

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 573 OF 2017
WITH
INTERIM APPLICATION (L) NO. 7314 OF 2020**

Shama Mohammed Husain ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr Altaf Khan, for the Petitioner.
Mr Abhay Patki, Additional GP, for Respondents Nos. 1 & 5-State.
Mr Shashank Shubham, i/b Anoop U Patil, for Respondent No. 2.
Mr Drupad Patil, with Prashant Dingrani, for Respondent No. 3.

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2022.09.08
17:37:33 +0530

**CORAM: G.S. Patel &
Madhav J. Jamdar, JJ.**
DATED: 15th November 2021

ORAL JUDGMENT:- (per Madhav J. Jamdar, J)

1. By the present Petition, the Petitioner is challenging the Notification dated 30th October 2015 published in the Maharashtra Government Gazette. The only contention raised by Mr Altaf Khan, learned counsel of the Petitioner is that State Government has failed to pass order contemplated by proviso to section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act 1971 (“Maharashtra Slum Act”).

2. By the said Notification, the Petitioner contends that her land was acquired. The said Notification is issued under Section 14(1) of the Maharashtra Slum Act. A perusal of the Notification shows that a notice was given to the owners in compliance with the proviso to Section 14(1) and a report was also called from the Chief Executive Officer (“CEO”) of SRA. After considering the said report, the Notification dated 30th October 2015 was issued. The said Notification specifically records that the State Government acquires the land in order to enable the Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme. Therefore, the State Government’s satisfaction regarding acquisition of land is specifically recorded in the said Notification.

3. Thereafter, under Section 17, an Award has been passed on 4th March 2020. It is significant to note that although the owners remained absent at the hearing of Section 14(1) proceedings, the owners were represented, they were heard and the order dated 4th March 2020 under Section 17 was passed.

4. In any case, the contention that the State Government has not passed any order under Section 14(1) proviso and, therefore, the impugned action is illegal and totally contrary to the statute is a submission that cannot be accepted. Section 14 is set out below for ready reference.

“Section 14:— Power of State Government to acquire land

(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 that 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 therefore, 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.”

5. The proviso to Section 14(1) contemplates that the State Government, or, as the case may be, the Competent Authority, *may* call upon by notice the owner or any other person who in its or his opinion may be interested in such land to show first in writing with reasons and within the time specified in the notice why the land should not be acquired. The Competent Authority shall with all

reasonable despatch forward any objections so submitted together with its report in respect thereof to the State Government and on considering the report and the objections if any, the State Government may pass any order as it deems fit. The order passed under Section 14 dated 30th October 2015 specifically states that the notice was issued to the owners and the owners of such land were absent for the hearing and no objections were received from the owners or any other person for the acquisition of the said land. The order further states that the Chief Executive Officer, Slum Rehabilitation Authority has submitted the report dated 10th September 2014. The State Government formed an opinion that to enable the Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme in the Slum Rehabilitation area mentioned in this schedule in the said order dated 30th October 2020, the said land should be acquired and, therefore, in exercise of powers under Section 14(1) read with paragraph (A) of sub-clause (i) of Clause (C) of Section 3D of the Maharashtra Slum Act, the Government of Maharashtra acquired the land. Therefore, there is no substance in the contention of the Petitioner that the State Government has not passed any order under Section 14(1) proviso.

6. The Writ Petition deserves to be dismissed and it is dismissed with no order as to costs.

PER G.S. PATEL, J.:

7. I have heard the oral judgment dictated in Court by my learned brother Madhav J Jamdar J. I am entirely in agreement with his reasons and conclusions. But there are other reasons as well to reject this Writ Petition in limine. These are considerations that apply to every Writ Petition invoking our jurisdiction under Article 226 of the Constitution of India.

8. In matter after matter, we find that Petitioners and Advocates are exceedingly careless in the manner in which prayers are framed. When our intervention is sought under Article 226 of the Constitution of India, the prayer is for the issuance of a discretionary high prerogative remedy. It is true that the powers conferred under Article 226 are wide. But they are not untrammelled, nor unguided. Each type of writ sought has its distinct conspectus, and one cannot and should not be allowed to be confused for another.

9. Prayer (a) at page 29 of this Petition exemplifies the problem. It seeks a mandamus, but it seeks one to *quash* the Section 14 Notification. Obviously, no such writ — a mandamus to quash — can ever issue.

10. The Petition also completely ignores the settled law (of at least seven decades of the Indian judiciary, perhaps several centuries of common law), that a mandamus cannot issue unless the petitioner avers and shows that the petitioner has made a demand for justice and that this has been denied. This is a prerequisite. Without that demand, and an averment of that demand, no mandamus can ever

issue. The administrative authority against which a mandamus is sought must be given an opportunity to take the corrective administrative action, which has otherwise resulted in a denial of the petitioner's right. There must, therefore, be an established legal duty that has not been followed and a corresponding legal right. In a Writ Court, this links directly to Article 14 of the Constitution. The demand is that the authority in question must act in conformity with Article 14, that is to say that in a non-arbitrary, reasonable and rational manner. The averment that justice has been demanded but has been denied is *not* an idle formality. It is essential to the grant of relief. We have seen at least 19 separate decisions of this Court and the Supreme Court which say precisely this. There are 20 or more decisions of the Calcutta High Court in the same vein. There is no purpose in multiplying these authorities. The law in this regard is far too well-settled. We do not understand why it is being so totally ignored.

11. We hasten to add that we do not propose that a writ petition be dismissed simpliciter on this ground. In a given case, an opportunity may be given to amend — provided there is indeed, i.e. factually, a demand for justice.

12. The second prayer in this Petition is even more peculiar. This is a prayer for a quashing, and it is unrelated to the Section 14 Notification. It seeks in the Petition in 2017 that the original Slum Rehabilitation Notification of *18th September 1975* be quashed and set aside. There is no explanation for this delay at all. This delay is a sufficient reason to reject the Writ Petition. Such gross and

unexplained delay amounting to laches will also defeat a writ petition.

13. But there is a yet further delay. By an order of 2nd March 2020 of this Court, parties were given time to file Affidavit in Reply and an Affidavit in Rejoinder. The SRA's Affidavit in Reply was filed on 17th March 2020. Until date, there is no Rejoinder. Instead, we find that in November 2020, the Petitioner sought to move an Interim Application for amendment. We have seen that Interim Application. It does not in any way address the question on merits that has been thoroughly dealt with by my learned brother Jamdar J. We reject the Interim Application for amendment because to allow it will serve no purpose and will only delay the matter.

14. Consequently, for these additional reasons, the Interim Application is also rejected along with the Writ Petition.

15. There will be no order as to costs.

16. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

Note: This Judgment is modified as per order dated 8th September 2022. The corrections are shown in paragraph 2 of this Judgment in bold, italics and underlined.