

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

WRIT PETITION NO. 2113 OF 2017

Ivory Properties & Hotels Pvt. Ltd. & Anr. V/S	Petitioners
The State Of Maharashtra & Ors.	Respondents

Mr. Girish Godbole a/w Ms. Hemlata Jain, Ms. Sukhada Wagle, Ms. Aishwarya Wagle i/b M/s. Hariani & Co. for the Petitioners.

Mr. A.L. Patki, AGP a/w Mr. Amit Shashtri for the Respondent No.1-State.

Mr. Pravin Samdani, Sr. Counsel a/w. Santosh Pathak a/w. Prachi Patel i/b. Mr. Santosh Pathak for the Respondent No.5.

Mr. Navroz Seervai, Sr. Counsel a/w. Ms. Rujuta Patel, Ms. Niyathi Kalia, Mr. Sonu B. i/b. Negandhi Shah & Himayaatullah for the Respondent No.6.

Mr. Dhakephalkar, Sr. Counsel a/w. Mr. Nivit Srivastava, Ms. Neha Shah i/b. Maniar Srivastava Associates for the Respondent No.7.

Mr. Vijay D. Patil for the SRA.

**CORAM: A. A. SAYED &
SMT. ANUJA PRABHUDESSAI, JJ.**

**DATED: 31 MAY 2022
(IN CHAMBER AT 1.30 P.M. WITH
SMT. ANUJA PRABHUDESSAI, J. ON
V.C.)**

JUDGMENT: (PER A. A. SAYED, J.)

1 By way of present Petition, the Petitioners have challenged -
(i) Notification dated 20th July, 2007 issued by the Respondent No. 3-Additional Collector (Encroachment/Removal) SRA under section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and

Redevelopment) Act, 1971 (hereinafter referred to as “the Slum Act”) whereby the Respondent No. 3-Additional Collector declared the subject property as “Slum Area” under Section 4(1) of the Slum Act, (ii) the Notification dated 1st March, 2016 issued by the Respondent No. 1-State of Maharashtra to acquire the subject property, (iii) the Show Cause Notice dated 30th August, 2016 passed by the Respondent No. 4-Chief Executive Officer, SRA calling upon interalia the owners of the subject property to file their written say on the compensation amount for acquisition of the subject property, (iv) the Award dated 25th May, 2017 determining the compensation for acquisition of the subject property, and (v) the letter dated 28th June, 2017 of the Dy. Collector (WS), SRA to take possession of the subject property and have his name entered in the land records.

2. The subject matter of the Petition is the land admeasuring 7757.80 sq.mtrs of CTS Nos.1, 1/1 to 16; 510, 510/1 to 8; 514, 514/1 to 5, 514, 518-A/1-part; 518A/2 Part; 561, 561/1 to 14 of Village Kanheri, Taluka Borivali (hereinafter referred to “the said property”).

3. It is the case of the Petitioners that by an Agreement dated

2nd January, 1995, the Respondent No.6-Nusli Neville Wadia, Administrator of the estate of late E.F. Dinshaw appointed the Petitioner No.1 as 'Project Co-ordinator' and granted the Petitioners exclusive development rights and agreed to grant five year lease followed by monthly tenancy in respect of a larger property, of which the said property forms a part.

4. The subject matter of the present Writ Petition is also the subject matter in the companion Writ Petition No.1863 of 2017 filed by the Respondent No.6-Nusli Neville Wadia, claiming to be the owner of the said property. The Petitioner No. 1 herein is impleaded as Respondent No.6 in the said Writ Petition.

5. In para 8 of the present Petition, it is averred by the Petitioners that the Petitioner No.1 under the Agreement dated 2 January 1995 has the exclusive right to redevelop the said property. Other than the said averment, no other right has been asserted by the Petitioners in the Writ Petition either as a Lessee or Tenant or otherwise. It is not the case of the Petitioners that there was any Lease Deed executed between the Petitioners and Respondent No.6-Nusli Neville Wadia after the Agreement dated 2 January 1995.

6. In the companion Writ Petition No.1863 of 2017, filed by Nusli Neville Wadia (Respondent No.6 herein), interalia, the very Notification dated 1st March, 2016 issued by the State of Maharashtra to acquire the said property and the very Compensation Award dated 25 May 2017 determining the compensation, which are challenged in the present Writ Petition, are also challenged. The Petitioners, who claim to have an exclusive development rights in the said property under the Agreement dated 2 January 1995 belonging to the owner/s cannot claim to have any better right than that of the owner/s and will be bound by the order passed in Writ Petition No.1863 of 2017.

7. By a separate order passed today, we have dismissed the said companion Writ Petition No. 1863 of 2017 with reasons. The above Writ Petition is therefore liable to be dismissed on this ground alone.

8. Even otherwise, we do not find any substance in the submission of the learned Counsel for the Petitioners that the principles of natural justice were not followed as the Petitioners were not personally served with the show cause notice and therefore no opportunity was granted to submit their objections

prior to the issuance of the impugned Notification dated 1 March 2016 under section 14(1) of the Slum Act. Section 14 (as amended by Chapter 1A) and Section 36 of the Slum Act read as follows:

14 (1) 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, 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 orders as it deems fit.

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

(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."

36. Service of notice, etc.

(1) Every notice, order or direction issued under this Act shall, save as otherwise expressly provided in this Act, be served-

(a) by giving or tendering the notice, order or direction [or] by sending it by registered post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the notice, order or direction on some conspicuous part of his last known place of above or business, or by giving or tendering the notice, order or direction to some adult member or adult servant of his family or by causing it to be affixed on some conspicuous part of the building or land, if any, to which it relates.

(2) Where the person on whom a notice, order or direction is to be served is minor, service upon his guardian or upon any adult member or adult servant of his family shall be deemed to be the service upon the minor.

(3) Every notice, order or direction, which by or under this Act is to be served as a public notice order or direction or as a notice, order or direction which is not required to be served on any individual therein specified shall, save as otherwise expressly provided, be deemed to be sufficiently served if a copy thereof is affixed in such conspicuous part of the office of the Competent Authority or in such other public place during such period, or is published in such local newspaper or in such other manner, as the Competent Authority may direct.

9 It is not disputed before the Court that the Public Notice to show cause why the proposal of the Respondent No.5-Sangharsha SRA Co-operative Housing Society Ltd be not sent to the Government of Maharashtra for acquisition of the said property,

was published in Marathi newspaper “Navakal” and English newspaper “The Free Press Journal” on 27 June 2013 calling upon the owners and all person interested in the said property. The said Notice was also affixed on conspicuous part of the said property. The Petitioners are therefore deemed to have notice. In our view, there was no mandatory provision or requirement of serving individual notices on all person interested in the said property, even assuming the Petitioners can claim to have any interest in the said property.

10 The Division Bench of this Court in **Sara Harry D’mello vs. State of Maharashtra & Ors., 2013 (4) Mh.L.J. 348** while upholding the Constitutional validity of section 14 of the Slum Act observed as follows:

“27. As per the settled legal position, principles of natural justice are not to be put in a straight jacket formula. The scope of hearing to satisfy the principles of natural justice would vary depending on the legislative provisions and object of the inquiry. As rightly submitted by learned counsel for respondents, persons to be affected by acquisition and redevelopment of the land are not merely land owners, but also numerous persons residing in sub-human conditions in a slum area. The Legislature, in its

wisdom, has therefore not provided for the kind of inquiry which may be provided in a disciplinary proceeding. The object of acquisition of land is not to punish the land owner but to enable large masses residing in sub-human conditions in a slum area to come out from such conditions and to be provided with decent housing.”

“40. Having examined the statutory provisions, decisions cited at the bar and the rival submissions, we have no hesitation in coming to the conclusion that provisions of Section 14(1) of the Maharashtra Slum Act cannot be said to be arbitrary or violative of the provisions of Article 14 of the Constitution. Provisions of Section 14(1) of the Slum Act do provide for an opportunity of hearing to be given to the owner/mortgagee of the land before notification for acquisition is issued under section 14(1).”

11. So far as the challenge to the impugned Notification dated 20 July 2017 issued under section 4(1) of the Slum Act declaring the said property as slum is concerned, there is an alternative remedy of filing an Appeal under section 4(3) of the Slum Act. So far as the challenge to impugned Award dated 25 May 2017 is concerned, there is an alternative remedy of filing an Appeal under section 17(6) of the Slum Act.

12. Quite apart from the above, it is required to be noted that admittedly the Agreement between the Petitioners and Respondent No.6-Nusli Neville Wadia was terminated on 1 February 1995 and Suit No.414 of 2018 has been filed by the Respondent No.6 against the Petitioners in this Court. The Petitioners have neither filed proceedings nor produced before us any order showing that the termination of Agreement has been stayed or set aside. We, therefore, have our doubts about the locus of the Petitioners to challenge the acquisition of the said property under section 14(1) of the Slum Act.

13 The judgment in the case of **M/S Dharampal Satyapal Ltd vs Dy. Commissioner Of Central Excise & Ors 2015 (8) SCC 519** and the Judgment of **Anil Dattatray Gaikwad vs The State Of Maharashtra 2009 SCOnline Bom 1325** relied upon by the learned Counsel for the Petitioners, do not pertain to acquisition under section 14 of the Slum Act and would have no application to the facts of the present case. In case of **State of Maharashtra vs Mayer Hans George, 1965 (1) SCR 123** relied upon by learned Senior Counsel for Respondent No.5-Society, the 3-Judge Bench of the Supreme Court in paragraph nos. 48 and 49 held as

follows:

“48. Learned counsel for the respondent also referred us to the decision of the Bombay High Court in *Imperator v. Leslie Gwilt* where the question of the proper construction and effect of Rule 119 of the Defence of India Rules, 1937 came up for consideration. The learned Judges held that there had not been a proper publication or notification of an order, as required by Rule 119-And that in consequence the accused could not be prosecuted for a violation of that order. Other decisions of a like nature dealing with the failure to comply with the requirements of Rule 119 of the Defence of India Rules or the Essential Supplies Act, or the Essential Commodities Act, were also brought to our notice but we consider that they do not assist us in the present appeal. Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form i.e. by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules. In most of the Indian statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It therefore stands to reason that publication in the Official Gazette viz. the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned. As we have stated earlier, the notification by the Reserve Bank was published in the Gazette of India on November 24, 1962 and hence even adopting the view of Bailhache, J. the notification must be deemed to have been published and brought to the notice of the concerned individuals on the 25th of November, 1962. The argument, therefore, that the notification dated November 8, 1962 was not effective, because it was not properly published in the sense of having been brought to the actual notice of the respondent must be rejected.

49. Before parting from this topic we would desire to make an observation. There is undoubtedly a certain amount of uncertainty in the law except in cases where specific provision in that behalf is made in individual statutes as to (a) when subordinate legislation could be said to have been passed, and (b) when it comes into effect. The position in England has been clarified by the Statutory Instruments Act of 1946, though there is a slight ambiguity in the language employed in it, which has given rise to disputed questions of construction as regards certain expressions used in the Act. We consider that it would be conducive to clarity as well as to the avoidance of unnecessary technical objections giving occasion for litigation if an enactment on the lines of the U.K. Statutory Instruments Act, 1946 were made in India either by an amendment of the General Clauses Act or by independent legislation keeping in mind the difficulties of construction to which the U.K. enactment has given rise. As we have pointed out, so far as the present case is concerned, even on the narrowest view of the law the notification of the Reserve Bank must be deemed to have been published in the sense of having been brought to the notice of the relevant public atleast by November 25, 1962 and hence the plea by the respondent that he was ignorant of the law cannot afford him any defence in his prosecution."

14. As held in the order passed today in companion Writ Petition No. 1863 of 2017, upon issuance of impugned Notification dated 1st March, 2016, the said property now vests in the State Government free from all encumbrances and having regard to the fact that the Respondent No. 7-Developer has taken several steps as indicated in the said Agreement dated 2nd January, 1995, it is now not possible to set clock back.

15. In case of ***Improvement Trust, Moga vs Manchanda Soap Works and Others, (1996) 8 SCC 686***, the Supreme Court in paragraph 5 held as follows:

“A reading of the Sections would clearly indicate that the statute requires general Publication. The publication in that behalf in the newspaper and Gazette is mandatory requirement. On the facts of this case, they were, in fact, published in the newspapers. Therefore, the Act did not provide for any individual notice or personal hearing under Section 79 of the Act read with Sections 36 and 38 of the Act. In consequence, the objections are not required to be served with personal notice. Notice in the newspaper, as required under the Act, was intended to be sufficient notice for the objectors. The High Court, therefore, was not right in its conclusion that the respondents could not have read and had not read the newspapers. That reason is obviously fallacious. Once the statute requires publication of notification in the newspaper, that is the sufficient compliance. It presumes that the intending objectors are put on notice of the hearing and it is for them to appear and if they fail to appear they cannot make any grievance of non-issuance of personal notice which statute does not require them to be served.”

16. For the aforesaid reasons, there is no merit in the Petition.

The Petition is accordingly dismissed.

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(SMT. ANUJA PRABHUDESSAI, J.)

(A. A. SAYED, J.)