

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

WRIT PETITION NO.942 OF 2024

1. Suresh Narayan Kakade, Age 65 years,
2. Chhaya Janu Mandavi, Age 60 years,
3. Sushma Ratnakar Bhandhari, Age 58 years,
4. Pramila Milind Thombre, Age 53 years
All R/o.2/15, Malti Kakade Niwas,
Bhandup Village Road, Opp.Bhatia Hospital,
Bhandup (West), Mumbai-400 078.

Petitioners

versus

1. The State of Maharashtra,
through Principal Secretary, Housing Department,
Mantralaya, Mumbai.
2. The Slum Rehabilitation Authority through
Chief Executive Officer, Bandra (East),
Mumbai-400 051.
3. Samata Seva Vikas Co-op. Housing Society (proposed)
through Chairman/Secretary, office at
In front of Bhatia Hospital, Bhandup Village
Road, Bhandup (West), Mumbai-4000 078.
4. M/s.Sankalp Developers, office at
Thakre Estate, Tikujini Wadi Road,
Chitalsar, Manpada, Thane (West)

Respondents

WITH
INTERIM APPLICATION NO.2702 OF 2024
IN
WRIT PETITION NO.942 OF 2024

1. Tulsiram Devidayal Charity Trust,
2. Gaurav Balkishan Devidayal,
3. Balkishan A.Devidayal
4. Shashi B.Devidayal

Applicants

In the matter between :

Suresh Narayan Kakde and others

Petitioners

versus

The State of Maharashtra and others

Respondents

WITH
WRIT PETITION NO.1923 OF 2019

1. Tulsiram Devidayal Charity Trust,
Devidayal AgroChemical, Devidayal Estate,
Rey Road, Mumbai-400 010.
2. Balkishan A.Devidayal,
Trustee of Tulsiram Devidayal Charity Trust,
Devidayal AgroChemical, Devidayal Estate,
Rey Road, Mumbai-400 010.
3. Shashi B.Devidayal,
Trustee of Tulsiram Devidayal Charity Trust,
Devidayal AgroChemical, Devidayal Estate,
Rey Road, Mumbai-400 010.

Petitioners

versus

1. The State of Maharashtra,
through Principal Secretary, Housing Department,
Mantralaya, Mumbai.
2. Chief Executive Officer,
The Slum Rehabilitation Authority, Bandra (East),
Mumbai-400 051.
3. Additional Collector (Encroachment/Demolition)
and Competent Authority,
East Suburban Main Office, Industrial Assurance
Building, 1st Floor, Opp.Churchgate Station,
Mumbai-400 020.
4. Deputy Collector (Encroachment/Demolition)
Competent Authority, Office at Topiwala College
Building, Ground Floor, Sarojani Naidu Road,
Mulund (West), Mumbai-400 080.
5. Samata Seva Vikas Co-op. Housing Society (proposed)
office at Opposite Bhatia Hospital, Bhandup Village
Road, Bhandup (West), Mumbai-400 078.
6. M/s.Sankalp Developers, office at
5, Thakre Estate, Tikujini Wadi Road,
Chitalsar, Manpada, Thane (West)

Respondents

Mr.Ranjit Thorat, Senior Advocate, i/by Mr.Balasaheb Deshmukh, Advocates for
Petitioners in WP.942/2024.

Mr.Shakeeb Shaikh with Mr.Noorain Patel i/by Diamondwala & Co. for Petitioners
in WP.1923/2019 and for applicants in IA.2702/2024.

Smt.Usha Rahi, AGP for State in WP.942/2024.

Ms.Vrushali Kabre, AGP for State in WP.1923/2019.

Mr.Jagdish G.Aradwad (Reddy) for Respondent no.2 SRA in WP.942/2024.

Mr.Abhijit P.Kulkarni with Mr.Abhishek Roy, Ms.Sweta Shah for Respondent no.2 SRA in WP.1923/2019.

Mr.Prerak A. Sharma for Respondents 3 and 5 in WP.942/2024 and WP.1923/2019.

Mr.A.S.Khandeparkar, Senior Advocate, i/by Mr.Sahil L.Shah for Respondent no.4 in WP.942/2024 and WP.1923/2019.

**CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.**

Date of Reserving the Judgment : 24th September 2025

Date of Pronouncing the Judgment : 14th October 2025

JUDGMENT (Per : Aarti Sathe, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. These two Writ Petitions filed under Article 226 of the Constitution of India challenge the acquisition of the piece and parcel of the land and the structure thereon bearing Old survey no. 81, Hissa No. (part), CTS No. 270 (part) admeasuring 1,201 square yards situated at Bhandup Village Road, Opposite Bhatia Hospital, Mumbai – 78 (subject land). The Petitioners in the first Writ Petition No.942 of 2024 are the legal heirs of late Shrimati Malti Naryan Kakade who claim to be the owners of the said land (hereinafter referred to as the “First Petition”). The second Writ Petition No.1923 of 2019 is filed by Tulsiram

Devidayal Charity Trust & Ors, who also claim ownership of the subject land (hereinafter referred to as the Second Petition). An Interim Application No.2702 of 2024 has been filed in the First Writ Petition praying for impleadment of the applicants therein i.e. trustees of Tulsiram Devidayal Charity Trust, who have preferred the Second Writ Petition.

3. Learned counsel on behalf of both the Petitioners have submitted that although insofar as the ownership of the subject land is concerned, an inter se dispute exists between the two Petitioners which is not the subject matter of adjudication, In the present proceedings, as both these petitions are ad-idem on the challenge to the acquisition of the land in question against which they speak in common voice. Thus, both the Petitioners challenge the acquisition proceedings initiated by the Slum Rehabilitation Authority (SRA) under section 14(1) of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) of the subject land. Both the Petitioners contend that the impugned acquisition is illegal and not in accordance to the due process of law and is contrary to the provisions of the Slum Act which require that prior to making an acquisition under section 14 of the Slum Act, a notice under section 13 of the Slum Act ought to have been issued.

4. Briefly the facts in both the Petitions are set out as under:-

5. Facts in the Second Petition need to be noted which are as follows:-

5.1 The Petitioner is a public charitable trust registered under the Bombay Public Trust Act 1956, having registration No. E-670. By virtue of registered Indenture dated 23rd June, 1959, the Petitioner became the landlord and

owner of the larger property of which the subject land is a part as described in para 1 of the Writ Petition. The property card and 7/12 extracts reflecting the ownership of the Petitioner is annexed as Exhibit E to the petition.

5.2 The subject land was notified as a Slum under Section 4(1) of the Slum Act on 10th December 1998. Thereafter, on 11th April 2008, a proposal was submitted by respondent No. 5 i.e. Society to the SRA for the purposes of redevelopment of the subject land. On 1st April 2013, a show cause notice was issued by the SRA under Section 14 of the Slum Act. This notice was issued to Prem Amirchand Devi Dayal who was neither the trustee nor had the Petitioner's authority and therefore the Petitioner never received this notice.

5.3 Thereafter, on 28th June 2013, a change report along with order passed by the learned Assistant Charity Commissioner accepting the change report and directing Balkishan Devi Dayal and Shashi Devi Dayal to be recorded as trustees was accepted. It is also the Petitioner's contention that Prem Amirchand Devi Dayal who purportedly attended hearings before the CEO, SRA was never a trustee of the Petitioner trust.

5.4 On 1st October 2013, a report was prepared by Respondent No. 2 recommending the acquisition of the subject land. Thereafter, on 28th August 2015, the subject land was declared as a Slum under Section 3C of the Slum Act. Respondent No. 1 State Government issued a notification to acquire the subject land under the provisions of Section 14(1) of the Slum Act on 13th October 2015.

5.5 Thereafter, a notice dated 20th February 2017 was issued by the office of the Respondent No. 2 wherein it was informed to the Petitioner that the date of

hearing for fixing compensation as regards the acquisition of the subject land was kept on 20th February 2017. It was also informed to the Petitioner by such notice that on 24th October 2016, 21st November 2016, 26th December 2016, 27th December 2016, and 23rd January 2017, notices were sent to the Petitioner. It was informed that the said notices of a hearing to be granted to the Petitioners were sent via hand delivery, RPAD and email. It was further informed that public notice in that regard were published on 8th December 2016 in Daily Lokmat newspaper. Such notices were also published on 1st January 2017 in Marathi Daily Navakal and English Daily Free Press Journal newspaper.

5.6 It was therefore informed to the Petitioner that since none attended the hearing on the said date, the next hearing was scheduled on 20th March 2017 in respect of the acquisition. It is the Petitioner's contention that this notice was purportedly served by one Mr. Prashant Wagmare on 16th March 2017, that is after almost one month from the date of the notice. It is also the Petitioner's contention that the remark of the said Prashant Wagmare only reflected that the said notice was not received and further that Tulsiram Devi Dayal (the owner) had passed away and thus the notice cannot be accepted. It was recorded in the said remark of Mr. Wagmare that Tulsiram Devi Dayal was the owner of the subject land.

5.7 It is the Petitioner's contention that the remarks are absolutely silent as to the particulars of person who provided the aforesaid information and also who refused to take service of the notice. Thereafter on 7th June 2017, an ex parte award was passed by Respondent No. 2 under the provisions of section 17 of the Slum Act, wherein an amount of Rs. 2,70,000 was purportedly awarded to the Petitioner

in lieu of the acquisition of the subject land. It is the Petitioner's contention that even this exercise was undertaken without following the provisions as envisaged under section 17 (5) of the Slum Act.

5.8 Thereafter on 29th August 2017, a receipt was issued by the land survey officer reflecting the ex parte possession (paper possession) being taken of the subject land. A letter dated 22nd February 2018 was also addressed by Respondent No. 6 i.e. developer to deputy collector SRA intimating that the proposal for development of Respondent no. 5 society has been submitted along with the latest property card. This letter was procured by the Petitioner under the Right to Information Act and that is when, sometime around 2018, the Petitioner learned about the impugned acquisition.

5.9 On 18th January 2021, a Letter of Intent (LOI) was issued by Respondent No. 2 to Respondent No. 6 developer. It is on the backdrop of these facts, that an ex-parte award was passed against the Petitioner without following the provisions of the Slum Act, that the Petitioner has challenged the land acquisition.

The prayers as made in this petition are as follows :

“a) that this Hon’ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction to call for the papers and proceedings relating to the said Impugned Report dated 1st October 2013 (being Exhibit ‘A’ hereto) with respect to the impugned Acquisition Proceedings with respect to the property being Plot of land situated at CTS No.270 (Part), situated at Mouje Bhandup, Tal.Kurla, admeasuring area 1058.50 sq.mtrs and after going into the legality and propriety thereof be pleased to quash and set aside the same as the same is illegal, vitiated and against the principles of natural justice;

b) that this Hon’ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction to call for the papers and proceedings relating to the said Impugned Notification dated 13th October 2015 (being Exhibit ‘B’ hereto)

with respect to the impugned Acquisition Proceedings with respect to the property being Plot of land situated at CTS No.270 (part), situated at Mouje Bhandup, Tal.Kurla, admeasuring area 1058.50 sq.mtrs and after going into the legality and propriety thereof be pleased to quash and set aside the same as the same is illegal, vitiated and against the principles of natural justice;

c) that this Hon'ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction to call for the papers and proceedings relating to the said ex-parte Impugned Award dated 7th June 2017 (being Exhibit 'C' hereto) with respect to the impugned Acquisition Proceedings with respect to the property being Plot of land situated at CTS No.270 (part), situated at Mouje Bhandup, Tal.Kurla admeasuring area 1058.50 sq.mtrs and after going into the legality and propriety thereof be pleased to quash and set aside the same as the same is illegal, vitiated and against the principles of natural justice;

d) that pending the hearing and final disposal of the present writ petition, Respondent no.2 be restrained by an Order and injunction of this Hon'ble Court from sanctioning any scheme on the said plot being CTS No.270 (pt) admeasuring 1058.50 sq.mtrs or issuing any redevelopment permissions with respect to the said plot;

e) for interim and ad-interim reliefs in terms of prayer (a) to (d) above;

f) for costs of this Petition and orders thereon; and

g) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

6. Facts in the first petition are as follows:-

6.1 The Petitioners herein are the legal heirs and representatives of late Smt. Malti Narayan Kakade, original lessee who expired on 9th April 2019. One Dhanaji Babu Patil was a protected tenant and was cultivating and occupying the entire subject land till 1968. After the tiller's day under the Bombay Tenancy and Agricultural Land Act, 1948 the protected tenant became the owner of the said agricultural land. Thereafter, the said Dhanaji Babu Patil entered into a registered lease in perpetuity in favour of late Smt. Malti Narayan Kakade, i.e. the mother of the Petitioners herein, in respect of the open plot of land i.e. subject land for the

period of 99 years and further extendable up to 99 years. The erstwhile owner Dhanaji Babu Patil also put the Petitioner's mother i.e. Smt. Malti Narayan Kakade in possession, occupation and enjoyment of the subject land in terms of a registered lease dated 12th January 1968.

6.2 The Additional District Deputy Collector, Andheri by an order dated 26th July 1969 granted permission for conversion of agricultural land into non-agricultural land for the purposes of utilizing the subject land for development of residential and commercial purposes.

6.3 It is the Petitioner's contention that tenants on the subject land of the Petitioner's mother i.e. Smt. Malti Narayan Kakade and the builder approached the Deputy Collector Encroachment and Eviction for acquisition of the subject land under the provisions of Section 14 of the Slum Act. It is in pursuance thereof that sometime in 2011, the Petitioners received a notice dated 8th March 2011 from the office of the Deputy Collector Encroachment and Eviction Mumbai stating that the proposal for acquisition of the subject land has been received. The Petitioners' mother Smt. Malti Narayan Kakade immediately submitted her reply dated 15th March 2011 to such notice and opposed the proposed acquisition and also claimed preferential right to develop the subject land under the Slum Act.

6.4 On 13th February 2013, Respondent no.1 informed that as per the provisions of Chapter 1A read with Section (3) (D) (C) (i) of the Slum Act, if private landed property is required to be acquired under the Slum Act, then the entire process of acquisition has to be from the office of Respondent No. 2 i.e. SRA and not from the office of the Deputy Collector Encroachment and Eviction. So,

the proposal submitted by the Deputy Collector Encroachment and Eviction came to be turned down and the Petitioner was asked to file a fresh acquisition proposal by making compliance of the Slum Act.

6.5 Thereafter, on 1st April 2013, Respondent No. 2 issued a show cause notice dated 1st April 2013 and without making any survey, assessment, actual inspection of the subject land, contented that the subject land needs to be acquired under section 14(1) of the Slum Act for the implementation of the Slum Rehabilitation Scheme as per the proposal submitted by the Respondent No. 3 society. The Petitioner submitted a reply to the office of Respondent No. 2 and opposed the said acquisition and claimed a preferential right to develop the subject land under the Slum Act.

6.6 However, on 1st October 2013, without following the due process of law and without complying with the Slum Act, Respondent No. 2 submitted a proposal of acquisition of the subject land to the State Government i.e. Respondent No. 1 under section 14(1) of the Slum Act. Respondent No. 1 thereafter sometime on 11th September 2015 marked the area as a Slum rehabilitation area under section 3C(1) of the Slum Act and the same was published on 31st August 2015. Thereafter, Respondent No. 1 issued a notification dated 13th October 2015 by exercising powers under section 14(1) of the Slum Act without compliance of the basic ingredients of the sections i.e. a notice under section 13 was not issued which is mandatory, and declared the said to be a Slum Rehabilitation Project.

6.7 Thereafter, correspondence ensued between the Petitioner and Chief Secretary of State of Maharashtra and an appeal was also filed to set aside the

notification dated 13th October 2015 issued by Respondent No. 1. However, the same was not acted upon and it was forwarded by the Additional Chief Secretary's office to Respondent No. 2 to take action.

6.8 However, without taking any notice of the objections filed by the Petitioner to the acquisition made by way of the aforesaid notices, an award came to be passed on 7th June 2017 to acquire the subject land of the Petitioner. Post passing of the said award, Respondent No. 2 informed the Petitioner's mother i.e. Smt. Malti Narayan Kakade that the name of the Petitioners are not reflected on the 7/12 extract of the subject land, and the same needs to be challenged in appeal proceedings. Petitioner's mother i.e. Smt. Malti Narayan Kakade followed up at various levels with the various authorities including Respondent No. 2 in pursuance of the aforesaid award. However, there was no response from such authorities. The office of Respondent No. 1 on 2nd March 2019, informed the mother of the Petitioner i.e. Smt. Malti Narayan Kakade that the subject land was acquired for redevelopment of a slum scheme and an award has been published in respect thereof.

6.9 Various correspondences were entered by the Petitioner's mother i.e. Smt. Malti Narayan Kakade up until 2020 with various officers for the purposes of getting the subject land restored in her name and also for getting a Sanad as well as mutation of the name on the 7/12 extract of the subject land, however, the same was not done. Thereafter on 18th January 2021, Respondent No. 2 issued a Letter of Intent (LOI) for the purposes of development of the subject land. It is on the backdrop of the aforesaid facts, the Petitioners have filed this petition challenging

the acquisition of the subject land to contend that the same is being acquired illegally and/or without following the due process of law as the Slum Act would stipulate.

6.10 As noted hereinabove, in both the above Petitions, the Petitioners have primarily submitted that the procedure as contemplated under the provisions of Slum Act have not been followed prior to acquisition of the subject land considering the settled principles of law laid down in several decisions of this Court and the Supreme Court. The Petitioners in the First Petition have submitted that Respondent No.2 ought not to have issued a notice under section 14(1) of the Slum Act without exercising the power contemplated under section 13(1), (2) of the Slum Act. The Petitioners have further contented that Respondent no2 hence should not have forwarded the proposal dated 1st October, 2011 to Respondent No.1 under Section 14(1) of the Act without compliance of section 13(1), (2) of the Slum Act. Further there was no publication made in the newspaper, nor was there any notice issued as contemplated under section 13 of the Slum Act. There was no fair opportunity of a hearing granted to the Petitioner before submitting the proposal and before issuing a notification under section 14(1) of the Act. Such actions were against the established principles of natural justice.

6.11 The Petitioners further submitted that Respondent No.1 had acted at the behest of the proposed society i.e. Respondent No. 3 and 4 and there was no actual survey, inspection of the site or any declaration that the adjoining plot to the subject land whether was declared a Slum. It was therefore not the case that the

adjoining plot was a Slum and for the purpose of redevelopment thereof, the subject land was being acquired.

7. The Petitioners also submitted that admittedly there was no notice as contemplated under Section 13(1) of the Slum Act issued to the Petitioners mother i.e Smt. Malti Narayan Kakade who appeared before the Dy. Collector, SRA. The mother of the Petitioners i.e. Smt Malti Narayan Kakade had also filed a detailed reply to the show cause notice issued under section 14(1) of the Slum Act wherein she had claimed her preferential right to develop the subject land. It is also submitted by the Petitioner that Respondent No. 1 and 2 ought to have issued a notice under section 13 of the Slum act before invoking S. 14(1) of the Slum Act which was a sine qua non. Hence, the acquisition of the subject land was bad in law. The Petitioner also submits that the facts of the present case are squarely covered by the judgment rendered by this Court in Writ Petition No.1360 of 2024 (Byramjee Jeejeebhoy Pvt.Ltd and others Vs. State of Maharashtra and others), Writ Petition No. 1212 of 2022 (Bishop John Rodrigues Vs. State of Maharashtra and others) and Writ Petition No. 2448 of 2015 (Aakash Dhamista Construction Pvt.Ltd. Vs. State of Maharashtra and others). The Petitioners also submit that the said issue now stands covered by the judgment of the Supreme Court in **Saldanha Real Estate Private Limited Versus Bishop John Rodrigues and others¹**. It is also submitted by the Petitioners that the trust who has preferred Second Petition never exercised preferential right to develop the subject land. In view thereof the

¹2025 SCC OnLine SC 1794

Petitioner submitted that the actions of the Respondents in acquiring the subject land is contrary to the provisions of Slum act.

8. In the second Writ Petition also the Petitioners have broadly made similar submissions as made in the first Writ Petition noted hereinabove. The Petitioners primarily submitted that the landowner has preferential right to develop the land. They also submitted that notice under section 13(1) of Slum Act is mandatorily required to be given prior to acquisition to the land owner. Therefore, since in the facts of the present case, the mandatory condition of giving notice has not been followed, the entire acquisition proceedings are liable to be quashed and set aside.

9. In the Second Writ Petition, reply affidavit of Respondent No. 2 SRA has been filed. None of the other Respondents have filed affidavits in the aforesaid petition. Respondent No. 2, SRA has primarily opposed the admission of the present Petition on the ground that the same suffers from gross delay and laches of around 6 years in filing the same. It is Respondent No. 2's contention that the memo of Petition was sworn on 19th June 2019 and the report under challenge dated 1st October 2013 has been challenged after a period of 6 years. Also, the notification dated 13th October 2015 and the award dated 7th June 2017 has also been challenged by way of the present petition only in 2019 and therefore, on the ground of delay and laches itself, the present petition deserves to be dismissed. Further, Respondent No. 2 has also contended that the Petitioner trust has raised disputed questions of fact and also contended that one Prem Amarchand Devi Dayal was never the trustee of the Petitioner trust nor was he authorized to attend any hearing on behalf of the trust. In view thereof, since these are disputed

questions of fact, Respondent No. 2 submitted that the present Petition deserves to be dismissed. Respondent No.2 also further contended that Slums were constructed on the subject land and the Petitioner trust did not take any action against them and they had an alternate efficacious remedy available to them for the purposes of taking the said action. Respondent no. 2 has also contended that the subject land was declared as a Slum under section 4(1) of the Slum Act and therefore details of the titled area were given in respect of the proposed acquisition along with information about notices to the concerned persons. Respondent No. 2 further contends that the State Government by report dated 1st October 2013 informed the Secretary, Housing Department Mantralaya the details titled area, survey No. and proposal of the land given by the Respondent No. 4 society who had submitted the proposal for redevelopment. Respondent No. 2 therefore submitted that due procedure of law had been followed and notice under section 14(1) of the Slum Act was also published in the newspaper. As seen from the tenor of the affidavit filed by the SRA i.e. Respondent No. 2, it is its contention that due procedure of law was followed under the Slum Act, and that the acquisition has been made as per the mandate of the Slum Act and after affording proper opportunity to the Petitioner.

10. Written submissions/propositions have been submitted by Respondent No.6 in the Second Writ Petition, wherein Respondent no.6 has opposed the admission of the present petition on the ground that the same suffers from delay and laches. It is further submitted that Respondent No.6 has mobilized the site and proceeded with the redevelopment of the subject land. It is also submitted that

Respondent No. 6 has incurred substantial expenses towards transit accommodations. In view thereof, Respondent No. 6 has opposed the admission of the aforesaid petition.

11. In the First Writ Petition, Affidavit of Respondent No.2 on behalf of Slum Rehabilitation Authority has been filed opposing the admission of the present petition to contend that the Petitioner did not show any willingness to develop the said property. It is contended that a proper show cause notice under section 14 of the Slum Act was issued to the Petitioner and an opportunity of a hearing was also granted given to the Petitioner. However, the Petitioner did not show any willingness to redevelop the property on his own and hence by a detailed report dated 01st October 2023, acquisition was recommended under section 14(1) of the Slum Act. It was further submitted that by notification dated 28th August 2015, subject land was declared as “Slum Rehabilitation Area” under Section 3-C of Slum Act and award dated 07th June 2017 was passed after following due process of law. It was submitted that compensation was given to the trustees of the trust, but the same was refused by them. It was therefore submitted that the First Writ Petition deserves to be dismissed.

12. Affidavit in Reply of Respondent No.1, 3 and 4 is filed in the First Writ Petition opposing the admission of Writ Petition and submitting that due process of law has been followed before issuing the notification dated 13th October, 2015 to acquire the subject land under section 14 of the Slum Act.

13. Written propositions/submissions of behalf of Respondent No. 4 are also filed in the First Writ Petition wherein it is submitted that the Petitioners i.e. Smt.

Malti Narayan Kakade who claims to be the owner of the subject land does not have a valid legal right and therefore cannot claim preferential right of redevelopment on the subject land. It is also submitted that notice under section 14(1) of the Slums act was issued to the Petitioner's mother i.e Smt. Malti Narayan Kakade and she was unable to establish her ownership with proper documents during hearing. Respondent No.4 has further opposed the admission of the present petition on the ground that the same suffers from delay and laches. It is further submitted that Respondent No.4 has mobilized the site and proceeded with the redevelopment of the subject land and incurred expenses in respect thereof.

ANALYSIS :

14. In the backdrop of the above facts of both the petitions and considering the submissions made by learned counsel for respective parties, it is an undisputed position that prior to the acquisition of subject land, no notice was issued to the Petitioners under section 13 of the Slum Act. Even though all the Respondents in their various affidavits and written submissions have submitted that a notice was not issued under section 13(1) of the Slum Act calling upon them to undertake redevelopment of the slum being their preferential right, as no hearing was granted to the Petitioners under Section 14(1) of the Slum Act, yet the same doesn't take away the fact that a notice under section 13 of the Slum Act is a sine qua non for acquisition under section 14(1) of the Slum Act for acquisition of the subject land.

15. It is also clear from the facts in First Writ Petition No.942 of 2024 that mother of the Petitioner i.e. Smt. Malti Narayan Kakade had appeared before the SRA Authorities and claimed preferential rights for redevelopment of the subject

land, however that does not make the acquisition legal and valid in as much as section 13 notice has not been given to the Petitioners in both the Writ Petitions.

16. In the decision of **Indian Cork Mills Private Limited Vs. State of Maharashtra and others**² a co-ordinate Bench of this Court wherein one of us (G.S.Kulkarni, J.) was a member, has also taken a view that preferential rights of the land owner have to be recognized more particularly in respect of any redevelopment even if a proposal is sent to the SRA for redevelopment by the slum dwellers. The relevant paragraphs of the aforesaid decision are reproduced below:

“59. That a preferential right for redevelopment is so vested in the owners/landholders and/or occupants is further clear in view of a conditional power/authority created with the SRA to undertake redevelopment of the slum rehabilitation area in a two-fold manner firstly by exercising power under sub-section (1) or (2) of Section 13 which is to re-develop the land by entrusting it to any agency on a failure of the landholder or the occupant in not coming forward within a reasonable time with a scheme for re development; and when application of Section 13(1) and (2) do not fetch any result by re-developing or carrying out development under the slum rehabilitation scheme in any slum rehabilitation area by resorting to acquisition of the land under section 14 as applicable with modification under Chapter I-A. It is thus clear that the object and purpose which the provisions of Section 3B(4)(e), Section 13(1) and (2), Section 12(10) and Section 14 (as modified by under Chapter I-A) is to achieve and bring about an effective redevelopment of slum rehabilitation area.

Thus, from the legislative scheme of the amended provisions it can be clearly inferred that the rights so conferred under these provisions on the owner/landholder/occupant cannot be usurped directly by putting into operation the acquisition machinery simply because such power exist on the statute book. The exercise of such power within the scheme of Chapter I-A is required to be resorted by due adherence to the said provisions which have created and recognized the legitimate rights in the owners, landholders and occupants to undertake re-development. The power to acquire land is also required to be exercised in a fair manner and certainly in the context of the present statutory scheme, when the object and purpose for which acquisition is to be undertaken can be achieved by other methods and for which the statute has made the requisite provision for achievement of such

²Writ Petition No.658 of 2017

purpose.

89. We also cannot accept the submission as urged on behalf of the society that since the society has submitted a scheme prior to the petitioner's scheme, the preferential right in favour of the petitioner does not survive. This submission pre-supposes that there is a preferential right in the petitioners to redevelop the said land.”

17. We find that in the facts of the present case, the issue is no longer *res integra* considering that this issue has been extensively dealt with and decided in the case of **Bishop John Rodrigues Versus The State of Maharashtra and others**³, which has been upheld in the case of Saldanha (supra), wherein it has been held that land which is admittedly private land on which there were hutments and which came to be declared as “Slum Rehabilitation Area” under the provisions of section 3C(1) of the Slum Act, cannot be acquired without recognizing the preferential rights of the Petitioner as owner of the said land. The State cannot discard the Petitioner’s rights and proceed to acquire the land under section 14 of the Slum Act.

18. At the outset we may observe that it is not in dispute that the land in question is a private land in respect of which the Petitioner enjoys valuable rights under Article 300A of the Constitution. Therefore, the acquisition of the subject land had to be done by following due process of Law. In the decision of Bishop John Rodrigues Vs. The State of Maharashtra and others (supra) of which one of us (G.S.Kulkarni, J.) was a member, it was categorically held that the provisions of Section 13 are sine qua non for any acquisition of property under Section 14 of the Slum Act. Relevant paragraphs of the said judgment are reproduced below :

³Writ Petition (OS) No.1212 of 2022

“101. In these circumstances, 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 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 permit the owner of the land to undertake the development. The CEO-SRA has an onerous obligation to reasonably, non-arbitrarily, and objectively deal with the valuable property rights of private citizens who are dragged in such 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 right to property. 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. We may also add that if the official machinery was to act as per law, today we would not have been confronted with the situation of an international city like Mumbai being also known for its slums on private and public lands [See the observation of the Court in High Court on its own motion (In the matter of Jilani Building at Bhiwandi) vs. Bhiwandi Nizampur Municipal Corporation & Ors. (supra)].

102. Be it so, in our opinion, a cumulative reading of the provisions under Chapter-I-A does not, in any manner, depict a legislative intent that the moment the private land is declared as a slum and a cooperative society of slum dwellers is formed, no opportunity whatsoever is required to be granted to the owner of the land to undertake development of the land. In fact, primary obligation on the CEO-SRA as also for the slum rehabilitation society is to issue a notice to the owners of the land specifying the period/a time bound schedule i.e. 120 days as contemplated under Section 13(1) of the Slum Act. This would be the basic necessity before a owner could be deprived of its constitutional rights under Article 300A before applying the statutory 120 days as contemplated under Section 13(1) of the Slum Act either from the declaration of the slums as the slum rehabilitation area or any insistence on the part of the society and which may not be to the knowledge of the owner. In our opinion, the petitioner would be correct in its contention that Section 13(1) would be required to be read in the context of what has been observed by the Division Bench of this Court in *Indian Cork Mills Pvt. Ltd. vs. State of Maharashtra* (supra), in as much as, for a valid acquisition under Section 14, the pre-requisite would be an opportunity to call upon the owner of the land to come forward with a scheme to undertake the redevelopment by putting him to a notice that a rehabilitation scheme if not submitted by him, would be a circumstance which would be taken against him so as to take steps to acquire the land. The Division Bench had held that such notice to the land owners was imperative, considering the plain reading of Section 14(1) of the Slum Act. The observations of the Division Bench in that regard are already noted by us hereinabove.

103. Moreover, it can be clearly seen that the SRA has accepted the fact that the owner would have preferential rights to undertake redevelopment of the slums which has also been noted by the Division Bench in the case of *Anil Gulabdas Shah vs. State of Maharashtra* (supra) referring to SRA's circular. Such position was also considered by the Division Bench of this Court in *Indian Cork Mills Pvt. Ltd. vs. State of Maharashtra* (supra) wherein the Court in paragraph 97 observed that

such circular was binding on the SRA. Such observations of the Division Bench read thus:-

"97. The decision in Om Sai Darshan society (supra) the court was dealing with the issue as noted by the Court in para 2 of the decision which reads thus: "This petition under Article 226 of the Constitution of India inter alia seeks to challenge the orders of eviction dated 4th March 2005 issued by the respondent no. 3 (Mumbai Housing and Area Development Board) against the members of the petitioner no. 1 proposed society under sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (hereinafter referred to as "the slum Act"). In the said notices, it is alleged that the members of the petitioner no. 1 to whom notices have been addressed have refused to shift to the alternative accommodation offered by the developer i.e. respondent no. 7. It is stated in the notices that if the concerned persons failed to show cause, action of eviction will be taken under sections 33 and 38 of the Slum Act. The second prayer in this petition is for a writ of mandamus directing Respondent nos. 2, 3 (Slum Rehabilitation Authority) and respondent no. 6 (Deputy Collector, SRA) to hear the applications made by the petitioners for grant of Index-II for development of the property in favour of the petitioner no. 1 proposed society. The petitioners have taken out a notice of motion for interim protection against demolition. An order of status quo has been granted on 12th December 2005 and the same has been continuing."

111. We may also observe that such contention of the society that the moment the land in question, which is of private ownership, is declared as a slum and after coming into force of Regulation 33(10) of the DCR would mandate steps to be taken to develop the land, would also be required to be held to be fallacious. As stated hereinabove, it cannot be expected that the owner of the land would instantly possess the necessary wherewithal, or would have no opportunity to mobilise/organise himself to undertake a redevelopment. Thus, it is ill-conceivable that an instant development of such land from the resources of a private person can automatically be foisted. Such an argument also lacks discernment to any ground realities in which the owner of the land in a given situation may find himself, under the scheme of the things.

118. If this be the position, then certainly, the slum dwellers merely by forming a society cannot assert that their rights are higher than the rights of the owners of the land and as successive Division Benches of this Court has held that the rights of the slum dwellers cannot be elevated (as if they are the owners of the property), so as to control the rights of the owners of the land under the garb of rehabilitation and through the resources of a developer, foist/dictate compulsory acquisition of land against the owner. The acquisition of the land for rehabilitation of slum dwellers can also

never be on a pedestal and/or of a status of an acquisition of the land for public purposes in relation to public project to be undertaken by the State in exercise of its powers of eminent domain. This for two reasons firstly, it is a private group of persons (slum developers) who would be the beneficiary of such land acquisition and the second beneficiary would be the developer who would reap bonanza of a huge Floor Space Index (FSI) in undertaking construction of commercial/saleable premises. Thus, the only beneficiaries of such acquisition of private persons, the Government would spend a meager amount of compensation to be paid as per Section 17 of the Slum Act. Despite this clear position, quite unfortunately, the experience in relation to acquisition under the Slum Act is quite different. It is completely misunderstood, misapplied, misinterpreted or abused by the authorities; this considering the proliferation of litigation in this regard, concerning private lands as encroached, and what is happening to public lands is a mystery which can never be resolved.

121. Thus, a conclusion can be reached that the process of acquisition of private land under the Slum Act is quite draconian with minimal say to the owners of the land coupled with enormous discretion conferred on the CEO, SRA, leaving an enormous scope and window, for large scale arbitrariness and illegality. Considering such parameters, there is an onerous obligation on the State Government not to have a mechanical approach in processing proposals from the CEO SRA and to very minutely examine each and every proposal and reach to a subjective satisfaction for reasons to be recorded in writing as to whether the proposal for acquisition as being put up by the CEO, SRA is fair, reasonable and non-arbitrary. In the present case, valuable land of the petitioner situated at Bandra is being acquired for merely 35 slum dwellers. It is quite astonishing as to why in such a situation, the SRA would not grant an opportunity to the petitioner to undertake redevelopment of its own land and rehabilitate the slum dwellers and in fact, resort to a compulsory acquisition of the petitioner's land under Section 14 of the Slum Act.” (emphasis supplied)

19. This decision of the co-ordinate Bench of this Court was challenged before the Supreme Court in Saldanha Real Estate Private Limited Vs. Bishop John Rodrigues and others (supra) and the said decision of this court has been upheld by the Supreme Court in the Special Leave Petition. The relevant paragraphs of the decision in the civil appeal are reproduced below :

20. *The learned Senior Counsels for the Appellants strenuously argued that, as a consequence of the 2018 Amendment, there is no statutory requirement to issue a separate notice for initiation of proceedings Under*

*Section 13 of the Slums Act.*²⁰ The reason attributed to this inference was that such a notice already stands effected on a landowner Under Section 3C, as a Rule of audi alteram partem within the process of notifying the land as an SR Area. It was thus elaborated that in view of the changed legislative policy, the precondition of a separate notice Under Section 13 as outlined in *Indian Cork Mills* (supra) and upheld by this Court in *Tarabai* (2025 INSC 1015) would no longer be applicable. It was clarified that the cited decisions pertain to the situation as it stood prior to the 2018 Amendment and are, thus, distinguishable.

21. In this regard, a pointed reference was also made to the phrase, 'which shall not be more than one hundred and twenty days' in Section 13, to buttress the submission that the onus has been shifted onto the landowner to remain vigilant and submit the SR Scheme within the stipulated period once the Section 3C(1) Declaration is issued.

22. On a bare perusal of the 2018 Amendment, it seems to us that no attempt has been made to remove or dilute the preferential right of the landowner to redevelop an SR Area. All those provisions which have been analysed in *Tarabai* (supra) lead to only one conclusion, i.e., that the owner has a primary right to undertake development, and none of the provisions have been amended. Rather, the owner's right is now further entrenched into the legislative scheme, with the addition of the term 'owner' into the text of Section 3B(5) and Section 13, along with the existing expressions of 'landholders' and 'occupants'. The Legislature has, thus, expressly acknowledged the distinct rights enjoyed by the owner or a landlord within Chapter I-A.

23. In order to address the Appellants' contention, it is germane, firstly, to observe that, under Chapter I-A, no occasion arises for any stakeholder to develop an area unless it has been finally notified as an SR Area. In other words, the Section 3C(1) Declaration is a stage prior to redevelopment being initiated Under Section 13. The issuance of a notice Under Section 3C 24 is meant to accord hearing to a landowner and invite objections, if any, against declaration as an SR Area. By contrast, this Court, in *Tarabai* (supra), has expressly held that the purpose of a specific notice Under Section 13 is to invite and enable the owner to initiate redevelopment. Keeping in mind the fact that both the provisions operate in different directions and for different purposes, what is deemed to be mandated Under Section 13 cannot be rendered moot by the stipulations in Section 3C. With this view of the matter, the plea of the Appellants that the new mechanism within Section 3C no longer necessitates a separate notice-cuminvitation on the landowner cannot be accepted.

24. Further, *Tarabai* (supra) outlines very cogent and critical reasons for why the specific notice under Section 13 is a mandatory requirement. This Court, considering the practical realities of preparing an SR Scheme as well as the potentially drastic consequences of not submitting the same, held that it would not be feasible for the owner to file the scheme without being invited to do so. The newly added qualification of 120 days in Section 13 in

no way impacts or has any relation to such an invitation or the reasons behind its necessity. The incorporation of this condition cannot lead to the conclusion that the notice-cum-invitation is no longer required. Rather, the stipulated time-limit would come into effect after the owner is notified and invited to redevelop the SR Area, whereupon they must come forward within the time-ceiling. The claim of the Appellants that the owner is expected to present an SR Scheme within 120 days of the Section 3C(1) Declaration without any notice-cum- invitation is wholly misconceived and, thus, accordingly rejected.

25. On a conspectus of the 2018 Amendment and the perceived resultant variation on the pre-amendment legislative policy, we are satisfied that the holistic interpretation of the Slums Act made by this Court in Tarabai (supra) is also squarely applicable on post 2018 Amendment actions/events, barring the now legislatively stipulated timeline within which a redevelopment scheme has to be submitted by an interested landowner. It, then, goes without saying that SRA's actions initiating the acquisition in the instant case must also be tested against the same principles, which we shall now proceed to assess in the following issue.

29. At the cost of repetition, it may be reiterated that Mr. Divan advanced a two-pronged submission. First, he contended that all statutory requirements for initiating acquisition, particularly the issuance of notice to the Church Trust, had been duly complied with. Second, he argued that the Church Trust, by failing to proactively develop the Subject Land or submit a proposal in the prescribed format Under Regulation 33(10) of the DCPR 2034, had effectively waived its preferential right. On this basis, he asserted that the acquisition proceedings were valid and did not merit interference.

E.3.1.1 No Notice-cum-Invitation for Redevelopment

30. Regarding the first strand of these claims, we hasten to observe at the very outset that there is no notice or invitation Under Section 13 on the record that was issued to the Church Trust.

31. The only communication relied upon by the Appellants is the Deputy Collector, SRA forwarding the Section 3C(1) Declaration to the Church Trust. We have already held that such notice does not amount to compliance with the procedure contemplated Under Section 13 of the Slums Act.

32. The inevitable consequence of the SRA's omission to issue a separate notice Under Section 13 is that the Church Trust's preferential right to redevelop the Subject Land remains intact. In the absence of a valid notice or opportunity, there existed no legal basis to extinguish this right. The acquisition was, therefore, vitiated in law, falling afoul of the prescribed procedure.”

20. It is thus the clear position in law that under section 13(1) of the Slums Act as falling under the provisions of Chapter 1-A, the jurisdiction with the Chief

Executive Officer, Slum Rehabilitation Authority would trigger only when the land is declared as slum rehabilitation area. The Chief Executive Officer would have jurisdiction to make representation to the State Government under Section 14(1) of the Act to enable the SRA to carry out development under the slum rehabilitation scheme, only when the area is a slum rehabilitation area as explicitly provided under sub-section (1) of Section 14. As consistently held by this Court in *Indian Cork Mills Pvt. Ltd. vs. State of Maharashtra* (supra), as also the decision in *Bishop John Rodrigues vs. The State of Maharashtra* (supra), it was necessary that the owner of the land (petitioner) be granted an opportunity of being put to a notice that the petitioner would be required to submit a proposal after declaration of land as a slum rehabilitation area, so as to consider the owners's inclination to redevelop his owner land and ameliorate the slums and only in the event, within 120 days of such notice, the owner was not to take steps to submit a proposal for redevelopment, the jurisdiction to acquire the land could be exercised by the CEO SRA/State Government. Thus, in recognizing the pre-emptory right of the owner to redevelop the land and only if the landholders or occupants of such area do not come forward within a time period 120 days from the issuance of such notice as incorporated by virtue of amendment by the Maharashtra Act XXVIII of 2018, only in that event, when SRA can order to determine to redevelop the land by entrusting it to any agency and /or further steps can be taken to acquire the land. This right created by law in favour of the owner under Section 13 (1) that an opportunity be granted to the owners in terms of Section 13(1) is necessarily required to be recognised, without which the provision as made in the statute

conferring such rights would be meaningless. The Courts have also held that the preferential right for redevelopment of the land under slums is vested with the owners/landholders and/or occupants in view of a conditional power/authority created with the SRA to undertake redevelopment of the slum rehabilitation area in a twofold manner, firstly by exercising power under Section 13 (1) and (2) which is to redevelop the land by entrusting it to any agency on a failure of the landholder or the occupant in not coming forward within a reasonable time with a scheme for re-development; and when an application of Section 13(1) and (2) do not fetch any result by re-developing or carrying out development under the slum rehabilitation scheme in any slum rehabilitation area by resorting to acquisition of the land under Section 14 as applicable with modification under Chapter I-A. It is also clearly held that from the legislative scheme of the amended provisions, it is clear that the rights so conferred under such provisions on the owner/landholder/occupant cannot be usurped directly by operating the acquisition machinery, simply because such power exists on the statute book. It is further held that the exercise of such power within the scheme of Chapter I-A is required to be resorted to by due adherence to the provisions as contained therein, which have created and recognized the legitimate rights in the owners, landholders and occupants to undertake redevelopment. In the facts of the present case such principles of law which are now confirmed by the Supreme Court in *Saldanha Real Estate Pvt. Ltd. vs. Bishop John Rodriques* (supra) has been completely given a go-bye in acquisition of land under the scheme of Section 14 without recognition of preferential rights cannot be

recognized. In this view of the matter, the acquisition would be required to be quashed and set aside.

21. Before parting, we may observe that although there is a dispute on the title of the land between the petitioners in the first and second Writ Petitions, such inter se disputes at all material times need to be subject matter of appropriate proceedings, as insofar as the assertion of both the petitioners in assailing the acquisition, the petitioners are asserting such contentions as legally permissible, in one voice, i.e. a contention of preferential rights, lack of notice etc, as observed as clearly held in the decisions of Supreme Court in Indian Cork Mills Pvt. Ltd. (supra), Bishop John Rodriques (supra), Tarabai Nagar Cooperative Housing Society (Proposed) vs. State of Maharashtra & Ors., Saldanha Real Estate Pvt. Ltd. (supra). Thus, any inter se rights between both these petitioners are not subject matter of adjudication in the present proceedings. Our aforesaid discussion is confined only in regard to the decision of the Chief Executive Officer, SRA as also the State Government in acquiring the land for redevelopment of slums.

22. As a result of the above discussion, the petition is allowed in terms of the following order:

ORDER

(i) The acquisition of land in question bearing Old Survey No.81, Hissa No. (part), CTS No.270 (part) admeasuring 1,201 square yards situated at Bhandup Village Road, Opposite Bhatia Hospital, Mumbai-400078 vide notification dated 13th October 2015 is quashed and set aside, being arbitrary, illegal and contrary to the decisions of this Court in Indian Cork Mills Pvt. Ltd. (supra) , Bishop John

Rodrigues (supra), Tarabai Nagar Cooperative Housing Society (Proposed) vs. State of Maharashtra & Ors., Saldanha Real Estate Pvt. Ltd. (supra);

(ii) It is, however, open to the SRA to issue appropriate notice to the Petitioners as mandated by law recognizing the Petitioners' preferential right and consequent to the said notice, further appropriate procedure for redevelopment of the slums shall be resorted;

(iii) Rule is made absolute in above terms;

(iv) Writ Petition No.942 of 2024, Writ Petition No.1923 of 2019 and Interim Application No.2702 of 2024 are disposed of in the above terms.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)