

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1060 OF 2024

1. **RAMESH SWAMINATH SINGH,**
Age 45 years, Occupation Service
Hindu adult, Indian Inhabitant of
Mumbai
Residing at Singh Niwas, Kokani Pada,
Kurar Village, Malad (E),
Mumbai-400 097.
Mobile No.9920200126.
Email singh.ramesh77@gmail.com

...PETITIONER

~ VERSUS ~

1. **THE SLUM REHABILITATION
AUTHORITY,**
Having address at SRA Building,
Anant Kanekar Marg, Bandra (East),
Mumbai 400 051.
2. **THE CHIEF EXECUTIVE
OFFICER,**
Slum Rehabilitation Authority,
S.R.A. Building, Anant Kanekar Marg,
Bandra (E), Mumbai-400 051.
3. **THE EXECUTIVE ENGINEER
(SRA),**
Having address at SRA Building,
Anant Kanekar Marg, Bandra (East),
Mumbai 400051.

4. **CITY SURVEY OFFICE, MALAD
THROUGH STATE GOVERNMENT
OF MAHARASHTRA,**
Address at Administrative Building
5th floor, Dr. N.R. Karode Marg
Natakwala Lane, S. V. Road, Borivali
(West), Mumbai-400 092
5. **THE MUMBAI MUNICIPAL
CORPORATION,**
Having address at Mahapalika Bhawan
Mahapalika Marg, Fort,
Mumbai 400001
6. **THE MUNICIPAL
COMMISSIONER,**
Mumbai Municipal Corporation
Having address at Mahapalika Bhawan
Mahapalika Marg, Fort,
Mumbai 400001
7. **M/s. COSMIC DEVELOPERS,**
A Partnership firm registered under the
Indian Partnership Act, 1932 through
Its partner Mr. Mr. Musa M. Shaikh &
Mr. Naeem N. Shamsi, having address
Ground Floor, A-002, Hill Park, Kurar
Village, Kokanipada, Malad (East),
Mumbai - 400 097.
8. **KOKANIPADA SRA CHS,**
CTS No.738/B/1/A, 741 and 746
opp. Triveni Nagar Malad (East)
Mumbai - 400 097 through Mr. Ratik
Mamdani.

...RESPONDENTS

**WITH
INTERIM APPLICATION NO. 984 OF 2023
IN
WRIT PETITION NO. 1060 OF 2024**

1. **KOKANIPADA SRA Co-
OPERATIVE HOUSING SOCIETY,**
Having its address at, CTS
No.738/B/1/A, 741 and 746, Opp.
Triveni Nagar, Malad (East),
Mumbai – 400097
Through Authorised person
Mr. Ratik Mohammed Mamdani

**...APPLICANT/
INTERVENOR**

~ IN THE MATTER BETWEEN ~

1. **RAMESH SWAMINATH SINGH,**
Age 65 years, Occupation Service
Hindu Adult Indian Inhabitant of
Mumbai
Residing at Singh Niwas, Kokani Pada,
Kurar Village, Malad (E),
Mumbai 400097

...PETITIONER

~ VERSUS ~

1. **THE SLUM REHABILITATION
AUTHORITY,**
Having address at SRA Building
Anant Kanekar Marg, Bandra East
Mumbai 4000 51
2. **THE CHIEF EXECUTIVE
OFFICER,**
Slum Rehabilitation Authority,
S.R.A. Building, Anant Kanekar Marg,
Bandra East, Mumbai 4000 51

3. **THE EXECUTIVE ENGINEER
(SRA),**
Having its address at S.R.A. Building
Anant Kanekar Marg, Bandra East
Mumbai 4000 51
4. **CITY SURVEY OFFICE, MALAD
THROUGH STATE GOVERNMENT
OF MAHARASHTRA,**
Address at Administrative Building
5th Floor, Dr. N.R. Karode Marg
Natakwala Lane, S. V. Road, Borivali
(West), Mumbai 4000 92
5. **MUMBAI MUNICIPAL
CORPORATION,**
Having its address at Mahapalika
Bhawan
Mahapalika Marg, Fort,
Mumbai 40000 1
6. **THE MUNICIPAL
COMMISSIONER,**
Mumbai Municipal Corporation
Having its address at Mahapalika
Bhawan
Mahapalika Marg, Fort,
Mumbai 40000 1
7. **M/s. COSMIC DEVELOPERS,**
A Partnership firm registered under the
Indian Partnership Act, 1932 through
Its partner Mr. Musa M. Shaikh and
Mr. Naeem N. Shamsi having its
address at Ground floor, A-002, Hill
Park, Kurar Village, Konkanipada,
Malad (East),
Mumbai 4000 97

...RESPONDENTS

**WITH
WRIT PETITION NO. 1127 OF 2024**

1. **BABU MUMTAZALI CHOUDHARY,**
Aged 79 years, Occ. : Business,
Adult, Mumbai Inhabitant, Residing at
Flat No.105, first floor,
Noor Castle Apartments, Noorani
Masjid, Pathanwadi, Malad (East),
Mumbai – 400097.

... PETITIONER

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through the Secretary, Housing
Department, Hutatma Rajguru Chowk,
Madam Kama Marg, Mantralaya,
Mumbai – 400 032.
2. **THE CHIEF EXECUTIVE
OFFICER,**
Slum Rehabilitation Authority,
Having office at S.R.A. Building, Anant
Kanekar Marg, Bandra (East),
Mumbai-400 051.
3. **KOKANIPADA SRA CO-OP
HOUSING SOCIETY LTD.,**
Reg No.M.U.M./S.R.A./H.S.G./(T.C.)
/13347/2022, Office at C.T.S.
No.738B/1A, 741, & 746 of Village-
Malad (E), Taluka Borivali MSD
Mumbai situated at Kokani Pada, Kurar
Village, Malad (E),
Mumbai – 400 097.
Correspondence address at 002,
Ground Floor, Hill Park Apartment,
Omkar Co-op HGS Ltd, Kokanipada,

Kurar Village, Malad (East),
Mumbai-400097,

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER IN WP/1060/2024	Mr Pradeep Thorat, a/w Mr Aniesh Jadhav i/b Mr Pushparaj Singh.
FOR THE PETITIONER IN WP/1127/2024	Mr Yashodeep Deshmukh, i/b Mr Akhilesh M Yadav.
FOR RESPONDENT NOS.1 TO 3-SRA IN WP/1060/2024	Dr Milind Sathe, Senior Advocate a/w Mrs P H Kantharia.
FOR RESPONDENT NO.2-SRA IN WP/1127/2024	Mr Jagdish G Reddy.
FOR RESPONDENT- STATE IN WP/1060/2024	Ms Sheetal Malvankar, AGP.
FOR RESPONDENT- STATE IN WP/1127/2024	Mr Suraj Gupte, AGP.
FOR RESPONDENT-BMC IN BOTH WRIT PETITIONS	Ms Komal Kandharkar (through VC), a/w Mrs S Tondwalkar.
FOR RESPONDENT NO.7 IN WP/1060/2024	Mr Mayur Khandeparkar, i/b Mr Aadil Mirza.
FOR RESPONDENT NO.8 IN WP/1060/2024	Mr Amogh Singh, a/w Mr Jeet Gandhi, Mr Rahul Arora, Mr Akash Gupta i/b Mr Uttam Rane.
PRESENT	Mr Swapnil Gund, Sub-Engineer, P/North ward.

**CORAM : M. S. Sonak &
Kamal Khata, JJ.**

**RESERVED ON : 31 July 2024
PRONOUNCED ON : 09 August 2024**

JUDGMENT (Per M S Sonak J):-

1. Rule in both these Petitions. The Rule is made returnable immediately with the consent of the learned counsel for the parties.
2. Heard learned counsel for the parties. Learned counsel for the parties agree that both these Petitions can be disposed of by a common judgment and order.
3. Writ Petition No.1060 of 2024 concerns Petitioner's property measuring 440 sq. mtrs, surveyed under No.273, Hissa No.1 (Part), CTS No.738B/1A of village Malad (E), Taluka Borivali, Mumbai Suburban District, Mumbai along with ten assessed structures at Singh Niwas, Kokani Pada, Kurar Village, Malad (E), Mumbai 400097. Writ Petition No.1127 of 2024 concerns Petitioner's property measuring 279 sq. mtrs surveyed under No.273, Hissa No.1 (Part), CTS No.738-B/1A Part of village Malada, Taluka Borivali, Mumbai Suburban District, Mumbai, locally known as Kokanipada, Kurar Village, Malad (East), Mumbai 400097 (Collectively referred as "the said property")
4. The Petitioner in Writ Petition No.1060 of 2024 challenges Order dated 13 April 2016 made under Section 3C(1) of the Maharashtra Slum Areas (Improvements, Clearance and

Redevelopment) Act, 1971 (“the Slum Act”); Order dated 30 August 2019 made under Section 14(1) of the Slum Act; Notification dated 30 June 2020 and Order dated 26 July 2022 made under Section 17 of the Slum Act, to the extent these orders affect the Petitioner’s said property. Similarly, the Petitioner, in Writ Petition No.1127 of 2024, challenges the Notification dated 30 June 2020 published in the official gazette dated 09 July 2020 under Section 14 of the Slum Act to the extent it affects the Petitioner’s said property.

5. Mr Pradeep Thorat, learned counsel for the Petitioner in Writ Petition No.1060 of 2024, submitted that neither the Petitioner’s name nor the description of the said property was included in the notices issued under Section 3C or Section 14 of the Slum Act. However, for the first time, the Petitioner’s name and the Petitioner’s said property were included in the notice dated 26 July 2022 issued under Section 17 of the Slum Act calling upon the Petitioner to accept compensation towards the acquisition of the Petitioner’s said property.

6. Mr. Thorat submitted that the Petitioner’s said property, up to this stage, was never a part of the acquisition proceedings undertaken by the Slum Rehabilitation Authority (“the SRA”) or the State Government. He submitted that without following the acquisition process or without including the Petitioner’s name or the said property in the acquisition process, neither can any compensation be forced upon the Petitioner nor can the Petitioner’s said property be treated as acquired under the provisions of Section 14 of the Slum Act. He, therefore, submitted

that the impugned orders and the notification made under Sections 14 and 17 of the Slum Act are arbitrary, ultra vires, null and void.

7. Mr Thorat submitted that such a completely flawed acquisition or attempted acquisition was, at the instance of the developer, developing a slum rehabilitation scheme. He submitted this acquisition had no real nexus with the construction of the slum redevelopment buildings but this so-called acquisition was only to widen the DP Road. However, instead of resorting to provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. (“2013 Acquisition Act”) or applying the provisions of Development Control Regulations for the acquisition of the Petitioner’s said property, an attempt was made to unlawfully acquire the Petitioner’s said property by resorting to the provisions of the Slum Act. Mr. Thorat submitted that even this attempt was contrary to law inasmuch as there were no acquisition proceedings initiated against the Petitioner’s said property, but the Petitioner’s said property was sought to be included in the notice under Section 17 of the Slum Act for the first time when the previous notices under Section 3(C) or Section 14 of the Slum Act neither referred to the Petitioner nor the Petitioner’s said property.

8. Mr. Thorat submitted that the BMC, in its Affidavit in Reply, has pleaded that the Petitioner’s five structures had to be demolished to widen the DP Road. Therefore, by a subterfuge, the Petitioner’s said property was sought to be included in the acquisition proceedings at the stage of issuance of notice under Section 17 of the Slum Act to determine the quantum of

compensation. He submitted that for all the crucial stages before this stage, admittedly, neither was the Petitioner's name nor the Petitioner's said property even referred to in the notices and the notification issued under the Slum Act. He, therefore, submitted that the action was affected by legal malafides and warrants interference with the impugned orders and notifications.

9. Mr Thorat submitted that the provisions for the acquisition of property have to be strictly construed. He submitted that notice to a land owner or a person interested is mandatory, and any attempted acquisition without such notice is unfair and violative of Article 300A of the Constitution of India. He submitted that under the scheme of the Slum Act, the first opportunity to undertake a slum redevelopment scheme has to be offered to the landlord. Only upon failure to do so can the State Government proceed to acquire the property on the recommendation of the SRA. He submitted that the procedure adopted by the Respondents in the present case blatantly violates the law in the **Indian Cork Mills Private Limited, A limited company Vs. State of Maharashtra through its Housing Department and others¹** and **Yogesh Chandulal Mehta and anr. Vs The State of Maharashtra and ors²**.

10. Mr. Yashodeep Deshmukh, learned counsel for the Petitioner in Writ Petition No.1127 of 2024, adopted Mr. Thorat's submissions. He also submitted that the Petitioner's property was not even affected by the DP Road, and therefore, the attempted flawed acquisition was affected by legal malafides.

¹ (2018) 4 Bom CR 618

² 2023 SCC OnLine Bom 822

11. Mr. Deshmukh submitted that until the last moment, neither the Petitioner's name nor the Petitioner's said property was included in any of the notices or notifications during the acquisition process. Only in the final notification, or rather the notice under Section 17 of the Slum Act, some paltry compensation was offered to the Petitioner, and an attempt was made to acquire the Petitioner's said property.

12. Mr Deshmukh submitted that this Court granted interim relief in both the Petitions and that the Respondents were restrained from taking possession of the said properties from the Petitioners. He submitted that neither the procedure prescribed under the Slum Act nor the rulings of this Court were followed in the attempt to acquire the Petitioner's said property. He, therefore, submitted that the impugned notices/notifications/orders should be set aside.

13. Mr Thorat and Mr Deshmukh submitted that the impugned notices/notifications/orders should be set aside for all the above reasons.

14. Dr Milind Sathe learned Senior Counsel for the Respondent – SRA in both these Petitions, submitted that the notices and the survey plans had included the Petitioners' properties in the notices and notification concerning the acquisition. He, however, submitted that the Petitioners' names could not be reflected in the initial notices and notification because the Petitioners' names were included in the property card on 01 December 2016 and 09 January

2017, respectively, which was much after the notices dated 12 February 2016 or 18 May 2016 were issued under the provisions of the Slum Act. He submitted that since the Petitioners had not bothered to get their names included in the property cards, neither the SRA nor the State Government could be faulted for not including the Petitioners names in the impugned notices or notification for acquisition of their properties under the Slum Act.

15. Dr Sathe submitted that after the Petitioners' names were entered into the property cards on 01 December 2016 and 09 January 2017, respectively, the authorities deemed it appropriate to pay/offer compensation to the Petitioners because it is the Petitioners' properties that were being acquired under the Slum Act. He submitted that the Petitioners, who failed to take any steps to get their names included in the property cards within a reasonable period, cannot now complain about their non-inclusion in the notices and notifications leading to the acquisition of their properties. Dr. Sathe submitted that there was no breach of the procedure under the Slum Act or of Article 300A of the Constitution of India because the authorities had fairly offered and were willing to pay compensation to both the Petitioners towards acquiring their properties.

16. Dr. Sathe relied on the judgment of this Court in **Sakinaben Fakir Mohammed Sayani and others Vs. State of Maharashtra and others**³ to submit that under almost similar circumstances, no relief was granted to the land owners who had failed to take steps to

³

2015 SCC OnLine Bom 6591

get their names included in the property cards within a reasonable period.

17. Dr Sathe submitted that Section 3C of the Slum Act, as it stood before the 2018 Amendment, did not even contemplate the issue of any notice to the landowners. Such a requirement was introduced only after 2018. Therefore, the orders issued in 2016 under Section 3C of the Slum Act cannot be faulted for want of notices to the Petitioners. He relied on the judgment of the Supreme Court in **Kantabai Vasant Ahir and others Vs. Slum Rehabilitation Authority and others**⁴ to support this contention. He also submitted that the decisions Mr Thorat relied upon were distinguishable on facts, and based on those facts, no relief was due to the Petitioners.

18. For all the above reasons, Dr. Sathe submitted that these Petitions may be dismissed and interim relief may be vacated.

19. Mr. Khandeparkar, learned counsel for the Respondent-Developer, submitted that the redevelopment project had advanced substantially. If the acquisition of 1050 sq. mtrs. is interfered with at this stage, the same will affect the further progress of the redevelopment scheme. He submitted that by setting aside the acquisition, it was not as if the Petitioners would get any additional compensation by insisting upon resorting to acquisition under the 2013 Acquisition Act or the DP Regulations. He submitted that the Slum Act was a self-contained code, and its provisions would

⁴ (2019 10 SCC 194)

always override the provisions of the 2013 Acquisition Act or the DP Regulations.

20. Mr. Khandeparkar submitted that these Petitions were barred by laches because at least the Petitioner in Writ Petition No.1060 of 2024 was challenging the declaration under Section 3C of the Slum Act issued on 13 April 2014 by instituting this Petition on 04 November 2022. He submitted that there was no explanation for this inordinate delay, and therefore, this Petition should be dismissed on the grounds of unexplained and inordinate delay and laches.

21. Mr. Khandeparkar submitted that, in any event, the Petitioners had the remedy of Appeal under Section 3C(2) of the Slum Act to question an order under Section 3C(1) of the Slum Act. He submitted that even factually, the circumstances sufficient to declare the area a slum rehabilitation area clearly existed at the site. He pointed out that in 1986, this area was declared a slum area, and there was never any challenge to all this.

22. Mr. Khandeparkar submitted that there was no infirmity in the acquisition. Assuming there were any slight irregularities involved, the writ jurisdiction ought not to be exercised considering that the redevelopment scheme had advanced substantially and Petitioners' gains were not comparable to the prejudice the developer and, consequently, the slum dwellers would face, in case the orders under Section 3C or the acquisition was set aside.

23. Mr Amogh Singh, learned counsel for the Respondent—Society of Slum Dwellers—adopted Dr Sathe's and Mr Khandeparkar's arguments. He submitted that the slum dwellers would be prejudiced if the acquisition was interfered with at this stage.

24. In rejoinder, Mr. Thorat and Mr. Deshmukh submitted why the decisions relied upon by the learned counsel for the Respondents were distinguishable. Mr Thorat relied on **IDBI Trusteeship Services Limited vs District Collector, Pune and ors.**⁵ to submit that since the Petitioners had purchased the properties by registered documents, the law cast no further obligation on them to correct the property cards.

25. Mr Thorat submitted that the notices and the notification referred to 4 property holders owning distinct plots from the total property measuring over 46000 sq. mtrs. He submitted that under such circumstances, the Petitioners had no reason to suspect that their properties were included within the area of 1050 sq. mtrs, even though the names of 4 other persons were set out in the notices and the notification.

26. Mr Thorat submitted that ultimately, the properties of the persons whose names were included in the impugned notices/notification were not acquired, and only the Petitioners' said properties are sought to be acquired by forcing some compensation on them, even though they were neither notified nor granted any opportunity as contemplated by law before any

⁵ AIR 2021 Bombay 318

purported acquisition. He submitted that until the issuance of impugned notice under Section 17 of the Slum Act determining and offering compensation, even the Respondents had not contemplated the acquisition of the Petitioners' properties. Only because the BMC pointed out that the Petitioner's five structures would require demolition for the widening of DP Road that at the last movement, the notices were issued to the Petitioners offering compensation even without acquiring the Petitioners' properties following the law.

27. Mr Thorat and Mr Deshmukh submitted that this acquisition had nothing to do with the slum redevelopment scheme and that this was an attempt to deny the petitioners compensation under the 2013 Act or DP regulations. They submitted that the project would not be delayed if this acquisition was struck down. On the above grounds, they submitted that the Rule is liable to be made absolute in both these Petitions.

28. The rival contentions now fall for our determination.

29. The property bearing CTS No.738 is a large property measuring 46868.50 sq. mtrs. ("the larger property"). The impugned and alleged acquisition concerns only 1050 sq. mtrs. from this larger property. This being so, the SRA had to identify the acquired portion with some reasonable precision so that the persons interested would have a fair idea that it was their portion that was contemplated to be acquired. In these matters, the records show that there was no reference to the petitioners or their properties in the impugned notices and orders by which their

properties are supposed to have been acquired. Only at the final stage were the petitioners issued notices offering them compensation and threatening to take over their properties. By interim orders made on 24 January 2023 and 1 February 2023 inter alia restraining the petitioners' dispossession.

30. At one point, this larger property, measuring 46868.50 sq. mtrs, was entirely owned by F. E. Dinshaw and Nusli Wadia. However, portions of this property were transferred and re-transferred from time to time. This is evident from the various entries in the property cards placed by the Petitioners on record (See Exhibit-A on pages 51 to 54 in Writ Petition No.1060 of 2024).

31. The record in Writ Petition No.1060 of 2024 shows that the Petitioner's father, Swaminath Singh, purchased a portion of the larger property admeasuring 440 sq. mtrs along with the structures therein from Noormohammed Shaikh vide a registered sale deed dated 15 January 1974. Similarly, in Writ Petition No.1127 of 2024, the Petitioner purchased a portion of the larger property measuring 279 sq. mtrs from Noormohammed Shaikh vide a registered sale deed dated 04 May 1974. Thus, there is no dispute about the Petitioners owning the distinct portions of 440 sq. mtrs and 279 sq. mtrs. from out of the larger property measuring 46868.50 sq. mtrs. based on registered conveyances.

32. On 12 February 2016, the SRA issued a public notice declaring the properties described in the notice as slum rehabilitation areas under Section 3C of the Slum Act. This public notice is on page 394 of the paper book in Writ Petition No.1060 of

2024. The SRA's public notice dated 12 February 2016 states that the application was received from the Chairman of Kokani Pada Co-op Housing Society (Proposed) requesting to declare the area of land bearing C.T.S. No.738/B/1A (Pt.) of Village – Malad, Taluka-Borivali for Slum Rehabilitation Scheme of the said Society as “Slum Rehabilitation Area” under Section 3C (1) of the Slum Act.

33. The public notice also states that “*the applicant, along with its application, has submitted the document in respect of the property as mentioned below, the particulars whereof are as under :-*”

Sr. No.	C.T.S. No.	As per Property Card Owner
1	738/B/1A (pt)	<u>Holder :-</u> 1) Miss. Bachubai Voronzov Dashukov 2) Mr. Nasali Nevil Vadiya 3) Administrator of Hadalji Dinshaw <u>Holder :-</u> Miss. Chandrakala Dayashankar Singh <u>Holder :-</u> Sapna Trading Corporation <u>Holder :-</u> M/s. New Ajmera Construction And Developers

The particulars of area proposed to be declared as Slum Rehabilitation Area.

Sr. No.	Village & C.T.S. No.	Area as per property card (sq.mtr.)	Area to be declared as “Slum Rehabilitation Area” (sq.mtr.)	Boundaries of S.R.			
				East	West	North	South
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Village-	46868.5	950.50	C.T.S.	C.T.S.	C.T.S.	C.T.S.

	Malad Taluka- Borivali 738/B/1/A			738/B/1A (pt)	741	738(B) 3	738/B1 A/4C
Total Area		46868.5 Sq.Mt.	950.50 Sq.Mt.				

34. The public notice dated 12 February 2016 informs the land owners or any others who claim to have any right, title, and interest (if any) that they could object to the declaration of the property measuring 950.50 sq. mtrs as a slum rehabilitation area within ten days from the publication of this notice.

35. The public notice dated 12 February 2016 nowhere refers to the properties held by the two Petitioners. Instead, it refers to the properties held by Miss Bachubai Voronzov Dashukov, Mr. Nasali Nevil Vadiya, and the Administrator of Hadalji Dinshaw. The public notice also refers to the properties distinctly held by Ms Chandrakala Dayashankar Singh, Sapna Trading Corporation, and M/s. New Ajmera Construction and Developers. From the recitals in the public notice, it appears that the SRA has gone by the information furnished by the “applicant”, i.e. Chairman of Kokani Pada Co-op Housing Society (Proposed), without any independent application of mind.

36. The property card on pages 51 to 54 of the paper book in Writ Petition No.1060 of 2024 is extremely relevant and was relied on by the learned counsel for the Petitioners and the Respondents exhaustively. This property card refers to the property/portion measuring 460 sq. mtrs held by Smt. Chandrakala Dayashankar Singh, the property/portion measuring 1225 sq. mtrs. held by

Sapna Trading Corporation and the property/portion measuring 3387.5 sq. mtrs. held by New Ajmera Construction and Developers.

37. Given the above position, the contention that as of 12 February 2016, only the four names referred to in the notice dated 12 February 2016 were reflected in the property card is incorrect. Several names are included in the property card, indicating the extent of holdings of such holders. Still, the public notice dated 12 February 2016 refers only to the above names of holders having distinct portions of the larger property. From the notice, there was no reason for the two Petitioners even to suspect that the portions of the larger property held by them or acquired by them through the registered conveyances were sought to be included in the acquisition process. Very clearly, therefore, the public notice dated 12 February 2016 did not refer to the Petitioners or the Petitioners' said properties. Instead, the public notice referred to the properties/portions held by the persons named in the said public notice and not the others like the petitioners.

38. Dr. Sathe tried to contend that such public notices are usually based on survey or acquisition plans. He referred to one plan to contend that the public notice should be read along with such a plan, and when so read, the Petitioners' said properties could also be seen as included. This is, with respect, a tenuous contention backed by no credible material on record. Neither any pleadings nor any documents back such a contention.

39. The public notice dated 12 February 2016 refers to no survey or acquisition plans. The pleadings on behalf of the SRA also refer

to no such plans in clear terms. Even the plan shown to us does not clearly refer to the Petitioners' said properties. Therefore, the SRA's insistence that the public notice dated 12 February 2016 included the Petitioners' said properties but not the Petitioners' names because the Petitioners' names were not entered on the property cards by 12 February 2016 is a defence that cannot be so easily accepted in the facts of the present case. Rather, the SRA appears to be taking advantage of the fact that the Petitioners' names were entered into the property cards on 01 December 2016 and 09 January 2017, respectively, i.e. within a few days of the SRA's public notice dated 12 February 2016 even though the major portion of the acquisition process was after the inclusion of petitioners' names.

40. The SRA published yet another public notice on 18 May 2016 to enhance the area of 950 sq. mtrs, which was earlier sought to be declared as a slum rehabilitation area, to 1050 sq. mtrs. The contents of the notices dated 12 February 2016 and 18 May 2016 are substantially the same, except that the notice dated 18 May 2016 refers to the area of 1050 sq. mtrs. In the column concerning the names of the owners/Imala Malak, the same names as appeared in the public notice dated 12 February 2016 have been shown. Again, from the notice dated 18 May 2016, it is impossible to conclude that the Petitioners' said properties were included or even intended to be included for acquisition under Section 14 of the Slum Act. The petitioners' names are admittedly not included even in this notice.

41. The Petitioners have placed on record a report made by the Chief Executive Officer, SRA, on 30 August 2019 dealing with objections raised by some of the parties shown in the public notices dated 12 February 2016 and 18 May 2016. The report shows that one of the objectors withdrew the objection, and the other objector, i.e. New Ajmera Constructions and Developers, pressed the objection. However, such objections were rejected by the vague reasoning that the property held by New Ajmera Constructions and Developers was not the subject matter of acquisition. Even this report does not say that it was the petitioners' said properties that were the subject matter of acquisition. By this time, admittedly, the petitioners' names were very much recorded on the property card. The excuse about the late recording of the petitioners' names in the property card was clearly unavailable when this report was made on 30 August 2019.

42. By the time the Chief Executive Officer of SRA made his report dated 30 August 2019, the Petitioners' names had been included in the property cards. The Petitioners' names were, in fact, included in the property cards on 01 December 2016 and 09 January 2017. After observing that the property held by New Ajmera Constructions and Developers was not being acquired, the Chief Executive Officer, SRA, did not take cognisance of the Petitioners' names in the property cards and did not bother to issue any notices to the Petitioners, if the Petitioners' said properties were really included or intended to be included in the property described in the public notices dated 12 February 2016 and 18 May 2016. This would have been the most natural and reasonable manner of proceeding with the acquisition.

43. Based on the Chief Executive Officer, SRA's report dated 30 August 2019, the State Government made the order dated 30 June 2020 published in the official gazette dated 09 July 2020 under Section 14 of the Slum Act for acquiring the property which was the subject matter of the notices dated 12 February 2016 and 18 May 2016. Even this notification, dated 30 June 2020, refers to the same names as appeared in the two notices dated 12 February 2016 and 18 May 2016. This was after the CEO, SRA's report dated 30 August 2019, had recorded the properties of Chandrakala Dayashankar Singh, Sapna Trading Corporation or M/s. New Ajmera Construction and Developers were not included in the acquisition. This was also admittedly after the petitioners' names were included in the property cards, and this excuse was no longer available to the authorities.

44. Again, if the two notices had indeed referred to the Petitioners' said properties, then most reasonably and naturally, one would have expected this position to be cleared in the Chief Executive Officer, SRA's report dated 30 August 2019, by which time the names of both the Petitioners had been entered into the property cards. Similarly, the Chief Executive Officer of SRA would have recommended to the State Government to include the Petitioners' names in the final acquisition notification dated 30 June 2020 so that there would be no confusion or lack of clarity about which land or whose land was being acquired. Surprisingly, even the government's acquisition order dated 30 June 2020 does not refer to the Petitioners' names and, consequently, the Petitioners' said properties as the subject matter of the acquisition.

45. After almost two years, the Chief Executive Officer, SRA, again, without even bothering to hear any of the Petitioners by presuming that the Petitioners' said properties were included in the notices dated 12 February 2016 and 18 May 2016, order dated 30 August 2019 and the Government's Notification dated 30 June 2020 (even though none of these documents referred to either the Petitioners or their said properties) has proceeded to determine the compensation of Rs.14,26,794/- as payable to the Petitioner in Writ Petition No.1060 of 2024 and compensation of Rs.9,04,717/- as payable to the Petitioner in Writ Petition No.1127 of 2024. Based on this notice dated 26 July 2022, the Respondents contend that the Petitioners' properties were acquired in pursuance of the notices dated 12 February 2016, 18 May 2016, and the orders dated 30 August 2019 and 30 June 2020, even though none of these documents refer to the Petitioner or Petitioners' properties.

46. The Petitioner in Writ Petition No.1127 of 2024 rushed to the Civil Court when based upon the Chief Executive Officer, SRA's order dated 26 July 2022, he apprehended immediate dispossession. Mr. Deshmukh, the learned counsel for the Petitioner, submitted that this fact was pleaded in the Writ petition. He explained that at that stage, the Petitioner in Writ Petition No.1127 of 2024 had no inkling about the notices dated 12 February 2016, 18 May 2016 or the orders dated 30 August 2019 and 30 June 2020, which did not even refer to the Petitioner's names or their said properties. After the Petitioners were apprised of these documents, the present Petition was instituted after making full disclosure.

47. The Petitioner in Writ Petition No.1127 of 2024 cannot be faulted for rushing to the Civil Court based on the limited information available to the Petitioner. This Petitioner has not suppressed any facts but made full disclosure in the present Petition. Therefore, the half-hearted contention that Writ petition No.1127 of 2024 should not be entertained because of the suit instituted by the Petitioner therein cannot be accepted in the facts or present case.

48. Similarly, the developer's contention about delay or laches is also misconceived. Only after the petitioners received the notice dated 26 July 2022 could they be attributed with some knowledge that their properties were sought to be acquired. The Petitioners instituted their petitions on 28 September 2022 and 16 November 2022. As observed earlier, the notices neither referred to the petitioners nor their properties. Therefore, there was no question of delay or laches involved. Besides, this Court granted interim relief on 24 January 2023 and 1 February 2023 inter alia, restraining the authorities from taking over the possession of the petitioners' properties. So, it was not as if the authorities undertook any works pursuant to the impugned orders or changed their position substantially or otherwise. There is no material to suggest that the slum redevelopment scheme is suffering due to the interim order made by this Court. The Petitioners have contended that this exercise was nothing but an attempt to acquire Petitioners' properties to widen the DP road. This attempted acquisition was only to avoid payment of compensation under the 2013 Act or the

DP regulations. Therefore, the objection based on any alleged delay or laches cannot be sustained.

49. Dr Sathe explained that at the stage of determining the compensation, it was realised that the Petitioners were the owners of the properties, which were the subject matter of the acquisition under notices dated 12 February 2016 and 18 May 2016. Therefore, the compensation was determined and awarded favouring the two Petitioners. He submitted that by 26 July 2022, the Petitioners' names were already included in the property cards. As noted earlier, the Petitioners' names were included in the property cards on 01 December 2016 and 09 January 2017. After this, the Chief Executive Officer of SRA made his report dated 30 August 2019 without taking any cognisance of the Petitioners' names on the property cards. Similarly, based upon the Chief Executive Officer, SRA's report dated 30 August 2019, the State Government made its order dated 30 June 2020, again, without taking any cognisance of the Petitioners' names in the property cards. Surprisingly, the Chief Executive Officer, SRA, takes cognisance of the Petitioners' names in the property cards only on 26 July 2022 and determines compensation.

50. Mr Thorat and Mr Deshmukh are justified in submitting that this last-minute switch was because the BMC informed the SRA that demolishing the Petitioner's structures might be necessary for widening the DP Road. Therefore, the entire procedure, which had neither involved the Petitioners nor the Petitioners' said properties, was sought to be downplayed. The order dated 26 July 2022 purports to create an impression that the Petitioners' said

properties were the subject matter of the acquisition proceedings. However, neither the Petitioners' names nor their properties were referred to in the notices dated 12 February 2016 and 18 May 2016 or the Chief Executive Officer, SRA's report dated 30 August 2019, and the State Government's order dated 30 June 2020.

51. The BMC has filed an Affidavit in this matter on 03 March 2023. Paragraph 7 of this Affidavit reads as follows:-

7) I say that in order to facilitate the sewer line laying work in the Kurar Village the same work is also undertaken and for the same work the S. P. construction department of the MCGM is working. In view of above it is very much essential to shift/rehabilitation demolish the affected said 5 structures falling in the alignment of 18.30 m DP Road, in order, to clear the bottleneck & missing link of vital Road connectivity of Kurar area as explained above. There is a time bound program for the said work proposed by MCGM in large public interest.

52. There was no coordination between the BMC and the SRA. Therefore, the properties held by the persons whose names were reflected in almost all the acquisition documents except the final document dated 26 July 2022 were proposed to be acquired. Possibly, at the last stage, a crude attempt was made to include the Petitioners' said properties by determining the compensation payable to the two Petitioners. The Respondents have adopted a procedure not known to law. By adopting this procedure, the Respondents, particularly the SRA and the State Government,

have breached the principles of natural justice and fair play. They have also breached the statutory requirement of issuing notices to the landowners before acquiring their properties.

53. Several decisions have underscored the importance of granting a land owner an opportunity to show cause why his or her land should not be acquired. These are some of the few safeguards a land owner has been provided under the various compulsory acquisition legislations. The property right may no longer be a fundamental right, but it is still accepted as a constitutional or human right. Such right cannot be taken away by deviating from the prescribed procedure or adopting an arbitrary procedure that almost borders on subterfuge.

54. In **N. Padmamma vs S. Ramkrishna Reddy**⁶, the Hon'ble Supreme Court held that property rights are human rights and constitutional rights, and they cannot be taken away except in accordance with the law. Article 300-A of the Constitution protects such a right. The provisions of the Act seeking to divest such a right, keeping in view the provisions of Article 300-A of the Constitution of India, must be strictly construed.

55. The explanation about the Petitioners' names being included in the property cards only on 01 December 2016 or 09 January 2017 would be understandable, provided the notices had referred to the names of the predecessor-in-title of the Petitioners. Most of the procedures undertaken by the Chief Executive Officer, SRA or the State Government were after 01 December 2016 or 09 January

⁶ 2008 SCC OnLine SC 953 : (2008) 15 SCC 517

2017, when the Petitioners' names were already included in the property cards. Still, the Petitioners and even their properties were excluded from the acquisition procedure. Only when it came to determining the compensation did the Chief Executive Officer of SRA suddenly take cognisance of the property cards' entries and declare that the Petitioners' said properties stand acquired and offered to pay compensation for such alleged acquisition. Such a procedure is contrary to the provisions of the Slum Act. Such a procedure is contrary to the basic principles of natural justice and fair play, which ought to inhere such a compulsory acquisition process.

56. The decision of the Coordinate Bench in **Sakinaben** (supra) is distinguishable because the fact situation in the said decision is not comparable to the situation in the present case. Firstly, unlike in the present case, it was only after the final notification under Section 14 of the Slum Act issued on 01 September 2010 that the Petitioners in **Sakinaben** (supra) got their names included in the property card in December 2011. In the present case, the Petitioners' names were included in the property card on 01 December 2016 and 09 January 2017, respectively. The impugned order under Section 14(1) of the Slum Act was issued on 30 August 2019. The final notification was on 30 June 2020, i.e. almost three years after the Petitioners' names were entered in the property cards.

57. Secondly, unlike in the present case, the predecessor-in-title of the Petitioners in **Sakinaben** (supra) was issued notices and heard before the issuance of the impugned notification dated 01

September 2010. There was no dispute that the Petitioners were claiming title through M/s. Fazalbhoy Construction Co. and M/s. Morinaga Traders. Both these parties were duly noticed and heard before the impugned notification dated 01 September 2010 was issued. All this is evident from a letter dated 20 June 2007 addressed by M/s. J. S. Anand and Associates on behalf of the predecessor-in-title of the Petitioners referred to in paragraph 17 of the judgment.

58. Similarly, the discussion in paragraph 18 shows that the predecessor-in-title of the Petitioners filed their response to the notices issued to them, filed written arguments opposing acquisition proceedings and were heard before the impugned notification dated 01 September 2010 was issued. In these circumstances, the Coordinate Bench held that the Petitioners, who had not bothered to correct the property records at any stage before the notification dated 01 September 2010 was issued, could have no grievance against the acquisition proceedings on the ground of want of notice. Admittedly, the Petitioners do not claim through Miss Chandrakala Dayashankar Singh, Sapna Trading Corporation, and M/s New Ajmera Construction And Developers. In the present case, the predecessor-in-title of the petitioners were never noticed or heard in these acquisition proceedings. Therefore, the decision in **Sakinaben** (supra) is clearly distinguishable on facts.

59. **Kantabai Ahir** (supra) holds that prior notice under Section 3-C was not required before declaring any area as a slum rehabilitation area in terms of the law as it stood before 26 April

2018. However, the order declaring a slum rehabilitation area, i.e. the slum rehabilitation order, had to be given “*wide publicity in such manner as may be specified by the slum rehabilitation authority*”. In this case, the order under Section 3(C)(1) was made on 13 April 2016. This order did not refer to the Petitioners’ names or the Petitioners’ said properties. In any event, in these Petitions, we do not propose to entertain the Petitioners challenge to the slum rehabilitation order dated 13 April 2016 made under Section 3(C)(1) of the Slum Act because Section 3(C)(2) of the Slum Act had provided that any person aggrieved by the slum rehabilitation order may, within four weeks from the publication of such order, prefer an appeal to the Special Tribunal and the decision of the Special Tribunal shall be final. Therefore, we decline to set aside the slum rehabilitation order dated 13 April 2016 in these Petitions, leaving it open to the Petitioners to explore the possibility of challenging it.

60. However, our non-interference with the slum rehabilitation order dated 13 April 2016 on the above ground is no bar to interfering with the notification dated 30 June 2020 purporting to acquire the Petitioners’ said properties under Section 14 of the Slum Act. Even after issuing the valid order under Section 3(C)(1) of the Slum Act, legal and proper proceedings must be taken to acquire the property, which is the subject matter of a slum rehabilitation order. This procedure clearly contemplates notice to the owners, particularly because the owners are to be granted the opportunity to develop such property in the first instance.

61. Apart from the question of notice, the authorities must properly identify and describe the property sought to be acquired

under Section 14 of the Slum Act. In the present case, a perusal of the notices dated 12 February 2016, 13 April 2016, and 18 May 2016, the CEO, SRA's order dated 30 August 2019, and the notification dated 30 June 2020 neither refer to the Petitioners' names nor the Petitioners' said properties. Only the notice dated 26 July 2022 determining the compensation refers to the Petitioners' names. This is despite the Petitioners' names being included in the property cards on 01 December 2016 and 09 January 2017, respectively. Based upon such serious omissions, there is no question of acquiring the Petitioner's said properties or proceeding on the premise that the Petitioner's said properties had been acquired under the notification dated 30 June 2020.

62. Admittedly, in this case, the Petitioners purchased the said properties under the registered conveyances. In **IDBI Trusteeship Services Limited** (supra) the Coordinate Bench held that when a transfer of immovable property is effected by way of a registered instrument, a subsequent purchaser is said to have implied notice of the same. Section 3 of the Transfer of Property Act of 1882 considers not only the actual notice but also implied notice by way of a registered instrument, provided that the instrument is required by law to be registered. Therefore, mere non-entering of the encumbrances in the revenue records cannot be an excuse. Moreover, the second proviso to Section 149 of the MLRC exempts the obligation of reporting the acquisition of rights by a registered instrument to the revenue authorities.

63. But even if the principle in the above ruling is not applied, still, for the several reasons discussed above, the excuse about the

absence of petitioners' names in the property card when the initial or preliminary acquisition notices were issued cannot be accepted. This is a case where most of the crucial processes were after the inclusion. Even the preliminary notices did not refer to petitioners' properties but some other properties. The names of other property owners (but not the petitioners' names) were included in such preliminary and final notices. The petitioners' names were only included for the very first time in the notice determining compensation.

64. This is not how the authorities can attempt to acquire its citizens' properties compulsorily. The compulsory acquisition of properties, even under the Slum Act, is a serious matter, particularly since property owners are made to part with their properties for compensation, which is much less than the compensation offered under the 2013 Act or DP Regulations. Besides, in such a case, the property owners are to be divested of their property to facilitate a slum redevelopment allegedly. Therefore, compulsory acquisition, in such cases, cannot be lightly resorted to, and certainly not by disregarding the safeguards that the law prescribes.

65. In **Bishop John Rodrigues Vs. State of Maharashtra Through its Principal Secretary and others**⁷ the Coordinate Bench of this Court has held that when valuable private rights as guaranteed under Article 300A of the Constitution to an owner of the land are being deprived under the garb of slum rehabilitation, there has to be an insurmountable situation on record of the SRA

⁷ 2024 SCC OnLine Bom 1632

or for any reasonable body of persons to come to an unimpeachable conclusion that the only and only remedy and/or avenue in a given case is to acquire the private land and not to permit the owner of the land to undertake the development. The CEO of SRA has an onerous obligation to reasonably, non-arbitrarily, and objectively deal with the valuable property rights of private citizens who are dragged into such a situation that the monsters of encroachment and persons supporting them take the rule of law in their hands in depriving the land owner of his property right. They forget that there is a rule of law and there are courts and any such attempt to dent the rule of law can be dealt with iron hands.

66. For all the above reasons, we quash and set aside the orders dated 30 August 2019, the notification dated 30 June 2020 made under Section 14 of the Slum Act and the order dated 26 July 2022 made under Section 17 of the Slum Act to the extent these orders affect the Petitioners and the Petitioners' said properties (as described in paragraph 4 of this Judgment and Order).

67. The rule is made absolute in the above terms, and the interim orders are hereby confirmed. There shall be no orders for costs.

68. In view of disposal of Writ Petitions, Interim Application No.984 of 2023 does not survive and the same is accordingly disposed of.

(Kamal Khata, J)

(M. S. Sonak, J)