr. Milind Sathe, Senior Advocate, with Mr. Chirag Shah, i/b Mr. Jitendra J. Shah, *for Respondent No. 5.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**
DATED: 24th February 2016

PC:-

1. By this Petition under Article 226 of the Constitution of India, the Petitioner has challenged an order dated 5th September 2012, a copy of which is at Annexure "S" to the Petition.
2. By this order, the Petitioner's application, styled as Miscellaneous Application No. 4 of 2012 has been dismissed by the President of the Slum Tribunal.

3. The Petitioner states that the President's reasoning in the impugned order is strange and untenable for several reasons and grounds. Firstly, upon an application which was styled as one seeking condonation of delay, the learned President held that sufficient cause is shown for the delay and it could be condoned. But at the same time he dismissed this application concluding that the Applicant-Petitioner cannot challenge any proceeding much less that of acquisition in law as the land has already been notified for acquisition in terms of Section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971 ("**Slum Act**") and possession of the same has been taken. It vested in the Government free from all encumbrances. For these reasons, even if the delay was condoned, the Applicant-Petitioner could not challenge, especially at this belated stage, the declaration of the property and its notification as a slum.

4. The Petitioner upon such a challenge contends in the Writ Petition that there are certain immovable properties, more particularly described at Annexure "A". The 3rd Respondent is the Authority notified as such under the Slum Act. Respondent No. 4 claims to be a cooperative housing society and the 5th Respondent claims to have been appointed as a Developer for developing the plot of land which is subject matter of this Petition, as also certain neighbouring plots. Respondent Nos. 6 to 9 are stated to be the legal heirs of the deceased owner of the plot of land and they are joined as formal parties whereas Respondent Nos. 10 to 16 are the tenants of the Petitioner who were lawful occupants of the said plot of land.

5. From paragraph 2 of the Petition, it is stated that one Mr. Abdul Mohomed Alibhoy and Late Jenabai, widow of Alibhoy were the lessees/assignees and, therefore, lawful owners of several immovable properties, including the plot of land which is the subject matter of this Petition, by virtue of a registered Lease Deed. Then, a Will of Late Jenabai is referred and in which there is a bequest of 50% of her share, which includes the subject plot of land, in favour of the Petitioner. Jenabai died on 15th June 1993 and her only heirs are those, according to the Petitioner, whose names are set out in paragraph 3.

6. The Petitioner projects himself as the lawful heir and owner of all properties left behind by Late Jenabai, and has filed a Suit in order to protect the properties belonging to Late Jenabai. If that Suit is pending, then certainly the Petitioner ought to be aware of all the steps taken resulting in acquisition of the land in question by the State. He refers in paragraph 5 to all the notifications declaring the properties as a slum and thereafter notifying them for acquisition. He also refers to the Award made pursuant to such acquisition on 6th September 2007.

7. The Petitioner then claims that he was unaware of any developer being brought in by the Cooperative Housing Society and the Slum Rehabilitation Authority resulting in eviction notices issued to Respondent Nos. 10 to 16. It is then, the Petitioner claims, that he became aware of the redevelopment project and the prior steps of the declaration of the land in question as a slum area.

8. That is how the Petitioner moved the Slum Tribunal by filing an application seeking to condone the delay in filing a substantive Appeal to challenge the declaration dated 12th August 2004 of the subject property as a slum.

9. It is that application which was moved before the Slum Tribunal and the President having dismissed it, what the Petitioner seeks to demonstrate to this Court as if it is a *prima facie* case in his favour that there is an eviction order which may result in his own eviction from the subject property, projecting thus what the Petitioner was indeed protecting was the occupation and possession of persons claiming through him, viz., Respondent Nos. 10 to 16. They are stated to be his lawful tenants.

10. After the Petition was heard for some time and all the dates and events as are undisputed were gathered from the Affidavit in Reply of the State and were put to the Petitioner's Advocate, he could not satisfy us as to how a Writ Petition under Article 226 of the Constitution of India at the instance of the present Petitioner is maintainable.

11. The Petitioner's Advocate would have no answer to the queries raised simply because the eviction was of certain occupants who are not Petitioners. They are Respondent Nos. 10 to 16. They claim to be the lawful tenants of the Petitioner. It is evident that when the property was notified for acquisition and all steps were taken ending in possession of the land and vesting with the State, the Petitioner's ownership rights, if any, cannot survive in law any longer. Once those ownership rights of the Petitioner do not

survive, we do not see how any tenancy allegedly created by the Petitioner in favour of Respondent Nos. 10 to 16 would survive. Their eviction, therefore, could never have been questioned by such a Writ Petition at the instance of the present Petitioner. The Petitioner also could not have put in issue the question of right, title and interest in the immovable property on the strength of a Will of Late Jenabai. Now that the estate has lost the property, if the Petitioner is aggrieved by certain acts of those who have collected the compensation amount or of the State in not paying him the compensation for the right, title and interest allegedly claimed in him, then this Writ Petition is not his remedy. The property having vested in the State, the Petitioner has no right, title and interest therein. Therefore, the Writ Petition cannot be entertained.

12. We also note that in the Petition, the Petitioner assails several documents by saying these are forged and fabricated. These are not issues that can be examined in our Writ jurisdiction. We also note that other than making allegations in this Petition, the Petitioner has taken no steps to impeach those documents in any civil proceedings or to have their correctness and validity adjudicated. None of this is within the scope of our writ jurisdiction under Article 226 of the Constitution of India.

13. The Writ Petition is dismissed with no order as to costs.

14. The ad-interim order passed on 11th October 2012 stands vacated forthwith.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)