

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 622 OF 2024

ABHIGNA ENTERPRISES,
Through its partner Mr Satish Bhansali,
having its office at E-15, Bharat Baug, Nr
Chandorkar Hospital, Off SV Road, Borivali
(West), Mumbai 400 092.

...Petitioner

~ VERSUS ~

1. **SLUM REHABILITATION
AUTHORITY,**
An Authority, constituted under
Provisions of Maharashtra Slum Area
(I.C & R) Act 1971, having its Office at
Administrative Building, Anant
Kaneekar Marg, Bandra (East), Mumbai
400 051.
2. **INCLINE REALITY PVT LTD,**
Commerz, 3rd floor, International
Business Park Oberoi Garden City,
Off Western Express Highway,
Goregaon (East), Mumbai 400 063.
3. **MAHARASHTRA HOUSING AND
DEVELOPMENT AUTHORITY,**
2nd Floor, MHADA Building,
Bandra (East), Mumbai 400 051.
4. **BORIVALI AVIRAH I SRA CHS
(PROPOSED),**
Through Chief Promoter

ASHWINI H
GAJAKOSH

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ASHWINI H
GAJAKOSH
Date: 2024.02.26
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Mrs Rekha T Patil, Dasa Mata Mandir,
Vasu Pawar Chawl, On WE Highway,
Next to Oberoi Sky City, Borivali
(East), Mumbai 400 066.

...Respondents

APPEARANCES

FOR THE PETITIONER	Mr Janak Dwarkadas, Senior Advocate, with GS Godbole, Senior Advocate, Shilpi Jain, i/b Jaya Bagwe.
FOR RESPONDENT NO 2	Mr Aspi Chinoy, Senior Advocate, with Karl Tamboly, Krishna Balaji Moorthy, Bhakti Mehta & Vikrant Baravkar, i/b Wadia Ghandy & Co.
FOR RESPONDENT NO 3- MHADA	Ms Sayli Apte, with Shreya Shah, i/b PG Lad.
FOR RESPONDENT NO 4	Mr Zal Andhyarujina, Senior Advocate, with Karan Bhide, i/b Richa Singh.
FOR RESPONDENT-SRA	Mr Vijay D Patil.
FOR RESPONDENT-STATE	Mrs Uma Palsuledesai, AGP.

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

DATED : 12th February 2024

ORAL JUDGMENT (Per GS Patel J):-

- 1. Rule**, returnable forthwith. Pleadings are complete.

2. The Petition relates to a Letter of Intent (“**LoI**”) in regard to a slum rehabilitation project at Borivali. The Petitioner wants excluded from the LoI, three tracts of land, CTS No 148/129 (400.4 sq mts), CTS No 149 (630 sq mts), and CTS No 150 (1380 sq mts), all of village Magathane, Taluka Borivali, Mumbai Suburban District. The LoI is dated 25th April 2019. The other prayer is to quash this LoI.

3. At the forefront, we reproduce the two prayers in the Writ Petition. These have been substituted for the previous prayer clauses (a) and (b). The amended prayers (a) and (b) now read as follows:

“(a) That this Hon’ble Court may be pleased to issue a Writ of Mandamus and/or any other Writ, Order or direction in the nature of Writ of Mandamus thereby directing the Respondent No. 1 Slum Rehabilitation Authority to forthwith amend and/or modify the Letter of Intent dated 25th April, 2019 issued by the Respondent No. 1 being Exhibit-B to this Petition by excluding lands bearing CTS No. 148/129 admeasuring 400.4 sq. mtrs., CTS No. 149 admeasuring 630 sq. mtrs. and CTS No. 150 admeasuring 1380 sq. mtrs. of Village Magathane, Taluka – Borivali, Mumbai Suburban District from the purview / scope of the said Letter of Intent dated 25th April, 2019 with a further Writ of Mandamus to make all consequential corrections and/or amendment in the areas of lands etc. pursuant to such deletion.

(b) That this Hon’ble Court may be pleased to issue a Writ of Certiorari and/or any other Writ, Order or direction in the Writ of Certiorari thereby partially quashing and/or setting aside the Impugned Letter of Intent dated 25th April, 2019 issued by the Respondent No. 1 Slum

Rehabilitation Authority, being Exhibit-B to this Petition to the extent the said Letter of Intent includes lands bearing CTS No. 148/129 admeasuring 400.4 sq. mtrs., CTS No. 149 admeasuring 630 sq. mtrs. and CTS No. 150 admeasuring 1380 sq. mtrs. of Village Magathane, Taluka-Borivali, Mumbai Suburban District.

4. In addition, there are prayer clauses (c) and (d) which read thus:

“(c) That this Hon’ble Court be pleased to grant injunction restraining the Respondent no. 2 through their servant, agent or persons claiming through or Respondent no. 2 from carry out any construction or development activities on the said property bearing CTS No. 148/129, 149 and 150 total admeasuring about 2410.4 sq. meters.

(d) That this Hon’ble Court be pleased to grant injunction restraining the Respondent no. 2 through their servant, agent or persons claiming through or Respondent no.2 from entering upon and remaining upon the said property namely having CTS No. 148/129, 149 and 150 total admeasuring about 2410.4 sq. meters.”

5. It is clear that prayer clauses (a) and (b), both proceed or are predicated on one factor namely, that there is no dispute that the three lands over which the Petitioner claims title are indisputably not part and could not have been part of the LoI or the slum rehabilitation scheme, that is to say, that they were never acquired by any public authority and that they remain the private ownership of the Petitioner. As we shall presently see, this is far from being an accepted position. On their own, given the contestation, the Petitioner’s prayers raise seriously disputed questions of fact. Even

worse, they raise questions of title; for what is essentially sought is a declaration of title by a Writ Court so as to sustain prayer clauses (a) and (b). Prayer clauses (c) and (d) are consequential on the reliefs sought in prayer clauses (a) and (b).

6. The Petitioner (“**Abhigna**”) is a developer. The 1st Respondent is the Slum Rehabilitation Authority (“**SRA**”). The 2nd Respondent, represented by Mr Chinoy is another developer (“**Incline Realty**” or “**IRPL**”). The 3rd Respondent, for whom Mr Lad appears is Maharashtra Housing and Area Development Authority (“**MHADA**”). The 4th Respondent is the Borivali Avirahi SRA Cooperative Housing Society Limited (“**the Society**”) represented by Mr Andhyarujina.

7. IRPL was issued a LoI of 25th April 2019. With the Society, it is implementing a slum rehabilitation scheme on a massive tract of land of over 28,000 sq mts at village Magathane. This covers CTS Nos 107/E, 141, 142, 148 (part), 148/1 to 129, 149, 150, 151, 155, and 155/1 to 12. Abhigna Enterprises is concerned with CTS Nos 148/129, 149 and 150. Abhigna Enterprises claims it acquired rights to these three plots in 2006. The record seems to indicate that, it has been proposing a slum rehab on a portion of the entire larger land, a parcel of about 8,655 sq mts. This is the equivalent of CTS Nos 148 (part), 148/129, and 149 of village Magathane and the corresponding earlier survey numbers were S No 33(part) and S No 116/1 (part). It is Mr Chinoy’s case that Abhigna Enterprises has from 2006 acted on the basis that these lands were in fact MHADA-owned. MHADA repeatedly issued letters asserting ownership and

objecting to Abhigna's endeavours to be the developer for this sub parcel of land. Abhigna was removed as a developer under Section 13(2) of the MHADA Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 ("**the Slum Act**"). This was challenged before the Apex Grievance Redressal Committee ("**AGRC**"), but the challenge failed. There was thus in parallel, this claim that Abhigna Enterprises was entitled to be the developer of this portion of 8,655 sq mts. It is only now in 2023, after a gap of nearly 17 years that Abhigna changes tack and claims to be the owner of 2,410 sq mts of part of this land covered by the scheme and the basis of this is the conveyance that it obtained in 2006. Hence its claim that these lands, covered or said to be covered by its conveyance, should be excluded from IRPL's LoI.

8. If we were to spotlight the singular document on which the Petition as originally filed turned, it is a response from MHADA of 28th March 2023 to a query by Abhigna under the Right to Information Act 2005 that the lands were not acquired by or for MHADA. This basis is now all but abandoned, for there are now affidavits by various Respondents, including MHADA itself, to the contrary.

9. The dates will show that there are two claims that seem to run not in parallel but consecutively, one following after the other failed. The first was a claim by Abhigna to be the developer of MHADA-owned land. That having failed and Abhigna having been removed, the plea now taken (and very recently) is that Abhigna is the *absolute* owner of a fractional portion of that land and that no slum scheme

can cover that fraction. Mr Chinoy and Mr Andhyarujina have been at some pains to point out that from 2006 to 2022 Abhigna has, notwithstanding its 2006 conveyance, proceeded on the basis that these lands were *all* owned by MHADA. There were several letters by MHADA asserting such ownership.

10. Under our directions, several affidavits came to be filed in this Writ Petition. We now have before us copies of the relevant land acquisition proceedings, possession receipts, plans, a city survey plan, etc.. In summary, these show that while the acquisition was originally proposed of a much larger piece of land, a strip of land was apparently excluded from acquisition. Mr Chinoy submits that a simple comparison an overlay of the plans — including a plan produced by Abhigna itself in Rejoinder — shows that the lands that Abhigna claims were excluded from acquisition were, in fact, acquired. There is also a reference to MHADA's very recent Affidavit of 5th January 2024, filed after much delay and evident reluctance. That Affidavit now makes clear MHADA's stand that the lands in question were indeed acquired by or for MHADA.

11. Thus, there are now three sets of disputes to the Petitioner's lands emanating from the record before us:

- (a) *First*, there is the conduct of Abhigna. This cannot be explained by saying that its actions were under some mistaken belief. It would not be unreasonable for any Court, and especially a Writ Court, to hold that an owner of a land must know with certainty what title it the owner obtained to what land.

- (b) *Second*, the additional Affidavits and the plans, possession receipts and documents that are now on record indicate that the lands to which Abhigna claim absolute and free title were indeed the subject matter of acquisition.
- (c) *Third* and finally there is the Affidavit of MHADA, the public authority, of 5th January 2024 asserting unequivocally that it is the owner of the lands Abhigna claims. The minute there is such an assertion from a public authority (backed by documentation), the dispute is about title and that cannot be examined in a writ petition.

12. A brief narrative will set the matter in perspective.

13. We begin with the Deed of Conveyance. This is of 23rd May 2006. The vendors were the Talpade family. There were confirming parties as well. According to this document, Abhigna took title to Survey Nos 33 (part), 116/1(part) and these were stated to be equivalent of CTS Nos 148(part), 148/129, 149 and 150 of village Magathane.

14. On 28th May 2006, this land and other portions of CTS Nos 148 (part), 148/129, 149, and 150, all altogether 8,655 sq mts, became a censused slum. A 'censused slum' is defined in Section 2(1b) of the Slum Act in the following terms:

“(2)(1b) ‘Censused Slum’ means any cluster of dwelling structures which has been **censused, surveyed and**

enumerated and incorporated in the records of land owning authority as having been censused by the Collector or Competent Authority or any other person of a Planning Authority or Special Planning Authority by order of the State Government or any authority empowered by order of the State Government.”

(Emphasis added)

15. The slum dwellers constituted themselves into a society, namely the 4th Respondent Society represented by Mr Andhyarujina. The existence of slums on the land can hardly be a matter of controversy. The Society held a general body meeting. It appointed Abhigna as a developer for 8,655 sq mts of land. A Development Agreement followed on 15th December 2006, granting Abhigna the right to implement a slum rehabilitation scheme on this area of 8,655 sq mts. Curiously, this agreement (a copy of which is at Exhibit “C” at page 153) does not contain a recital that Abhigna is the *owner* of any part of this land under slum re-development. It does not refer to the conveyance deed of 23rd May 2006 at all. To the contrary, and to our considerable surprise, the Development Agreement requires Abhigna to obtain a No Objection from the ‘land owner’. If Abhigna was the owner from 23rd May 2006, the Development Agreement could hardly have contained such a clause.

16. The curious gets curiouiser. On 12th September 2006, just a few months *prior* to the Development Agreement of 15th December 2006, SRA wrote to MHADA asking for an NOC to be given to Abhigna for all the land in the project. That could not have been

done had Abhigna owned part of the land under slum redevelopment.

17. On 8th January 2008, MHADA wrote to SRA. It said, and this will be important, that *MHADA was the owner of CTS Nos 148/129 and 149 in village Magathane* and these plots had censused slums according to a Slum Register Directory maintained by MHADA. MHADA said that Abhigna's proposal for redevelopment ought to be rejected.

18. On 19th June 2008, SRA asked Abhigna Enterprises if it was willing to pay a land premium at 25% of the Ready Reckoner Rate within eight days. If it did not, its proposal would be closed, and SRA would look elsewhere for a developer. There is nothing before us to indicate that Abhigna responded or paid this land premium. Everything points to the contrary.

19. MHADA started the process of preparing and drawing up Annexure II, the document that lists slum dwellers and assesses their eligibility to slum rehabilitation. Abhigna was asked to pay a scrutiny fee of Rs 5,000/-. Abhigna Enterprises paid this on 5th November 2008.

20. Two years went past.

21. On 16th April 2010, MHADA again asked for a scrutiny fee of Rs 5,000/- and Abhigna Enterprises paid this the very same day.

22. A little less than a year later, on 22nd February 2011, MHADA asked the CEO of SRA not to issue a LoI to Abhigna as the scheme on 8655 sq mts of land was entirely on MHADA land. This was reiterated on 4th May 2012.

23. As we noted, from 2008, when SRA first raised a demand for a premium, until 2017 Abhigna did nothing. It did not pay the land premium. It took no steps to implement the scheme.

24. We come now to 17th June 2017. This is when Abhigna endeavoured a revival of its scheme and obtained an LoI report from the CEO of SRA. This report notes that MHADA had said, five years earlier in 2012, that SRA should not give Abhigna a LoI; that the *entire* area of 8,655 sq mts in CTS Nos 148 (part), 149/129 and 149 belonged to MHADA; and that *a licensed surveyor of Abhigna itself had submitted property record documents for these three plots showing them to be in MHADA's name.*

25. Undeterred by any of this, SRA wrote to Abhigna demanding a premium of Rs 19.27 crores for the scheme on these three plots but noting that the land in question belonged to MHADA.

26. On 22nd June 2017, Abhigna paid Rs 2.89 crores apparently as a first instalment of the land premium. It seems that adjoining the land occupied by the Society, on an area of about 20,075 sq mts, there were also encroachments. The slum dwellers there had formed the Abhedya SRA CHS (proposed). The two societies joined hands and thus proposed to redevelop the whole of it in a single

consolidated scheme. **This** is how the area under re-development went up to about 28,000 sq mts.

27. Finding that Abhigna was now trying to resurrect its scheme after a passage of ten years, the Society complained to the CEO of SRA. On 28th June 2017, the CEO of SRA directed that no LoI should be issued to Abhigna until a fresh General Body Resolution of the Society was submitted. That General Body Meeting would have to be in the presence of the Assistant Registrar Cooperative Societies, SRA. Consent from slum dwellers was necessary.

28. Less than a month later, on 20th July 2017, the Society terminated Abhigna as the developer. There followed a show cause notice under Section 13(2) of the Slum Act on 14th August 2017. Abhigna went to the AGRC against the Show Cause Notice. That Appeal failed on 8th December 2017. The CEO of SRA was directed to take the matter to its logical conclusion. This AGRC order notes at different places that CTS Nos 148(part), 148/129, and 149 were all MHADA property.

29. Abhigna and some of its nominees purporting to act for the Society filed two Writ Petitions (L) Nos 94 of 2018 and 98 of 2018 against the AGRC order of 8th December 2017. These Petitions contained an assertion that MHADA was the owner of the land and that MHADA had prepared a draft Annexure II. On 12th January 2018, this Court directed the CEO of SRA to pass a final order in the Section 13(2) proceedings.

30. That order came to be made on 22nd February 2018 by the CEO of SRA. He found that no General Body Meeting of the Society had ever been held on 28th June 2006 contrary to what Abhigna had throughout maintained. There was nothing to show that the meeting was properly called or that the consent of 70% of the slum dwellers was properly obtained. The order also notes that Abhigna had not responded to the call to pay 25% of the land premium. The order directed the Assistant Registrar Cooperative Societies, SRA, to hold a General Body Meeting of the Society, to elect the Chief Promoter and a Managing Committee, and then directed the Managing Committee to hold a General Body Meeting to appoint a new developer.

31. The two Writ Petitions filed by Abhigna and its fellow petitioners were still pending. Those petitions were amended. They now challenged the CEO's order of 22nd February 2018.

32. On 15th March 2018, those Writ Petitions were dismissed. The order of the CEO of SRA was upheld.

33. On 9th April 2018, the Supreme Court dismissed as withdrawn a Special Leave Petition filed by Abhigna. In the SLP, Abhigna stated at various places that MHADA was the owner of the lands under slum re-development.

34. In April 2018, a General Body Meeting of the Society was held as directed to elect the Chief Promoter and the Managing Committee. Then the society's General Body met again on 2nd

June 2018 and this is when it appointed IRPL as the developer of that very same tract of 8,655 sq mts of land. This was noted and confirmed by the Joint Sub-Registrar Cooperative Societies of SRA on 15th June 2018.

35. As we have noted, the present 4th Respondent Society and the society on the adjacent land had come together. The neighbouring society came to be merged in the 4th Respondent Society with the idea that there would be a single LoI for the entire scheme covering over 28,000 sq mts of land.

36. We come now to a LoI report of 6th March 2019 issued by SRA. This was in regard to IRPL's proposal. This stated that CTS Nos 148, 148/1 to 129, 149, 150, and 151 of village Magathane belonged to MHADA. SRA issued an LoI in favour of IRPL on 25th April 2019. It covered 28,730.50 sq mts of land and this included the 8,655 sq mts for which Abhigna had been canvassing all this time.

37. IRPL says it began work. It claims that there were 948 slum tenements on site. Of these, 940 have been removed. On CTS Nos 148 (part), 148/129, and 149, there were 106 structures. All have been removed. Transit rent is being paid. IRPL says it has spent more than Rs 100 crores on the project and paid over Rs 22 crores towards MHADA towards land premium apart from significant payments to SRA.

38. This Petition was filed on 30th June 2023. Paragraph 21 of the original Petition at pages 27 and 28, is really the pivot for this whole Petition. This is what it says:

“21. The Petitioner thereafter made an application to the Respondent no. 3 under RTI Act, 2005 seeking particulars about the acquisition proceedings and the award. In reply to the said application the Respondent No. 3 by its letter dated 28/03/2023 informed the Petitioner that the Petitioner’s land that is the said property was not acquired. Thus it is clear that the land which is considered as a property of the Respondent no.3 was a private property and the slum rehabilitation scheme should not have been permitted on the said land. Hereto annexed and marked as Exh. “L” is the copy of the RTI application dated 03/03/2023 submitted by the Petitioner and reply of MHADA dated 28/03/2023 to the RTI application.”

(Emphasis added)

39. The matter came before us on 7th June 2023. We permitted amendments. These were effected on 12th July 2023. The amendments now began to trace the ownership history of parts of these lands. Abhigna claims that one Talpade originally owned lands at village Magathane including Survey No 33 (part) and Survey No 116. The amended Petition accepts that there were acquisition proceedings by MHADA. There is a reference to a notification dated 29th November 1961 under Section 4 of the Land Acquisition Act 1894 (**“the LAA”**), in regard to Survey No 33 (part) and to a notification dated 28th June 1962 excluding a part of the originally notified land followed by an award. In regard to Survey No 116,

again it is stated that there was an original notification of 14th January 1960. There was a corrigendum of 20th July 1962. The final notification of 10th October 1962 under Section 6 of the LAA notified a smaller area. Then there was an order under Section 48(2) withdrawing 27 gunthas from acquisition. What went to an award was thus only 7 acres and 4 gunthas.

40. There is the assertion that the Talpades continued to own 2410.4 sq mts comprised in CTS No 148/129, CTS No 149 and CTS No 150, admeasuring, 400.40 sq mts, 630 sq mts, and 1380 sq mts respectively. Abhigna claims that it is this land that they purchased and that it is *adjacent* to MHADA land CTS No 148/1 to 128 and CTS No 151.

41. Contrary to what was alleged in the original Petition, the amendment now says that the Abhigna's original proposal for slum redevelopment covered not only lands acquired by and for MHADA but also its own "ownership lands", i.e., CTS No 148/129 and CTS No 149. It is on this basis that it thus claims that MHADA has in its RTI query referred to earlier confirmed that these three lands, CTS Nos 148/129, 149, and 150 were 'never acquired'.

42. The numbers do not add up. From what we are able to discern, this area of 2410.4 sq mts is included in the tract of 8,655 sq mts for which Abhigna was appointed (and later removed) as a developer, and in respect of which it had to get the no objection certificate of the land owner. Nowhere is this land of 2410.4 sq mts

shown as separated out, or additionally included along with MHADA-owned land.

43. On 18th July 2023, a Division Bench of which one of us (GS Patel J) was a member noted some of these facts. In paragraphs 7, 8, and 9 we held as follows:

“7. Mr Chinoy for Incline Realty maintains that the Petitioner is not entitled to claim any rights, benefits or entitlements irrespective of whether or not the Petitioner holds a registered conveyance for these three plots. The submission appears to be that by its conduct over a long period of 15 years, and through litigations that travelled to the Supreme Court, the Petitioner is or must be deemed to be, estopped from claiming any such rights. It never asserted these rights of ownership. It allowed others not only to enter upon the land, but openly and without any obstruction carry on work on that land. Mr Chinoy says that Incline Realty has over the years spent a large amount of money on development work, at least to the extent of initial surveys, some site clearance and demolitions and so forth.

8. **We have outlined this simply to clarify that there is no dispute about the “title” to the three plots. The question is not about title to the land, which would have been required to be agitated in a civil suit, but whether or not the Petitioner continues to have entitlements to the benefits of that land ownership, and whether the Petitioner can claim to be excluded from the amalgamated redevelopment or rehabilitation scheme. Whether that exclusion happens as a matter of estoppel, acquiescence or otherwise is the question of law that will have to be decided.**

9. Mr Dwarkadas agrees that principal prayers A and B will need to be recast to more accurately focus on what the

Petitioner seeks, viz., that the three plots in question, namely CTS Nos. 148/129, 149 and 150 be excluded from the amalgamated scheme. As presently cast, prayers A and B are confusing and unclear. We permit the Petitioner to amend the Petition with appropriately worded replacements of prayer clauses A and B. Those amendments are also to be carried out by Monday. A copy of the amended Petition or the amendments, as may be convenient (since the Petition has already been once amended), will be served on all four Respondents(including the Society).”

(Emphasis added)

44. IRPL filed an Affidavit in Reply. Then by 4th August 2023, Abhigna filed a Rejoinder. On 9th August 2023, we noted some of the submissions before us. Paragraphs 7, and 9 to 22 are important, especially in view of what followed. We reproduce these below:

“7. A ‘censused slum’ is defined in Section 2(1b) of the Slum Act in the following terms:

(2)(1b) ‘Censused Slum’ means any cluster of dwelling structures which has been **censused, surveyed and enumerated and incorporated in the records of land owning authority** as having been censused by the Collector or Competent Authority or any other person of a Planning Authority or Special Planning Authority by order of the State Government or any authority empowered by order of the State Government.”

(Emphasis added)

9. And that is the heart of the problem. **The Petitioner claims that it acquired title to this land on 23rd May 2006 under a registered conveyance that has never been**

questioned or impeached. The Petitioner proceeded, for the next 17 years or so, on the assumption, supposition or belief that the land it bought ‘had been acquired’ by, and was the property of, the Maharashtra Housing and Area Development Authority (“MHADA”).

10. Until 2012 nobody disagreed. MHADA itself seems to have maintained in at least three letters that it did acquire the lands that are mentioned above, and which are the subject matter of this Petition. The Slum Rehabilitation Authority (“SRA”) seems to have built upon what we will now call ‘the MHADA acquisition premise’ and said that there was in fact a census, survey, enumeration and that these lands are now covered by a censused slum.

11. That there are slums on the land is not in dispute.

12. It is also a matter of quite considerable record that for a very long time the Petitioner was endeavouring to be anointed as the developer for slum redevelopment but with a notable lack of success.

13. **It is unclear to us at this stage what prompted the Petitioner’s epiphany on 3rd March 2023 when it filed a Right to Information application with the Public Information Officer of MHADA. A copy of this is at page 633 and the enquiry was ‘if the land that has been acquired by MHADA required the plan of acquisition and other relevant documents’.**

14. MHADA’s PIO replied on 28th March 2023. A copy is at page 634. The first paragraph refers to various plots. These include the three subject plots, i.e., 148/129, 149 and 150 among others. The first sentence of the second paragraph however says that MHADA has not acquired these lands.

15. And so, only on account of this response to a RTI query, the Petitioner comes to Court now asserting its title under the 23rd May 2006 conveyance, saying that its lands purchased under that conveyance could never have been part of a censused slum, was never acquired by MHADA, was never MHADA land, could never have been incorporated by SRA in the relevant MHADA records because MHADA itself had no title.

16. Mr Chinoy for the Developer and Mr Andhyarujina for the Society contest this formulation root and branch. According to them, there was not the slightest ambiguity in the Petitioner's own perception or corporate mind about its rights over the land. It proceeded on the footing that the land was acquired by the MHADA; the record is replete with the Petitioner's acceptance of this. It is based on this solitary line in a reply to an RTI query that the Petitioner now asserts a primary title and seek to dislodge an entire SRA scheme.

17. These rival contentions actually obscure something that is fundamental to a consideration in our writ jurisdiction. We are most emphatically not going to investigate disputed questions of fact, let alone disputed questions of title. That is not the remit of a writ court. But at the same time, we do not see how there can be in the records of a public authority namely, MHADA, this kind of ambiguity about whether it has or has not acquired the three CTS numbers that are the subject matter of this Writ Petition. This is not something that can ever be left to speculation. If MHADA has acquired those lands, there will be supporting documents including acquisition proceedings, notices, and so forth. It is entirely conceivable that the MHADA acquisition may have taken place well prior to the Petitioner's conveyance of 23rd May 2006 and that the original owners may simply have sold the Petitioner a title they did not have, one of which they were divested by

acquisition, i.e., a nothingness (and Mr Andhyarujina says this must be so for this vast tract of land the Petitioner claims to have paid only Rr 6 lakhs in total).

18. But whether or not clear title ever passed to the Petitioner really depends on what the MHADA records show. We are not satisfied at this stage that the isolated statement by the PIO of MHADA without any reference to any documents, files or other material can now serve as the foundation for a title claim by the Petitioner.

19. Equally, it is unsatisfactory from the opposite perspective as well. We are more concerned with the slum rehabilitation project because there are undoubtedly a large number of slums here. That entire project should not suffer because of disputes like this. MHADA has so far not filed an Affidavit. We are not asking MHADA to confirm or deny the correctness of the answer to the RTI query.

20. Our specific questions, ones we insist be answered in the clearest terms on the Affidavit are:

- (a) whether MHADA at any time in recorded human history acquired CTS Nos. 148/129, 149 & 150;
- (b) If so, when, from whom (i.e., who were the recorded owners of these three plots at the time), and in what manner?
- (c) full details as available of the acquisition proceedings including details of all award/s passed, compensation ordered and paid;
- (d) whether that compensation was accepted and whether there were any further proceedings in that regard?;
- (e) whether following any such acquisition, if it took place, what steps were taken to update the land records in regard to these three plots.

21. If MHADA maintains that there has never been an acquisition of these three plots at any time from any person, then a responsible officer of MHADA must, on the basis of the records, explain how in correspondence of 2008, 2011 and 2012 unambiguously asserted that these lands are the property of MHADA.

22. The Affidavit is to be filed and served by 22nd August 2023. We would prefer if a responsible officer of MHADA was present in Court with the necessary files, should there be an additional query.”

45. By that order we had also directed SRA to file an Affidavit. It did so on 22nd August 2023. It said that CTS No 148/1 to 129 and CTS No 149 were all formed out of original Survey No 116. CTS No 150 was formed out of Survey No 34/3. SRA maintained that IRPL scheme had been approved on the basis of correspondence with MHADA. At no point had MHADA ever told SRA that CTS No 148/129, CTS No 149, or CTS No 150 did not belong to MHADA.

46. On 11th October 2023, the matter was before this very Bench. We noted some of the previous orders and reproduced them for completeness. This is the time when we now turned to the City Survey Officer. Paragraphs 3 to 8 of our order of 11th October 2023 read as follows:

“3. Mr Lad on behalf of Maharashtra Housing and Area Development Authority (“MHADA”) now tenders a copy of a letter dated 18th August 2023 addressed by the Executive Engineer, Borivali Division of the Mumbai Board to the City Survey Officer, Borivali, Mumbai. Not only is a copy of this letter taken on record and marked “X1” for identification with today’s date, but for clarity and so that

there is no ambiguity at any stage, and also because Ms Palsuledesai for the State says that she has not seen a copy of this letter, we append a scan of this letter to the present order.

4. To put the controversy in a nutshell, Mr Dwarkadas, learned Senior Advocate for the Petitioners, claims that there is a certain portion of the land that remained outside acquisition. This is described as an area admeasuring 27 are. The remaining land was the subject matter of a land acquisition proceeding in LAQ No. 9 and LAQ No. 31. The request by MHADA to the City Survey Officer is to check if the records of the City Survey Office show that CTS Nos. 149 and 150 are the lands acquired for MHADA or are lands which are not acquired under LAQ No. 9 and LAQ No. 31.

5. There is a request for the joint measurement and possession receipt, but we are not issuing that direction to the City Survey Officer at this stage.

6. Our direction is that on the basis of the records available with the City Survey Office, the City Survey Officer should inform the Court by filing a brief Affidavit as to which lands were acquired under LAQ No. 9 and LAQ No. 31 and how these are shown in a map or a city survey plan. We will proceed on the basis that out of the larger plot, that which is not demarcated on the plan as having been acquired will be the land that is exempted or withdrawn from the acquisition.

7. This is obviously necessary because faced with the contentions raised in this Writ Petition, we cannot possibly proceed on speculation and conjectures as to what was and was not acquired. As the previous orders show, the conduct of the Petitioners is one aspect of the matter — but it is only one aspect of the matter. In matters of public records and actions of public authorities regarding acquisition of lands for public purposes or slum redevelopment, there

cannot be this kind of ambiguity, of what was and was not acquired.

8. We direct the City Survey Officer to file an Affidavit by 31st October 2023.”

47. On 9th November 2023, we granted time to file further Affidavits. We noted the submission on behalf of the State Government. We reproduce paragraphs 2 to 8 of that order:

“2. Ms Palsuledesai informs us on the basis of instructions from Mr Umesh Mohan Zende, City Survey Officer, that as far as he can presently say, there is a measurement plan for the entire area. He is unable to say whether there are separate *plans* for CTS Nos. 148/129, 149 and 150.

3. The three CTS numbers involved are CTS Nos. 148/129, 149 and 150 and the question is whether these or any of these or any parts of these were acquired by the State Government for Maharashtra Housing And Development Authority (“MHADA”) at any time and if so when. The answer to this question will determine the trajectory of the entire litigation. As Mr Chinoy points out there are several communications from MHADA in which MHADA said that CTS Nos. *148/129* and 149 were acquired. Later, however, it emerges that there is no record of any such acquisition having been completed or an award having been made.

4. MHADA has yet to file an Affidavit. We direct MHADA to file that Affidavit even if it is to say that its records are either incomplete or from the records it is not possible to say affirmatively one way or the other if the lands in question have been acquired. There is a reference in MHADA communication to a slum directory said to be

maintained by MHADA. We will need to see the relevant portions of that slum directory as well.

5. We request Ms Palsuledesai to have an Affidavit prepared by the City Survey Officer bringing on record such information as is presently available with that office. We are not directing the officer to conduct a survey. We are only asking that the copies existing material be placed before the Court.

6. The MHADA Affidavit and the Slum Rehabilitation Authority (“SRA”) Affidavit are to be filed and served on or before 11th December 2023.

7. List the matter high on board on 13th December 2023.

8. We clarify that the portion that is disputed is about 2410 sq mts out of a much larger area of over 28000 sq mts. We see no reason why MHADA or SRA permissions should be withheld for the balance. Other portions of the project are clearly unaffected by and disputes pertaining to these CTS numbers. Mr Patil will instruct his officers to take up applications for the remaining portions of the project and to process expeditiously and in accordance with law.”

48. By November 2023, IRPL had filed a further Affidavit in which it pointed out that as regards CTS Nos 148/129 and 149, Abhigna had said that these lands were in the portions that had been excluded from acquisition. But IRPL pointed out that a comparison of the plans and a superimposition on the City Survey plan showed that Abhigna’s lands (which it said were excluded from acquisition) were in fact the subject matter of acquisition.

49. On 11th December 2023, Abhigna filed an additional Affidavit in Rejoinder. It now brought on record the Land Acquisition Awards in question.

50. On 13th December 2023, we made the following order:

“1. There is an interesting Affidavit dated 11th December 2023 filed by Umesh Mohan Zhende, City Survey Officer, Borivali. It is filed pursuant to our directions in our order dated 9th November 2023. It speaks *inter alia* to the state of the city survey offices record.

2. We will let all concerned address us on this on the next occasion, but we do not permit responses to this Affidavit by any party.

3. We, however, leave it open to Mr Lad for Maharashtra Housing & Area Development Authority (“MHADA”) to decide whether or not MHADA wishes to file a final Affidavit in the matter. We will take it that if no Affidavit is filed by MHADA by 5th January 2024 then MHADA does not intend to file a further Affidavit in the matter, and we will proceed on the record as it currently stands. To this extent we modify our order of 9th November 2023 and substitute the direction in paragraph 4 with this option to MHADA, on the footing that MHADA’s silence may be actually more eloquent than whatever it may choose to say on Affidavit.”

51. On 5th January 2024, MHADA finally filed an Affidavit saying that the Deputy Collector (Land Acquisition) had in December 2023 forwarded copies and the Awards *and that these documents showed that the lands in dispute were acquired indeed for MHADA*. These documents and plans were annexed to its Affidavit.

52. Our order of 16th January 2024 reads as follows:

“1. There is finally an Affidavit of Maharashtra Housing & Area Development Authority (“MHADA”), the 3rd Respondent. It is dated 5th January 2024. It has many annexures.

2. Filings in this matter, a Writ Petition under Article 226 of the Constitution of India, have gone past the 2000 page mark. We are not permitting further Affidavits under any circumstances now.

3. Mr Dwarkadas seeks time to put together a compilation because he says that from the Affidavits filed on behalf of the City Survey Officer and the latest Affidavit of MHADA, he is now in a position to demonstrate that CTS Nos 148/129 and 149, which the Petitioner says are of its ownership, were at no point acquired by or for MHADA. Specifically, the submission before us is that although they may have been notified for acquisition, they were released from acquisition proceedings.

4. Mr Dwarkadas also submits that possession of these two plots was never taken pursuant to any acquisition proceedings.

5. The third plot, CTS No 150, Mr Dwarkadas submits, was never notified for acquisition at all.

6. Mr Dwarkadas seeks some time to collate and co-relate the relevant documents. From our perspective, this matter has gone on far too long. It must be disposed of one way or the other.

7. By consent of the parties, list the matter on 23rd January 2024 at 2.30 pm for final disposal.

8. Previous orders, if any, to continue until the next date.”

53. We then heard the parties.

54. Mr Dwarkadas for Abhigna, readily realising the jurisdictional limits of a Writ Court under Article 226 of the Constitution of India, submits that if there is this kind of a dispute, whether or not to exclude the claimed lands from IRPL's LoI should be decided by the SRA. He maintains that the documents now on record show that the lands were never in fact acquired for MHADA at any point. There are two reports in question of 6th August 2018 and 23rd October 2018 of the **District Superintendent** of Land Records ("**DSL**R"). According to him, a subsequent report of the Deputy Director of Land Records ("**DDL**R") pursuant to one of our orders and which is of 7th August 2023 'debunks' the 2018 DSLR reports and says these are 'defective'. These must be read with Affidavits of 6th October and 17th October 2018 filed by IRPL's architects. According to him, the LoI issued to IRPL is based only on its architects' affidavits, but there is no record of MHADA ownership by acquisition.

55. There is a problem with this formulation to begin with. Nobody can dispute that there were in fact acquisitions. The question is what was acquired and what was excluded. That is a determination of fact. That is also a determination of title. Both these are entirely outside the remit of the Writ Court, and it is certainly not for the Writ Court to arrive implicitly at some sort of a finding of title by some roundabout reductive reasoning, more or less saying it must have been thus or it was probably such and such. A writ court is entitled to proceed on the footing that when a person

acquires property that person knows exactly what that person has acquired, what its boundaries are, and whether there are or are not any encumbrances on it.

56. The entire endeavour by Mr Dwarkadas is really to create clouds of confusion about Abhigna's own title and then have a writ court proceed on the footing that since there is this confusion (created by Abhigna itself), therefore relief ought to be granted. That is a wholly unsafe basis on which to proceed. The DDLR report that Mr Dwarkadas reads is a translation. As is often said, much is often lost in translation, and this might well be one such case. We do not see how the DDLR in 2023 could factually dispute what the DSLR had said in 2018. It may well be that there is no updating of necessary records following the acquisition. But that only points to a defect in record keeping. It does not affect the fact of acquisition, nor is it possible to conclude that a defect or lacuna in record keeping necessarily means there was no acquisition.

57. This is perhaps best illustrated by having a look at what IRPL says. Apart from anything else, we believe IRPL would be extraordinarily foolish if it was to expend hundreds of crores on a project without there being certainty as to title and what it was spending on. As we noted, because of orders of this Court we finally had before us over these several thousand pages of filings Affidavits on record from MHADA and the City Survey Office over and above what the individual parties had filed.

58. The City Survey Affidavit is from page 1895. There is an Affidavit dated 4th November 2023 of one Dinesh Nigudkar on behalf of IRPL. There are plans annexed to this Affidavit that show (page 1840 and page 1855) the lands that were notified and then excluded from acquisition. At page 1856 is a plan that shows structures on the land. Mr Chinoy states that in the plan at page 1857 what has been acquired is the portion shown in blue dashed lines but the portion shown below that in red dashed lines has been excluded from acquisition. He submits that Abhigna must be able to pinpoint the location of their lands on these plans that they have obtained. He therefore turns to the plan filed on behalf of Abhigna at page 1722 annexed to the Affidavit of one Satish Bhansali and affirmed on 4th August 2023. There is considerable confusion in the paging and there is duplicate paging. Therefore, we have referred to the Affidavits by date.

59. What Mr Chinoy points out is that in this document Abhigna has itself sited its lands marked CTS Nos 148/149, 149 and 150 in the blue bounded portion that was shown in the maps referred to earlier — viz., the portions acquired by or for MHADA.

60. We are not to be misunderstood as having arrived at a conclusive finding of title one way or the other. Obviously, we cannot.

61. It is settled law that a writ Court cannot go into disputed questions of fact and that title can only be decided by a civil Court.¹

¹ *Dwarka Prasad Agarwal v BD Agarwal & Ors*, (2003) 6 SCC 230 (paragraph 35); *Municipal Corporation of Aurangabad v State of Maharashtra &*

62. To put this into perspective, Abhigna will undoubtedly need to establish title before a court jurisdictionally competent to pass an appropriate decree. That cannot be a writ court. The Petitioner will have to lead evidence. This is by no means a complete listing, but Abhigna will have to explain not only its conveyance of 2006 but its actions thereafter, and how it came to pass that in all those years from 2006, no claim of title or exclusion was ever raised. The idea that Abhigna was seeking to include its ownership lands along with MHADA owned lands in a combined redevelopment comes much later in the day and cannot be accepted without explanation. Left to ourselves, we can envision an extremely lengthy cross-examination of Abhigna's witnesses — assuming there is anyone with sufficient personal knowledge to depose to begin with —even on the barest narrative we have set out here. In addition, there will be other issues Abhigna must address, not the least of which may well be a question of limitation.

63. The entire endeavour seems to be to somehow get the Writ Court to accept a case on title by circuitous and convoluted reasoning, speculation, surmise and conjecture; or, as was famously said decades ago, to adopt the strategy of a cuttlefish, squirting dark clouds of confusion to make good an escape. No court of equity will permit that, especially when there hangs in the balance the future prospects of thousand of slum dwellers anxiously awaiting completion of a slum re-development project.

Anr, (2015) 16 SCC 689 (paragraph 14); *Swati Ferro Alloys Pvt Ltd v Orissa Industrial Infrastructure Development Corporation (IDCO) & Ors*, (2015) 4 SCC 204 (paragraph 16).

64. The Petition is rejected.

65. Mr Dwarkadas asks us to continue a previous order, which he says, 'constitutes a stay'. Indeed, we do not read paragraph 8 of our order of 9th November 2023 as staying development. We had not directed SRA or MHADA not to process any particular applications. We had only noted that the project was much larger and obviously the rest of it could not be held up. In any case, we decline to continue any form of stay. After all, we have to bear in mind that the interest of the slum dwellers are paramount. Abhigna cannot escape the consequences of the fact that its challenges to its removal as a developer have failed entirely all the way to the Supreme Court. This has come at the cost of the slum dwellers. This is not a situation that we are prepared to allow to continue for a minute longer.

66. In the facts and circumstances of the case, there will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)

Note: This order is corrected as per order dated 23rd February 2023. The corrections are shown in paragraphs 8, 26 and 54 in bold, italics and underline.