

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 187 OF 2010
IN
WRIT PETITION NO. 3108 OF 2005

Alamkhan alias Kutub Alam Alhaj IbrahimkhanAppellants
and others

V/s.

The President (Maharashtra Slum AreasRespondents
(Ic and R) Tribunal and others

Mr. S. G. Deshmukh for the appellants
Mr. A. P. Kulkarni for respondent nos. 113, 209

**CORAM : SMT. VASANTI. A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 15, 2017.

P.C.

By this Letters patent appeal, the order of the learned Single Judge, dated 21/10/2005 in writ petition no. 3108 of 2005 is appealed against.

Writ petition no. 3108 of 2005 was filed by the appellant, who are the legal heirs of Mr. Ibrahim Khan for challenging the order of the Appellate Authority under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971. It was canvassed on behalf of the appellant before the learned Single Judge that the declaration under the said Act was issued without serving a show cause notice on the petitioners. The learned Single

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Judge however dismissed the petition after holding that the petitioners had knowledge about the proceedings and the filing of the writ petition was just another effort on the part of the petitioners to challenge the notification that was challenged earlier by the other slum dwellers on the same ground. The order of the learned Single Judge dated 21/10/2005 is appealed against.

The learned counsel for the appellant has sought for setting aside of the order dated 21/10/2005 only on two grounds. Firstly, according to the appellants since in a similar writ petition, the High Court had issued the notice to the Tribunal and the other slum authorities, the counsel for the appellants was under an impression that a notice to the respondent would be issued in writ petition no. 3108 of 2005 also. It is submitted that the counsel for the appellants had therefore asked the junior counsel to appear in the matter, however, the learned Single Judge decided the matter on merits. Secondly, according to the appellants, the learned Single Judge failed to consider that the notice of the proceedings was not served on the appellants and was issued to his dead father, Ibrahim Khan. It is stated that the notice on a dead person would not be a notice in the eye of law and the order is liable to be set aside.

On hearing the learned counsel for the parties, we find that there is no scope for interference with the order dated 21/10/2005. The only ground that was canvassed before the learned Single Judge by the junior counsel and the only ground that is canvassed before this Court today for challenging the

declaration is that a notice was not served on the appellants before the declaration was issued. The learned Single Judge had considered this aspect of the matter and had held that in respect of the same property, an earlier notification was cancelled because of the absence of service of notice. In view of the afore said fact, the learned Single Judge was justified in holding that the show cause notice was not liable to be served again and again in respect of the issuance of the declaration when the appellants had notice about the proceedings in respect of the same property. The learned Single Judge rightly observed that by filing the writ petition, the petitioners had made an effort to challenge the same declaration/notification on the same ground that they did not have the notice of the proceedings. We find that the order of the learned Single Judge is just and proper. Merely because the notice was issued in the name of the father of the petitioners, who was no more, it cannot be said the petitioners did not have notice of the proceedings. The knowledge of the proceedings would be material for deciding the issue whether a fair opportunity was granted or not. The approach of the learned Single Judge in deciding the writ petition is just and proper and is in consonance with the well settled position of law. We do not appreciate the submission made on behalf of the appellant that since in a writ petition arising out of the common judgment, this Court had issued notice, the learned Single Judge was duty bound to issue notice in the present writ petition also and that it could not have dismissed the writ petition though it did not bear merit. The said proposition would apply only where a writ petition with a similar issue is admitted by the Court and would not apply to a case where only a notice is

issued by the Court in a similar matter.

Since there is no merit in both the submissions made on behalf of the appellants, we dismiss the letters patent appeal with no order as to costs.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]