

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.995 OF 2018**

Veekaylal Investment Company Private Limited ... Petitioner

Vs

1. State of Maharashtra
 2. Chief Executive Officer, SRA
 3. Additional Collector (Encroachment & Removal)
 4. Deputy Collector (E & R) and the Competent Authority
 5. Siddhivinayak SRA CHS
 6. Shree Durga Mata CHS (proposed)
- ... Respondents

Mr.Chirag Balsara ib Mr.Rajeev Sharma for the Petitioner
Mr.Chirag kamdar with Mr.Nilesh Ranavat, Mr.Abir Patel, Ms.Disha Shetty i/b Wadia Ghandy & Co. for Applicant in CHSW/235/2018
Mr.Hemant Haryan, AGP, for Respondent Nos.1, 3 and 4
Mr.Milind More for Resp. No.2
Mr.Pravin Samdani, Senior Advocate with Mr.Suraj Iyer, Ms.Debashree Mondpe and Rickin Dang i/b Ganesh & Co. for Resp. No.5
Mr.A.Panikar i/b Mr.Vishal Kava for Resp. No.6

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.
JUDGEMENT RESERVED ON: AUGUST 29, 2019
JUDGEMENT DELIVERED ON: OCTOBER 22, 2019**

JUDGMENT (PER AKIL KURESHI, J.):

1. The petitioner has challenged a notification dated 16.3.2017 under section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter to be referred to as 'Slum Areas Act') acquiring lands bearing Survey

No.101/6, CTS No.3080/1 to 3, 3081/1, 3082, 3082/1 to 4, 3083, 3083/1 to 8, 3084, 3084/1 to 3, 3085, 3085/1 of Village Dahisar, Taluka Borivali, Mumbai. The petitioner has also challenged notice dated 21.7.2017 issued for the purpose of computation of compensation in terms of section 17 of the Slums Areas Act for the said lands. The petitioner has further prayed for a direction to respondent No.2 i.e., the Chief Executive Officer (CEO), Slum Rehabilitation Authority (for short, 'SRA') to process the proposal submitted by the petitioner for the implementation of slum rehabilitation scheme on behalf of respondent No.6 Shree Durga Mata SRA CHS (proposed) in relation to the said lands.

2. This litigation has chequered history. Bare necessary facts to decide the dispute may be noted. The petitioner is a company registered under the Companies Act and is engaged in the business of construction and development in and around the city of Mumbai. The petitioner acquired the said land in the year 1970 upon execution of the deed of conveyance by the Court Receiver appointed by the High Court.

3. The land in question was occupied by a large number of slum dwellers and the property was, therefore, declared as a slum area under section 4(1) of the Slum Areas Act on 19.9.1996. The slum dwellers residing in the said property formed a cooperative housing society in the name of Siddhivinayak SRA CHS, respondent No.5 herein and appointed the petitioner as the developer by executing the development agreement. Based on such development agreement, the petitioner submitted slum redevelopment scheme to the Municipal Corporation of Greater Mumbai on 15.10.1996. The competent authority i.e., the Deputy Collector, Respondent No.4 herein, prepared a list of eligible and non-eligible slum dwellers on 17.3.1997 and forwarded the same to the Slum Rehabilitation Authority.

4. On 4.7.2009, the Additional Collector wrote to the CEO, SRA conveying that when the proposal for redevelopment for the land in question was sent for making necessary enquiry to the Deputy Collector, Borivali, the society had not responded to the communications and reminders. Thus, the society has not shown interest and, therefore, the proposal is closed.

5. On 17.8.2009, the Executive Engineer, SRA, called general body meeting of respondent No.5 society for change of the developer. On 13.4.2010, the general body meeting of the respondent No.5 society was conducted. The appointment of the petitioner as the developer was terminated and one M/s.Shree Sai was appointed as a new developer.

6. On 9.9.2011, respondent No.5 society made an application to the competent authority for acquisition of the said land. Under letter dated 21.12.2011, the petitioner objected to such proposal. On 23.12.2011, the Deputy Collector conveyed to the petitioner that a proposal for acquisition of the land has been received and the petitioner may raise objections. The petitioner thereupon filed written objections before the said authority on 26.12.2011. On 7.1.2012, the Deputy Collector rejected such objections. On 16.8.2012, the Deputy Collector submitted a report to the Collector recommending the acquisition of the land in question. In the meantime, on 16.6.2012, in a general body meeting of respondent No.5 society, the appointment of M/s.Shree Sai as a developer was terminated and instead, the society appointed one M/s.Falsa Corporation as the developer.

7. On 3.10.2012, the office of the Collector issued notice under section 14(1) of the Slum Areas Act. A public notice was published in the daily newspapers on 8.10.2012 calling for suggestions and objections to the proposed acquisition. The petitioner raised objection under communication dated 6.11.2012 issued by the advocate. On 22.1.2013, the petitioner filed written objections.

8. According to the petitioner, more than 70% of the eligible slum dwellers formed a splinter group and formed Shri Durga Mata CHS (Proposed), respondent No.6 herein. On 31.7.2013, the said respondent No.6 made a representation to the CEO, SRA contending that respondent No.5 society is dissolved and that respondent No.6 may be recognised as the slum dwellers' society for the purpose of development of slum rehabilitation scheme.

9. On 28.10.2013, the CEO, SRA terminated the appointment of the petitioner as the developer of the said land in terms of section 13(2) of the Slum Areas Act. The petitioner filed an appeal before the High Powered Committee against the said order dated 28.10.2013. Such appeal came to be dismissed by the Committee by an order dated 16.2.2019. The petitioner thereupon filed Writ

Petition (Lodging) No.926 of 2019. Respondent No.6 herein filed separate Writ Petition (Lodging) No.984 of 2019. Both the petitions were dismissed by this Court by judgment dated 22.4.2019.

10. On 25.11.2013, the report was submitted by the CEO, SRA to the Principal Secretary of Housing department recommending the acquisition of the land in question.

11. On 26.8.2015, the notification was published in official gazette declaring the land in question as a slum rehabilitation area under section 3C of the Slum Areas Act.

12. On 24.11.2015, the petitioner submitted representation to the Minister of State for Housing objecting to the acquisition of the land in question. On 16.3.2017, the impugned notification under section 14(1) of the Slum Areas Act was issued acquiring the land. On 21.7.2017, the notice under section 17(1) of the Slum Areas Act was issued in order to determine the compensation payable for such acquisition. On 8.8.2017, the petitioner made representation to respondent No.4 requesting to recall the notification of acquisition. On 9.8.2018, the SRA had issued the letter in favour of Ekta Falsa Realty LLP accepting the proposal for redevelopment

of the land, subject to the pending litigation. On 6.10.2018, respondent No.6 filed complaint before the Assistant Registrar contending that the respondent No.5 society does not have requisite majority of the slum dwellers. The said complaint was dismissed by the Assistant Registrar, SRA by an order dated 7.3.2019.

13. On 4.1.2019, the petitioner filed application before the CEO, SRA challenging the proposal submitted by M/s.Ekta Falsa Reality which was dismissed by an order dated 1.8.2019. The petitioner challenged the said order before the High Court by filing Writ Petition (Lodging) No.2329 of 2019. The Writ Petition was dismissed by the High Court by order dated 13.8.2019.

14. Respondent No.2 Deputy Collector, SRA, has filed an affidavit in reply dated 10.9.2018, pointing out that Siddhivinayak Cooperative Housing society has made an application for acquisition of the land to the Additional Collector which was forwarded to the Deputy Collector on 25.3.2013. It is further stated that notices were issued to the general public, to the land owners after which hearing and joint measurements of the land were conducted. After considering the objections raised by the

concerned parties, the Deputy Collector forwarded the proposal for acquisition of the land to the State Housing Department on 25.11.2013. The State Government issued notification dated 16.3.2017 acquiring the said land.

15. Respondent No.5 society has filed an affidavit in reply dated 25.9.2018 contending that the said society had initially appointed the petitioner as a developer under regulation 33(10) of the Development Control Regulations 1996 ('DCR 1996', for short). However, on account of various defaults by the petitioner in developing the property, respondent No.5 terminated the authority of the petitioner and subsequently, the SRA passed its order under section 13(2) of the Slum Areas Act on 28.10.2013. It is further pointed out that after following all statutory procedures, the notification of acquisition of land has been issued.

16. In this background, the learned Counsel for the petitioner raised the following contentions:

- (i) The CEO, SRA had no jurisdiction to recommend acquisition of the land in question before issuance of notification under section 3C(1) of the Slum Areas Act.

(ii) The proceedings for acquisition were initiated by the CEO, SRA when the petitioner was still the developer.

(iii) The procedure under sections 5 and 12 of the Slum Areas Act was not followed.

(iv) From the inception, the application for acquisition dated 9.9.2011 was defective because :

(a) the application did not have support of 70% members of the society and

(b) the petitioner was still the developer of the land whose authority was not terminated.

(v) It was contended that as the owner of the land, the petitioner had a first right to develop the land. In this context, the Counsel placed reliance on the decision of the Division Bench of this Court in the case of **Indian Cork Mills Private Ltd. vs. State of Maharashtra**¹.

17. On the other hand, the learned Counsel for respondent No.5 society opposed the petition and contended that -

¹ 2018 SCC Online Bom 1214

The petitioner was appointed as a developer by respondent No.5 society. For years together, the petitioner took no steps for implementation of the project for slum rehabilitation. The authority of the petitioner was cancelled by the society. Subsequently, the SRA also passed an order under section 13 (2) terminating the authority of the petitioner as a developer. The petitioner's challenge to the said order has failed. The petitioner, therefore, cannot claim any further preferential right to develop the property. The Counsel further submitted that the land in question was declared as a slum rehabilitation area under section 3C of the Slum Areas Act by issuance of a notification dated 26.8.2015. After following all necessary steps, notification for acquisition of land was issued on 16.3.2017. The Government thus acquired the land in question. The petitioner's objections were considered. He pointed out that respondent No.5 society has appointed the new developer Ekta Falsa Realty. The proposal of the Ekta Falsa Realty has been accepted by the SRA. The petitioner has challenged the proposal submitted by Ekta Falsa Realty before the CEO, SRA, which was dismissed by an order dated 1.8.2019. The petitioner

challenged the said decision before the High Court by filing Writ Petition, which also came to be dismissed by order dated 13.8.2019. The petitioner had thus at all stages failed to establish any rights. The present Writ Petition is filed only with a view to thwart the development of the property in question. Since years, the rehabilitation of the slum area is suffering. He took us through the provisions of the Slum Areas Act and submitted that the provisions of section 14 of the Slum Areas Act are independent. He relied on the decision of the Supreme Court in the case **Murlidhar Tekchand Gandhi & Ors. vs. State of Maharashtra & Ors.**² in which it was observed that the provisions of section 14 are independent under which the area is acquired by the State subject to the hearing of the objections pursuant to the notice and a decision has to be taken thereafter. It was further observed that the manner of acquisition is prescribed under section 14 and the Court could not add or subtract anything in the said provision.

18. Counsel for the official respondents also opposed the petition.

² Civil Appeal No.11077 of 2017 order dated 29.8.2017

19. In order to judge the validity of the rival contentions, we may first summarise the relevant facts. As noted, the land in question was declared as a slum under section 14(1) of the Slum Areas Act on 19.9.1996. The petitioner had submitted a rehabilitation scheme. However, on the ground that for years together, no effective steps were taken, respondent No.5 society in its general body meeting dated 13.4.2010, terminated the petitioner as a developer and appointed as a new developer. The CEO, SRA passed order under section 13(2) of the Act dated 28.10.2013 terminating the appointment of the petitioner as a developer. This order was challenged before the High Powered Committee. The appeal having been dismissed, the petitioner approached this Court by filing Writ Petition. The said Writ Petition came to be dismissed by order dated 22.4.2019. The petitioner had also challenged the proposal submitted by the new developer Ekta Falsa Realty on behalf of respondent No.5 before the CEO, SRA. The said application was dismissed against which the petitioner had approached this Court. The Writ Petition was dismissed with costs of Rs.50,000/- by order dated 13.8.2019 in which the learned Single Judge has observed as under:

“14. A perusal of the judgment of this Court dated 22nd April 2019 in Writ Petition (L) No.926 of 2019 with Writ Petition (L) No.984 of 2019 filed by the petitioner herein and Durgamata SRA CHS clearly indicates that this Court has upheld the order passed by the CEO/SRA rejecting the proposal of the petitioner which was upheld by the Appellate Authority. This Court has observed that the petitioner had failed to implement the subject SR Scheme for past 17 years, all along which, the occupants of the subject land were awaiting proper housing. This Court has also recorded that the petitioner had thus exhausted in preferential right to develop the subject plot of land as its owner. This Court rendered a finding that there was no infirmity in the findings rendered by the CEO/SRA and the Appellate Authority in respect of the property in question. This Court however, dismissed the application filed by the petitioner and the respondent no.4 clarifying that the controversy as regards the legitimate status of the two societies i.e. Siddhivinayak SRA CHS – respondent no.3 and Durgamata SRA CHS- respondent no.4 to represent the slum dwellers, the discussion in the impugned order of the Appellate Authority shall be restricted to the controversy in the appeal including intervention application of Durgamata SRA CHS- respondent no.4.

15. It is clear that in so far as the petitioner herein is concerned, the application filed by the petitioner for redevelopment in its individual capacity as well as to exercise preferential right to develop the subject plot of land as its owner is already decided against the petitioner by this Court in the said judgment dated 22nd April 2019. In my view, even if the writ petition filed by the petitioner impugning the notification under Section 14(1) of the Slum Act is allowed and even if the notification dated 16 March 2017 is set aside by this Court, the petitioner would not be able to apply for redevelopment of the property in question as the owner of the land or otherwise.”

20. These developments would thus show that the petitioner has lost all rights to develop the property in question. We are

conscious of the decision of this Court in the case of **India Cork Mills Pvt. Ltd.** (supra) in which the observations of the Division Bench in the case of **Anil Gulabdas Shah v. State of Maharashtra**³ were noted with approval that the owner would have the preferential right under section 13(1) of the Slum Areas Act to undertake redevelopment of the slum rehabilitation area and the acquisition by parties without recognising such rights will be illegal. In the present case, the petitioner not having been able to develop the property and his engagement as a developer having been terminated by SRA, which the petitioner has unsuccessfully challenged, the petitioner can no longer press the claim of preferential right to develop the property.

21. Despite this, the petitioner is not precluded from challenging the validity of the acquisition being the owner of the land. In this context, we may peruse the documents on record more minutely. On 9.9.2011, respondent No.5 society had moved an application before competent authority urging the authority to acquire the land. The Deputy Collector permitted the petitioner to raise the objections which were rejected after consideration. On 16.8.2012, the Deputy Collector and Competent Authority made a report to the

3 2011 (1) Mh.L.J. 797

Collector for acquisition of the land. This report contained the basic details about the land in question, the number of occupants, the name of the owner of the land, etc.

22. The Collector issued notice dated 3.10.2012 to the petitioner calling upon the petitioner to show cause why the said land should not be acquired under the provisions of section 14(1) of the Slum Areas Act. In response to the notice, the petitioner raised objections under communication dated 6.11.2012. The petitioner's main objections were that the petitioner had obtained the necessary consent of more than 70% of the slum dwellers for implementation of the redevelopment scheme. The petitioner as an owner of the land was implementing a scheme of slum rehabilitation under DCR 33(10), the petitioner has taken effective steps for implementation of the scheme and, therefore, the land was not required to be acquired under the Slum Areas Act. These objections were considered by the Collector in his communication dated 25.3.2013.

23. The CEO, SRA submitted report dated 25.11.2013 to the Principal Secretary, Housing Department. In this report, reference was made to the communication of the Collector dated 25.3.2013.

Report also referred to the notices issued to the land owner and the general public. The report recorded the hearings which took place on various dates. The report recorded the objections and written submissions of the petitioner which were dealt with. It was observed that since 1996, the slum rehabilitation scheme has not been implemented and no steps are taken for development of the property till date. Principally, on such grounds, the proposal of the acquisition of land was made.

24. It was pursuant to such exercise that the impugned notification came to be issued on 16.3.2017. The notification reads as under:

“HOUSING DEPARTMENT
Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 16th March 2017

NOTICE

MAHARASHTRA SLUM AREAS (IMPROVEMENT, CLEARANCE
AND REDEVELOPMENT) ACT, 1971.

No.Bhusampa-2013/C.R.254/Zopani-2. Whereas, on representation from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, it appears to the Government of Maharashtra that in order to enable the said Authority to implement the Slum Rehabilitation Scheme in relation to the Slum Rehabilitation Area mentioned in the Schedule appended hereto (hereinafter referred to as “the said Schedule”), it is necessary that the land specified in the said Schedule (hereinafter referred to as “the said land”) , should be acquired,

And whereas, as required by the proviso to sub-section (1) of section 14 of Chapter V read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of the Maharashtra Slum Areas (Improvement , Clearance and Redevelopment) Act, 1971 (Mah. XXVIII of 1971) (hereinafter referred to as "the said Act"), the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, has, by his Notice No.SRA/Dy.Coll./TD. 6/Bhusampa/Shri Siddhivinayak C.R. 26/Hearing/2013/890, dated the 17th June 2013 served in prescribed manner and also by notice published in the daily Marathi newspaper "Mumbai Tarun Bharat" dated the 13th October, 2012 and English newspaper "Business Standard" dated the 16th October, 2012, and also by affixing in the conspicuous part in the premises situated in the said land, as provided in section 36 of the said Act, called upon the persons mentioned in column (6) of the said Schedule, who are the owners of the said land or any other person interested therein to show cause, within fifteen days from the date of its publication in the newspapers, as to why the proposal to acquire the said land for implementation of the Slum Rehabilitation Scheme for the concerned protected slum dwellers should not be sent to the State Government for approval;

And Whereas, the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, after considering the objections received int his behalf for the acquisition of the said lands and pleading on behalf of the proposed Co-operative Housing Society of the Slum dwellers, entries as to the right sin the land record, reservation in development plan and the legitimate request of the protected slum dwellers, by his representation dated the 25th November 2013 submitted the report for the acquisition of the said land;

And whereas, as required by the first proviso to sub-section (1) of section 14 of Chapter V read with Paragraph (A) of sub-clause (I) of clause (c) of section 3D of Chapter I-A of the said Act, on representation from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai and after considering his report it appears to the State Government that in order to enable the Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme in the slum rehabilitation area mentioned in the said Schedule, the said land should be acquired;

Now, therefore, in exercise of the powers conferred by sub-

section (I) of section 14 of Chapter V read with Paragraph (A) of sub-clause (i) of clause (c) of section 3D of the said Act, the Government of Maharashtra hereby declares, by this notice, that it has decided to acquire the said land.”

25. The Slum Areas Act was enacted by the State Legislature to make better provision for the improvement and clearance of slum areas in the State and that redevelopment and for the protection of occupiers from eviction and the distressed warrants. The term ‘slum area’ has been defined under section 2(ga) of the Act as to mean an area declared as such by the competent authority under sub-section (1) of section 4 and would include any area deemed to be slum area under section 4A. The term ‘Slum Rehabilitation Area’ is defined under section 2(h-b) as to mean a Slum Rehabilitation Area declared as such under section sub-section 1 of section 3C by the competent authority in pursuance of slum rehabilitation scheme notified under section 3B.

26. Chapter V of the Slum Areas Act pertains to acquisition of land. Section 14 contained therein vests power in the State Government to acquire the lands and lays down procedure for such acquisition. Section 14 of the Slum Areas Act reads as under:

“14. (1) 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 structure 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 this 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 objections 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.

(1A) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.

(2) When a notice as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances.”

27. Section 15 of the Slum Areas Act empowers the Collector to require person in possession of the land acquired under section 14 and which in terms of sub-section (2) thereof, vests in the government to hand over possession thereof.

28. Chapter I-A pertaining to Slum Rehabilitation Scheme was inserted in the Act by virtue of Maharashtra Act 14 of 1996. Under sub-section (1) of section 3A contained in the said Chapter, the State Government could by issuing a notification in the official gazette, appoint Slum Rehabilitation Authority for such area as may be specified in the notification. Section 3B of the Act pertains to slum rehabilitation schemes. Sub-section (1) of section 3B provides that the State Government or the Slum Rehabilitation Authority with previous sanction of the State Government shall prepare a general Slum Rehabilitation Scheme for the areas specified in subsection (1) of section 3A for rehabilitation of slums and hutment dwellers in such areas. Section 3C of the Slum Areas Act pertains to declaration of slum rehabilitation area. Sub-section (1) of section 3C provides that as soon as may be after the publication of the Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied that the circumstances in respect of the area justifies its declaration as Slum Rehabilitation Area under the scheme; may by an order published in the official gazette, declare such area to be a slum rehabilitation area. Such order shall be given wide publicity. Under sub-section (2) of section 3C, any

person aggrieved by the slum rehabilitation order, could within 4 weeks of the publication, prefer appeal to the Special Tribunal.

29. Section 3D of the Slum Areas Act lists certain modifications, subject to which other provisions of the Act would apply to area declared as a Slum Rehabilitation Area.

30. The relevant portion of these substitutions are as under:

“3D....

(ii) in section 12, -

(A) for sub-section (i), the following sub-section shall be substituted, namely:-

“(i) As soon as may be, after the Chief Executive Officer has declared any slum area to be a Slum Rehabilitation Area, he shall make a clearance order in relation to that area, ordering the demolition of each of the buildings specified therein, and requiring each such building to be vacated within such time as may be specified in the clearance order”:

(B) ...

(C) ...

(D) ...

(E) ...

(F) ...

(G) ...

(H) in sub-section (10)-

(a) for the words “Competent Authority” the words “Slum Rehabilitation Authority” shall be substituted;

(b)

...

“13. (1) Notwithstanding anything contained in sub-section (10) of section 12, the Slum Rehabilitation Authority may, after any area is declared as the Slum Rehabilitation Area, if the landholders or occupants of such area do not come forward within a reasonable time, with a scheme for re-

development of such land, by order, determine to redevelop such land by entrusting it to any agency for the purpose.

(2) Where on declaration of any area as a Slum Rehabilitation Area the Slum Rehabilitation Authority, is satisfied that the land in the Slum Rehabilitation Area has been or is being developed by the owner in contravention of the plans duly approved, or any restrictions or conditions imposed under sub-section (10) of section 12, or has not been developed within time, if any, specified under such conditions, it may, by order, determine to develop the land by entrusting it to any agency recognised by it for the purpose:

Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why such order should not be passed”;

(c) in Chapter V, -

(i) in section 14, in sub-section (1),-

(A) for the portion beginning with the words “Where on any representation” and ending with the words “clearance area”, the following portion shall be substituted, namely:-

“Where on any representation from the Chief Executive Officer it appears to the State Government that, in order to enable the Slum Rehabilitation Authority to carry out development under the Slum Rehabilitation Scheme in any Slum Rehabilitation Area”:

(B) after the proviso, the following proviso shall be added, namely: -

“Provided further than, the State Government may delegate its powers under this sub-section to any officer not below the rank of Commissioner”;

....
....”

31. As noted, section 14 of the Slum Areas Act empowers the State Government to acquire the land to enable the competent

authority to execute any work for improvement or to redevelop any slum area or any structure in such area. In relation to the implementation of the slum rehabilitation scheme in respect of the slum rehabilitation area notified under section 3C of the Act also such powers for acquisition of land would be available, however, subject to certain modifications noted above. Under sub-section (1) of section 14, in relation to a Slum Rehabilitation Area where on any representation of the Chief Executive Officer, it appears to the State Government that in order to enable the slum rehabilitation authority to carry out the development under the slum redevelopment scheme in any slum rehabilitation area, the land could be acquired.

32. It was in exercise of such powers that the impugned notification came to be issued. We have noted that the necessity and justification for such acquisition was gathered through several years of enquiries. The application for acquisition came to be made by the slum dwellers' society on 9.9.2011. The Deputy Collector considered the objections of the petitioner to such proposal and submitted his report to the Collector on 16.8.2012 after rejecting the objections of the petitioner. Notice was issued

under section 14(1) of the Act to the petitioner on 3.10.2012. The Petitioner's objections and written submissions were considered before the CEO, SRA who made the report to the government on 25.11.2013. In such report, the authority had also taken into account the Collector's comments contained in the letter dated 25.3.2013. This communication was made in connection with the application dated 9.9.2011 made by respondent No.5 society for acquisition of the land. It refers to publication of notice and giving wide publicity to it inviting objections to the acquisition including service thereof to the owner, receipt of objections of the owner and the hearings which took place and in the concluding portion recommends acquisition of the land. The CEO, SRA had given detailed reasons why the land was required to be acquired. Finally, the government issued the impugned notification, taking into account all the materials on record and citing reasons for acquisition.

33. In light of such facts and the statutory provisions, the contentions of the petitioner are required to be tested. Two main limbs of the petitioner's contentions were that the procedure for acquisition of the land was defective and that the acquisition of the

land defeats the petitioner's first right to develop. We have already held that the petitioner had squandered its rights to development on account of long delay without any worthwhile steps being taken for development pursuant to which the appointment of the petitioner as a developer came to be terminated by the CEO, SRA under section 13(2) of the Slum Areas Act which order has been upheld by this Court. The later objection of the petitioner, therefore, must fail.

34. Coming to the procedure for acquisition of land, principally, the petitioner's contention has been that the acquisition proceedings were initiated when the land in question was not yet declared as a Slum Rehabilitation Area under section 3C of the Slum Areas Act. The government relied on such proceedings including the reports of the Collector and the Slum Rehabilitation Authority to form an opinion that land was required to be acquired in order to publish notification under section 14(1) of the Act. As we have noticed, Chapter V of the Slum Areas Act pertains to acquisition of land. Section 14 which is a part of the said Chapter vests the State Government with powers and lays down procedure for acquisition of the land. As per the said provision for acquisition

of lands in cases where the area is not notified under section 3C of the Act, on a representation of the competent authority, if 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 structure in such area, it is necessary that such area or the land should be acquired, the government may acquire the land by publishing in the official gazette a notice to that effect. The proviso to sub-section (1) requires the State Government or as the case may be, the competent authority, before publishing such notice to call upon the owner or any other person who may be interested in the land to show cause why the land should not be acquired. The competent authority would forward objections so received together with his report to the government and on considering the report and objection, the government may pass such order as it deems fit. For the area declared as a Slum Rehabilitation Area, sub-section (1) of section 14 would apply with modifications as provided in section 3D of the Slum Areas Act. Under such amended provision, where on a representation of the CEO, it appears to the government that in order to enable the Slum Rehabilitation Authority to carry out development under the slum rehabilitation scheme in a Slum Rehabilitation Area, it is

necessary that such land should be acquired, the government may exercise the powers by publishing the notice in the official gazette. The procedure laid down in the proviso remains unchanged. In the case of **Murlidhar Tekchand Gandhi & Ors.** (supra), as noted, the Supreme Court in the context of section 14 of the Slum Areas Act, had observed that the provisions of section 14 are independent under which area is acquired by the State subject to the hearing of the objections pursuant to the notice and a decision has to be taken thereafter. It was observed as under:

“The provisions of section 14 are independent under which area is acquired by the State, subject to the hearing of the objection pursuant to a show cause, and a decision has to be taken thereafter. This Court in previous round of litigation has upheld the notification under section 4 of the Act declaring it to be ‘slum area’. Obviously considering its miserable condition decision was rightly taken to acquire it. There is no express provision or implied condition indicating that provisions of other sections should be followed for acquisition. An acquisition is permissible under section 14 to redevelop “clearance area”. However, acquisition is permissible without declaring an area as ‘clearance area’. The manner of acquisition is prescribed under Section 14, we cannot add or subtract anything in the provision.

The pre-requisite for exercise of power under Section 14 is the satisfaction of State Government that authority can execute work of improvement in “slum area” or any building in such area or redevelop “clearance area”, and it is necessary that land within, adjoining or surrounded by any such area by acquired, it can initiate proceedings under section 14(1) of the Act. The State can make acquisition

subject to conditions prescribed in provisions contained under section 14 of the Act.”

35. It is true in the present case, the initiation for the proceedings for acquisition of the land was before the declaration of the area as Slum Rehabilitation Area and the report was also made by the CEO, SRA before the issuance of such notification. However, the impugned notification under section 14(1) of the Act came to be issued subsequently. Section 14(1) as applicable to the notified Slum Rehabilitation Area requires the satisfaction of the State Government on a representation of the CEO that in order to enable the slum rehabilitation authority to carry out development under the slum rehabilitation scheme of the Slum Rehabilitation Area, it is necessary that such area should be acquired. Upon such satisfaction, the State Government would acquire the land in question after following the procedure laid down in the proviso under subsection (1) of section 14 of the Slum Areas Act. Before the State Government, the report of the CEO was placed which was submitted after calling for the objections from the petitioner and dealing with the same. With respect to the contents thereof and subjective satisfaction of the State Government, no

submissions have been made. In any case, judicial review of such decision would be extremely narrow. To strike down the entire acquisition on the face of the facts noted above, merely on the ground that the report of the CEO is pre-dated, the notification under section 3C of the Slum Areas Act, would be too technical in nature. When overwhelming facts on record justify proceedings further with the acquisition of the land so that the stalled project of rehabilitation of the slum dwellers can proceed further, we would not interfere with the impugned order on such technical ground. One cannot lose sight of the fact steps were initiated for slum clearance and rehabilitation wayback in the year 1996. After over 20 years, the situation has remained the same and in all probabilities, ground realities would have worsened.

36. We have noticed the sequence of events culminating into publication of notification under section 14(1) of the Slum Areas Act. As held by the Supreme Court in the case of **Murlidhar Tekchand Gandhi & Ors.** (supra), these powers are completely independent. Chapter III of the Slum Areas Act pertains to slum improvement. Section 5 contained therein pertains to power of competent authority of execution of works of improvement.

Essentially, this provision empowers the competent authority if it is satisfied that in slum area or any part thereof is capable of being improvement, after following the procedure to proceed to carry out the improvement works. Chapter IV of the Act pertains to slum clearance and redevelopment. Under sub-section (1) of section 11 contained in the said Chapter where the competent authority is satisfied as respects any slum area, that the most satisfactory manner of dealing with the conditions in the area is the demolition of all the buildings, he would declare the area to be a clearance area. Under sub-section 1 of section 12, soon after the competent authority has declared any slum are to be clearance area, it would make a clearance order ordering the demolition of each of the buildings specified therein and requiring the buildings to be vacated within a specified time. The exercise of powers by the government under section 14 of the Act for acquisition of the land is not subject to crossing the stages either of section 5 or sections 11 and 12 of the Act. The contention of the Counsel for the petitioner that no procedure under the said sections was undertaken and, therefore, acquisition was bad in law is, therefore, rejected.

37. The sole surviving prayer of the petitioner for direction to the CEO, SRA to process the proposal submitted by the petitioner for implementation of slum rehabilitation scheme on behalf of respondent No.6 Shree Durga Mata CHS (proposed) virtually merges into the main challenge to the acquisition of the land which we have rejected. Even otherwise, this stand alone prayer cannot be granted. We have noted that Shree Durga Mata CHS (proposed) had filed a complaint dated 6.10.2018 before the Assistant Registrar, SRA, alleging that respondent No.5 society does not have requisite majority of the slum dwellers. This complaint was dismissed by an order dated 7.3.2019 by Assistant Registrar. Thereafter, the petitioner had filed application before the CEO, SRA, on 4.1.2019 challenging the proposal submitted by Ekta Falsa, who was appointed as a developer by respondent No.5 society. His application was dismissed by the CEO, SRA, by order dated 1.8.2019. This order was challenged by the Petitioner by filing Writ Petition before this Court. The petition was dismissed by order dated 13.8.2019. Similar application was also filed by respondent No.6 before the CEO, SRA challenging the proposal submitted by Ekta Falsa. Such application was also dismissed by

the CEO, SRA on 27.8.2019. Under such circumstances, this prayer of the petitioner cannot be granted.

38. In the result, the petition fails and is dismissed.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)

Vishwanath
S. Sherla

Digitally
signed by
Vishwanath
S. Sherla
Date:
2019.10.22
12:32:45
+0530