

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1580 OF 2017
WITH
INTERIM APPLICATION (L) NO. 32032 OF 2023
(NOT ON BOARD)
IN
WRIT PETITION NO. 1580 OF 2017

1. **VITHAL RAKHUMAI CHS
(PROPOSED),**
Through its Chief Promotor
Vithal Rakhumai Mandir,
Jaku Club, Santacruz East,
Mumbai-400055.
2. **RIZWAN AHMED S/O HAJI
ALLAUDDIN**
3. **KAFEEL AHMED S/O ABDUL
AZIZ**
4. **ABBAS AHMED S/O LATE NISAR
AHMED**
5. **MOHAMMED HAROON S/O LATE
NIRAS AHMED**
6. **MOHAMMED FAROOQUE S/O
LATE NISAR AHMED**
7. **MOHAMMED ASIF S/O LATE
NISAR AHMED,**
No. 2 to 7 R/o. Cafe General Bakery,

Jaku Club, Prabhat Colony,
Road No.9, Santacruz (E), Mumbai-55
Petitioner No. 1 to 7 through their
Constituted Attorney
Asrar Ahmed Jatoo
Age: 41 yrs. Occ: Partner Arch Con
Realtors, Developers, Having address at
09, Ruby Tower, Sakhar Road,
Jogeshwari (W) Mumbai 400102.

8. **ARCH CON REALTORS,**
Through its Partner
Asrar Ahmed Jatoo
09, Ruby Tower, Sahkar Road,
Jogeshwari (W), Mumbai-400102.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through Secretary
Housing Development Department
Mantralaya Mumbai.
2. **ADDITIONAL COLLECTOR (ENC
& R),**
Mumbai Suburban District
Administrative Building, 7th floor,
Bandra (E), Mumbai – 51.
3. **CHIEF EXECUTIVE OFFICER,**
Slum Rehabilitation Authority
A. K. Marg, Bandra (E) Mumbai.
4. **ARIHANT CONSTRUCTION
COMPANY,**
Through its Partners
R/o Bldg No.46, S/4 Suprabhat CHS,
Gandhi Nagar, Opp. Mhada,
Bandra (E), Mumbai-51.

5. **SIDHIVINAYAK CHS
(PROPOSED),**
Through its Chief Promoter
Jaku Club, Prabhat Colony,
Road No.9, Santacruz (E), Mumbai-55.

... RESPONDENTS

**WITH
INTERIM APPLICATION (L) NO. 9956 OF 2024
IN
WRIT PETITION NO. 1580 OF 2017**

KAFEEL AHMED S/O ABDUL AZIZ,
R/o Cafe General Bakery,
Jaku Club, Prabhat Colony,
Road No.9, Santacruz (E), Mumbai-55.

**... APPLICANT/
ORI PETITIONER
No. 3**

~ IN THE MATTER BETWEEN~

1. **VITHAL RAKHUMAI CHS
(PROPOSED),**
Through its Chief Promoter
Vithal Rakhumai Mandir,
Jaku Club, Santacruz East,
Mumbai-40055.
2. **RIZWAN AHMED S/O HAJI
ALLAUDDIN**
3. **KAFEEL AHMED S/O ABDUL
AZIZ**
4. **ABBAS AHMED S/O LATE NISAR
AHMED**
5. **MOHAMMED HAROON S/O LATE**

NIRAS AHMED

**6. MOHAMMED FAROOQUE S/O
LATE NISAR AHMED**

**7. MOHAMMED ASIF S/O LATE
NISAR AHMED,**
No. 2 to 7 R/o. Cafe General Bakery,
Jaku Club, Prabhat Colony,
Road No.9, Santacruz (E), Mumbai-55
Petitioner No. 1 to 7 Through their
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Asrar Ahmed Jatoo
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09, Ruby Tower, Sakhar Road,
Jogeshwari (W) Mumbai 400102.

8. ARCH CON REALTORS,
Through its Partner
Asrar Ahmed Jatoo
09, Ruby Tower, Sahkar Road,
**JOGESHWARI (W), MUMBAI-
400102.**

... PETITIONERS

~ VERSUS ~

1. STATE OF MAHARASHTRA,
Through Secretary
Housing Development Department
Mantralaya Mumbai.

**2. ADDITIONAL COLLECTOR (ENC
& R),**
Mumbai Suburban District
Administrative Building, 7th floor,
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Slum Rehabilitation Authority

A. K. Marg, Bandra (E) Mumbai.

4. ARIHANT CONSTRUCTION COMPANY,
Through its Partners
R/o Bldg No.46, S/4 Suprabhat CHS,
Gandhi Nagar, Opp. Mhada,
Bandra (E), Mumbai-51.

**5. SIDHIVINAYAK CHS
(PROPOSED),**
Through its Chief Promoter
Jaku Club, Prabhat Colony,
Road No.9, Santacruz (E), Mumbai-55.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS **Mr Arshad Shaikh, Senior**
 Advocate, with MS Ansari &
 RM Momin.

FOR RESPONDENT NO. 4 **Mr Mayur Khandeparkar, i/b**
Ashwini Jadhav.

FOR RESPONDENT NO. 5 Mr Karl Tamboly, *with Abhijit Patil.*

FOR THE RESPONDENT **Mr Abhay L Patki, Addl GP, *with***
- STATE **Ms Nazia Sheikh, AGP.**

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

RESERVED ON : 1st April 2024

PRONOUNCED ON : 4th April 2024

JUDGMENT (Per Kamal Khata, J):-

1. **Rule.** Rule returnable forthwith. By consent of parties taken up for final hearing.

2. This Petition is under Article 226 of the Constitution of India. The Petitioners seek to quash and set aside the impugned Notification dated 16th July 2016 at page 152 of the Petition. This Notification is issued in exercise of the powers under Section 14(1) 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 (“**Slum Act**”).

3. Petitioner No. 1 is the proposed Co-operative Housing Society (referred to as ‘society’). The Petitioners Nos. 2 to 7 (referred to as ‘owners’) are the legal heirs of late Haji Allaiddin (deceased owner). It is stated that late Haji Allaiddin was the erstwhile owner of CT Survey No 67A, 67/1 to 26 Final Plot No. 72 (“**the said property**”) situated at Santacruz No V, Jaku Club, Prabhat Colony No.1, Village Bandra, Santacruz (East), Mumbai-55. The Petition states that vide Notification dated 15th October 1977 the said property came to be declared as Slum Area under Section 4(1) of the Slum Act.

4. This Petition is filed being aggrieved that the Respondent No. 2 namely Additional Collector, Mumbai Suburban District (herein after referred to as ‘Addl. Collector’) and Respondent No. 3 Chief Executive Officer, Slum Rehabilitation Authority (herein after referred to as ‘CEO SRA’) failed to consider that the owners

(Petitioners Nos 2 to 7) have a preferential right to develop the said land. The owners contend that they were always ready and willing to develop the suit land and the Addl. Collector and CEO SRA wilfully neglected and ignored the proposal submitted. According to the owners, the erstwhile owners, i.e., the predecessors of owners had corresponded with the authority as early as on 10th August 2007 informing the Addl Collector that they were inclined to develop the said property.

5. On 20th October 2007, Addl. Collector had issued the show cause notice to the erstwhile owners as to why the said property should not be acquired. Then correspondence ensued. By an order dated 30th May 2009, the Addl. Collector proposed to acquire the said property. Two and a half years later on 13th December 2011 the owners made a representation objecting to the acquisition of the said property. The Addl. Collector was called upon to consider the matter afresh by following the due process of law. This direction was recorded in the order dated 27th February 2012. The Addl. Collector referred the matter to CEO SRA for hearing. On 17th March 2015, pursuant to a notice dated 25th February 2015, the CEO SRA asked the owners of all seven plots including the Petitioners to submit a combined proposal for development. The Roznama of this meeting /order is annexed at page 50A (the Marathi hand written version is at page 46).

6. In the meantime, the Society submitted a proposal for development under the SRA Scheme through its architect and thereby showed their readiness to construct a school as per the

reservation on the said property. The owners aver that the CEO SRA repeatedly sent notices for acquisition of the said land and called upon the owners to submit their reply. The owners admittedly did not reply to these notices. On 17th November 2015, the CEO SRA submitted his report and proposal to Housing Department (Respondent No. 1) for acquisition of the said property. The Respondent No 1 issued a Notification on 16th July 2016.

7. The owners assert that the Notification was not communicated to them and they discovered the same as it was displayed by another society (Respondent No 5) in that area. The, owners through their developer's (Petitioner No 8) architect submitted a proposal for development to CEO SRA by a letter dated 20th May 2016. The Housing Department directed the Addl. Collector to consider the representation of the owners through Petitioner No 8 and to take appropriate action. They contend that their representation dated 6th May 2016 was prior to the Notification dated 16th July 2016. They contend that they only discovered the applications of the Respondents to develop the other plots through RTI applications and thus are aggrieved by the conduct of Respondents Nos 2 and 3.

8. The owners admit that there are seven plots which are covered under the SRA Scheme. Three of these plots are purchased by Respondent No. 4. Learned senior counsel Mr Shaikh for the Petitioners contends that the owners (of one of the seven plots) ought to have been given a preference to develop the said property. He therefore submits that the impugned Notification deserves to be

quashed along with the impugned proposal of the CEO SRA for acquisition of land dated 17th November 2015. Mr Shaikh in support of his contention drew our attention to the letters dated 10th August 2007, 20th November 2007 and 17th January 2008 to show that the Addl. Collector had failed to consider the proposals that were put up since August 2007. The Petition he submits is in time and should be allowed.

9. Mr Khandeparkar appearing on behalf of Respondent No 4 submitted that the said property was a plot that was reserved for a school. He tendered an area plan which shows that the owners' property is towards the north of the aggregate area and is land locked. That plan is scanned and annexed as a part of this order. He submitted that these are seven plots that are covered by slums and only if all the seven plots were redeveloped, then the proposed DP Road could be constructed. He submitted that Respondent No. 4 as the owner of three of the seven plots had given a proposal for composite development. He submitted that 258 out of 268 structures on the seven plots have given their consent to the Respondent No. 4. This includes 34 occupants of the 37 that are on the owners' property. He states that the Letter of Intent ("LOI") dated 21st March 2021 has been obtained for the entire Scheme and Intimation of Approval ("IOA") dated 24th August 2021 has been issued. He submitted that the Petition ought to be dismissed on the ground of delay. He further submitted that pursuant to the Notification an Award is declared under Section 17 and the award monies are deposited in the City Civil Court. He, thus, submits that the Petition deserves to be dismissed.

10. Mr Tamboly for Respondent No. 5 draws our attention to page 50A of the Petition to submit that the contention of the owners that they were not aware or they were not heard in the matter of land acquisition is blatantly false. He submits that from the minutes that have been annexed to the Petition, it is apparent that the owners and/or their legal representatives were present at the meeting of 17th March 2015. He submits that the order passed by the CEO, SRA, which is annexed at Page 50A of the Petition, dated 17th March 2015 has not been challenged. He further submits that the proposed society namely the Petitioner No 1 cannot maintain this Petition. He therefore submits that this Petition deserves to be dismissed.

11. We have heard all counsel. A narration of the events since filing of the Petition will bear some relevance. The Petitioner had filed this Petition way back on 13th October 2016. It can be seen from the records and the previous orders that since 8th September 2017, the Petitioners only sought time on one ground or the other. By an order dated 31st January 2019, this Court recorded that the Petitioners have failed to appear and argue the matter and on that ground the Petition had been adjourned from time to time. The order also recorded that the challenge to the Notification dated 16th July 2016 under Section 14(1) of the Slum Act had already been turned down in another Writ Petition No. 1036 of 2017 presented by Marathwada Society Chawl Committee and Others,¹ by an order of the Division Bench of this Court on 26th September 2017. Since the Petitioners had failed to remain present and the order of the

1 2017 SCC OnLine Bom 8547 : 2017:BHC-OS:12232-DB

Division Bench of this Court in *Marathwada Society's Case* (supra) was submitted, the Court recorded that nothing survived in this Petition and accordingly dismissed the Petition for want of prosecution.

12. Almost after four years and seven months on 31st July 2023, the Petitioners filed a Notice of Motion to set aside the order of 31st January 2019. That Motion was lodged on 28th February 2019. This Court with a view to afford a fair opportunity to the Petitioners set aside the order of 31st January 2019 and restored this Petition to file. On 20th November 2023, the Petitioners moved an Interim Application to stay the CEO SRA from taking possession of the said property. Respondent No 4's Advocate was also present. The statement of Respondent No 4 that they would not claim equities on the basis of possession that was being taken by CEO SRA was recorded and thus, interim relief was refused by this Court. The Interim Application was disposed of. In this background, we have taken up the matter for final hearing.

13. Let us consider the responses. The Affidavit of one Kalyan D Pandhare, for CEO SRA, records in paragraph 4 and 5 that the said property is duly acquired by the State Government following the due process of law having given full opportunity to the land owners before the acquisition of the said property. It is stated in paragraph 6 that now upon publication of the notice in the Government Gazette, the owners would only be entitled to compensation. They have a legal remedy by way of an appeal under Section 17(6) of the Slum Act if the compensation awarded is disputed. It is settled law that

upon a declaration being made under Section 4(3) of the Slum Act, the aggrieved person is required to challenge the declaration by filing an appeal before the Tribunal within 30 days of the date of declaration in the Official Gazette. Admittedly, the owners have not filed any appeal.

14. The Affidavit also states in paragraph 10 that there are 310 slum dwellers/occupants on the seven plots. Therefore, the members of Respondent No 5 who are the slum dwellers or the occupants formed a society and have filed an application dated 5th January 2006 before the Competent Authority requesting them to acquire the land under Section 14(1) of the Slum Act. The owners have failed to take any steps for the redevelopment or development of the said property, nor did they bother to provide basic civic amenities to the occupants/slum dwellers residing on the subject property.

15. Then paragraph 11 refers to a public notice that was published on 11th July 2007 in two Marathi newspapers “Sandhyakal” and “Mumbai Chaufair” and hearing was also given to those who objected on various dates. A report was forwarded by the Additional Collector to the Chief Secretary Housing Department on 27th May 2009. Then the Housing Department by its letter dated 15th February 2013 requested the Respondent to submit a proposal for acquisition on 17th March 2015. A meeting was held wherein the CEO SRA directed all the land owners to give a combined development proposal. It was categorically pointed out that only a combined proposal covering all seven plots would be considered. If

not, the other plots would be acquired. The developer would be the one who had consent of 70% of the eligible slum dwellers across all the lands.

16. Paragraph 12 to 16 then refers to notices for hearing which were issued on 25th February 2015, 10th July 2015, 20th August 2015 and 3rd October 2015 and also the public notice affixed on conspicuous parts of the various plots as provided under Section 36 of the Slum Act. After hearing all parties concerned, the CEO SRA forwarded a report to the Government for acquisition on 17th November 2015. Under these circumstances, the Notification dated 16th July 2017 and the corrigendum published in the Official Gazette on 2nd July 2017 came to be issued and the plot(s) were duly acquired. It is stated that the process for issuance of compensation as per section 17 of Slum Act has also commenced.

17. The affidavit then in paragraph 17 refers to the judgement of this High Court that upheld the Notification issued under section 14 of the Slum Act in Writ Petition No. 1036 of 2017 filed by *Marathwada Society Chawl Committee and others Vs State of Maharashtra and others* (supra). The relevant portion is extracted hereunder for ready reference:-

“20. The petitioners or the erstwhile owners having failed to take any effective steps to improve the condition of the slum dwellers, cannot be allowed to challenge the acquisition, which is for public purpose. Furthermore, the notice of acquisition having been published in the Official Gazette, in terms of sub section (2) of Section 14 of the Slum Act the property has vested absolutely in the State Government. In such circumstances, the remedy of the

Petitioners is to apply for compensation in accordance with the provisions of the Slum Act.

21. Under the circumstances and in view of discussion supra, we do not find any flaw in the notification or acquisition of the property under section 14 (1) of the slum act. In the facts and circumstances of the case we are of the considered view that this is not a fit case for interference under Article 226 of constitution. Hence the writ petition is dismissed with no order as to costs. Rule discharged.”

18. The Affidavit by Shri Ashok Tukaram Parte, the Chief Promoter of Respondent No 5 proposed society, states in paragraph 8 that the Scheme is a Cluster Development Scheme with a proposed DP Road. This is now pending for decades. It is evident from paragraph 9 that Respondent No 5 has submitted an application for land acquisition on 5th January 2006. In paragraph 10 the affidavit states that the joint measurement survey was done by the Competent Authority through the CTSO on 16th January 2006 on behalf of Respondent No 5 society. The CTSO plan shows the DP Road cutting across all seven plots. This DP Road can only be handed over to the Brihanmumbai Municipal Corporation if all seven plots are developed as a cluster. Therefore, the contention of the Petitioners that they would be developing their plot separately is not possible and the same is known to the Petitioners.

19. It is pertinent to note that in paragraph 14 it is stated that the SRA, after having examined the proposal of the Petitioners to develop their own property, had rejected the proposal by its letter dated 15th March 2016. The Petitioners have clearly suppressed this fact. As a matter of fact, it is stated in paragraph 18 that after the

rejection on 15th March 2016 the Petitioner submitted a revised proposal to the SRA suppressing vital information that the revised proposal was also cancelled on 19th November 2016, significantly on the ground that the plot was acquired by the Maharashtra Government prior to the acceptance of the SRA Scheme. The order dated 17th March 2015 clearly mentions that the development proposal of a single plot will not be accepted. This fact too is mischievously suppressed.

20. In our view, this Petition is without merit.

21. Firstly, the slum dwellers society (Petitioner No 1) is not the owner hence could never have filed the Petition and claimed the reliefs sought as it has no *locus standi*. On this ground alone the Petition deserves to be dismissed.

22. Secondly, the Petition deserves to be dismissed on the ground of suppression of material facts namely that the owner's application to develop their land had been rejected by a letter dated 15th March 2016. The Supreme Court in *SP Chengalvaraya Naidu v Jagannath & Ors*² has held that a litigant who approaches the Court is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document or suppresses material information in order to gain advantage over the other side then he would be guilty of playing a fraud on the Court as well as the opposite party. Such a party is not entitled to any relief. Such a Petition must be immediately dismissed. Above all, a Court must

2 (1994) 1 SCC 1

have a complete and candid disclosure of all material particulars. A failure to disclose material particulars is indistinguishable from an attempt to mislead the Court. This is now well settled in our jurisprudence.³

23. *Thirdly*, it is settled law that from the date of publication of the said notice dated 16th July 2016, the property stands vested absolutely in the State Government free of all encumbrances.

24. *Fourthly*, there is no explanation for the delay caused in filing of this Petition. It is evident that apart from writing letters the owners have failed to taken steps for development since 2007. Besides, the owners have not given any proposal for development of all seven plots either by themselves or jointly with others as directed

3 See :

- i. *Hari Narain v Badri Das*, (1964) 2 SCR 203;
- ii. *Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody*, (1964) 3 SCR 481;
- iii. *Gowrishankar & Anr v Joshi Amba Family Trust & Ors*, (1996) 3 SCC 210;
- iv. *Ashok Leyland Ltd v State of Tamil Nadu & Anr*, (2004) 3 SCC 1, paragraph 116;
- v. *AV Papayya Sastry & Ors v Government of AP & Ors*, (2007) 4 SCC 221;
- vi. *Dalip Singh v State of UP*, (2010) 2 SCC 114;
- vii. *Oswal Fats & Oils Ltd v Additional Commissioner (Administration) & Ors*, (2010) 4 SCC 728;
- viii. *A Shanmugam v Ariya Kshatriya Rajakula Vamsathu, etc*, (2012) 6 SCC 430;
- ix. *Maria Margarida Sequeira Fernandes & Ors v Erasmo Jack De Sequeira*, (2012) 5 SCC 370;
- x. *Sciemed Overseas Inc v BOC India Ltd*, (2016) 3 SCC 70;
Dnyandeo Sabaji Naik & Anr v Pradnya Prakash Khadekar & Ors, (2017) 5 SCC 496.

by the CEO SRA's order dated 17th March 2015. That was not challenged. That has attained finality.

25. *Fifthly*, we are bound by the order of the Division Bench of our Court in the case of *Sara Harry DMello and others Vs State of Maharashtra & Ors*⁴ holding that the provisions of Section 14 and 17 of the Slum Act are not *ultra vires* the provisions of the Constitution of India and that the aggrieved persons would be at liberty to file appeals under Section 17(6) of the Slum Act against the amounts determined by the Competent Authority under Section 17(5) thereof within 30 days. The owners in this case have not filed any appeal.

26. The deliberate suppression of material factors and the attempt to mislead the court to gain private profit advantage at the cost of slum dwellers, even those on the owners' lands and whose conditions the owners have done nothing to ameliorate, warrants an order of costs.

27. Rule is discharged and the Petition is dismissed, with costs of Rs. 10 lakhs to be paid to the 5th Respondent society.

28. In view of the disposal of the Writ Petition, both Interim Applications do not survive and are disposed of.

29. Mr Shaikh at this stage seeks protection to be able to approach the Supreme Court. There is no ad interim order. There is

4 (2013) 5 BCR 167

no question of protection in view of the observations above including regarding suppression of material facts.

(Kamal Khata, J)

(G. S. Patel, J)

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