HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1775 OF 2011

Sakinaben Fakir Mohammed Sayani
and others ... Petitioners
v/s
State of Maharashtra and others ... Respondents

Mr S.U. Kamdar, Sr. Counsel with Dr Birendra Saraf, Mr Ankit Lohia, Mr Y. Kamdar nd Mr Nilesh Tated i/b M/s Mahimtura and Co. for Petitioners.
Mr Milind More, AGP for Respondent Nos.1 and 2.
Mr R.V. Govilkar for Respondent No.3.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

Reserved On : 11th September, 2015
Pronounced On : 1st October, 2015

JUDGEMENT *[Per B.P. Colabawalla] :-*

1. This Writ Petition under Article 226 of the Constitution of India challenges (i) the constitutional validity of section 14 of the

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Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as the **"Slum Act"**) as being ultra vires the provisions of the Constitution of India; and (ii) the Notification dated 1st September, 2010 (Exh.'K' to the Petition) under which the Government of Maharashtra declared that it had decided to acquire the land bearing CTS No.247 (part), admeasuring about 474 sq.mtrs. and CTS No.247/1 to 28 and 36 to 50, admeasuring about 413.50 sq.mtrs., in Village and Taluka Andheri, Mumbai Suburban District (hereinafter referred to as the **"said land"**). The Petitioners claim to be the co-owners of the said land alongwith one M/s Fazalbhoy Construction Co. as tenants in common under a registered deed of conveyance dated 18th May, 1963.

2. The main ground of challenge to this acquisition is that the Petitioners being co-owners of the said land, were not given any notice as contemplated under the proviso to section 14(1) of the Slum Act and therefore, the said Notification dated 1st September, 2010 and all the subsequent proceedings in relation thereto are void and bad-in-law and ought to be set aside by us in our equitable jurisdiction under

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Article 226 of the Constitution of India.

3. Before dealing with and deciding the rival contentions, it would be necessary to set out the brief facts. It is the case of the Petitioners that one M/s Morinaga Traders was a proprietary concern of one late Mr Fakir Mohammed Haji Sayani, a Khoja Ismaili, who died intestate in Mumbai on 26th December, 1987. Morinaga Traders alongwith one M/s Fazalbhoy Construction Co., by a registered Deed of Conveyance dated 18th May, 1963 as tenants in common with equal shares, purchased certain pieces of land (including the said land). The names of M/s Morinaga Traders alongwith M/s Fazalbhoy Construction Co. are reflected in the 7/12 extract vide Mutation Entry No.687 of Village and Taluka Andheri. It is common ground before us that old survey numbers have undergone a change due to the introduction of CTS (Chain Triangulation Survey) in the Mumbai Suburban District. Therefore, Survey No.95B/3(Part) (which is the old survey number as reflected in Deed of Conveyance dated 18th May, 1963) is now inter alia designated under the CTS as CTS Nos.247, 247/1 to 237. The said land comprises of this larger

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property. It is also an admitted fact that by a Notification dated 14th October, 1977 issued under section 4(1) of the Slum Act, the said land has been declared to be the slum area.

4. It is the case of the Petitioners that the late Mr Fakir Mohamed Haji Sayani, a Khoja Ismaili, who died intestate in Mumbai, was survived by his heirs, the details of which are more particularly set out in paragraph 8 of the Petition. As a result, according to the Petitioners, the estate of late Mr Fakir Mohamed Haji Sayani has today devolved upon (i) the Petitioners; (ii) Mr Amin Fakir Mohammed Sayani; (iii) Mr Mashukali Fakir Mohammed Sayani; (iv) Mr Mohamadali Haji Sayani and (v) Mrs Bilkis Amir Rupani. This is how the Petitioners claim to be the co-owners of the said land.

5. As mentioned earlier, the said land was declared as a slum in the year 1977 and the slum dwellers were residing in that area without any basic amenities. The said slum dwellers accordingly formed a society known as Shree Gaodevi Ekta CHS Ltd. (Proposed)

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(Respondent No.3) and formulated a proposal for redevelopment of the said slum area under the Regulation 33(10) of the Development Control Regulations for Greater Mumbai, 1991 (for short **"DCR, 1991"**). This proposal was put up before the Additional Collector (ENC), Western Suburban, Bandra on 14th May, 2007 for acquisition of the said land. In their proposal, the said slum dwellers' Society contended that they had 70% majority of the Slum Dwellers who were supporting the SRA Scheme under Regulation 33(10) of the DCR, 1991 as per State Government Policy.

6. In view of the aforesaid proposal and the Government Resolution dated 14th January 2004, the Additional Collector (ENC) directed the Chief Surveyor (Western Suburban) and Deputy Collector, Andheri to inquire into the aforesaid proposal and check the slum dwellers' eligibility by checking their original record. Accordingly, the Chief Surveyor gave his report dated 5th July, 2007 to the Additional Collector who, after accepting the same, issued notices dated 5th November, 2007 for acquisition under section 14(1) of the Slum Act to the owners of the said land whose names were

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recorded in the property card. This notice was also published in the newspaper viz. Daily Navakal on 5th November, 2007. As on the date of issuance of the notice, it is an admitted fact that the names of the Petitioners or their predecessor (Morinaga Traders), was not reflected in the property card as owners of the said land. The property card of the said land clearly showed the owners as under:-

Sr.No.	City Survey No.	Names of owners
1	247	(1) Phirojshah Hormasji Balliwala, (2) Tehrina Hormasji Balliwala, (3) Allabhai Hormasji Balliwala, (4) Hemant Hormasji Balliwala
2	248	Trustee G.B. Daruwalla Trust and 2 others.

7. In these circumstances, the aforesaid notices for acquisition under section 14(1) of the Slum Act were issued to the owners whose names were recorded in the property card of the said land.

8. We must mention here that even before the issuance of the aforesaid notices dated 5th November 2007, one M/s J.S. Anand

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and Associates, Advocates, by their letter dated 20th June, 2007 stated that they were representing their clients M/s Fazalbhoy Construction Co. and M/s Morinaga Traders and claimed ownership of the said land.

9. After the aforesaid notices dated 5th November, 2007 were issued to the owners, hearings took place before the Additional Collector. During the said hearings, the said M/s J.S. Anand and Associates, Advocates, appeared, made their submissions, and also filed their written arguments claiming that M/s Fazalbhoy Construction Co. and M/s Morinaga Traders were owners of the said land (CTS. No.247) under a Conveyance Deed dated 18th May, 1963 and further contended that by an agreement dated 1st August 1967, the proprietor of M/s Morinaga Traders viz. Mr Fakir Mohammed Haji Sayani had sold, transferred and assigned his right, title and interest to the extent of his share in the said land in favour of M/s Fazalbhoy Construction Co.

10. The record reflects that the Additional Collector gave a

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hearing to all concerned on 20th November 2007, 31st January 2008, 7th February 2008, 20th February 2008, 26th February 2008, 5th March 2008, 11th March 2008 and 24th April 2008. Thereafter, the Additional Collector, after considering the replies and documents etc. produced before him, prepared a report dated 26th June, 2008 and forwarded the same to the Government (Housing Department) and recommended that the said land be acquired under section 14(1) of the Slum Act. It is in these circumstances that the said land has been acquired under the Notification dated 1st September, 2010 issued by the Housing Department of the Government of Maharashtra.

11. In this factual background, Mr Kamdar, learned Senior Counsel appearing on behalf of the Petitioners, submitted that admittedly the Petitioners being the co-owners, were not given any notice as contemplated under the proviso to section 14(1) of the Slum Act and therefore the Notification issued on 1st September 2010 was bad-in-law and liable to be set aside. Mr Kamdar pointed out that the notice under section 14(1) dated 5th November, 2007 was addressed to the Chief Promoter of the 3rd Respondent – Society as well as to

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certain other persons as more particularly set out in the said notice and the same was never addressed to the Petitioners. Mr Kamdar invited our attention to section 14(1) of the Slum Act and more particularly the proviso thereto which inter alia stipulated that before publishing any notice under section 14(1), the State Government or as the case may be, the Competent Authority may inter alia call upon the owner of such land to show cause in writing why the land should not be acquired within the period specified in the notice. According to Mr Kamdar, this mandatory provision has not been adhered to and therefore, the acquisition proceedings are bad-in-law.

12. On the other hand, Mr More, learned AGP appearing for Respondent Nos.1 and 2, contended that the notice was issued to owners of the said land whose names were recorded and reflected in the property card. He was at pains to point out that as on 5th November 2007, the names of persons mentioned in the property card were persons other than the Petitioners. In view of this admitted position, the notice was issued in the names of those persons and not in the name of the Petitioners. Mr More further submitted that even

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though the Petitioners (and their predecessor) claim to be owners of the said land under a registered Deed of Conveyance dated 18th May 1963, till the year 2008 (i.e. after the date of issuance of the notice) they had taken no steps to include their names in the property card which is the document that reflects who is the owner of the said land. Mr More submitted that as stated in the affidavit of Mr Khusalsinh Ramlal Pardeshi dated 28th February 2012, the Petitioners on 12th February 2008, for the first time, applied to the City Survey office for insertion of names of the Petitioners as legal heirs and representatives of late Fakir Mohammed Haji Sayani and the said application was rejected by the City Survey Office on 15th June 2009. It is further stated that till December 2011, the names of the Petitioners were not reflected in the property card. Mr. More therefore submitted that the Petitioners have slept over their rights and the Writ Petition suffers from gross delay and laches. His further submission was that admittedly the said land was declared as a slum under section 4(1) of the Slum Act way back in 1977 and till date, the same has not been challenged by the Petitioners or their predecessor-in-title. He submitted that looking at all these facts, the action of the Respondents

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to issue notice to the persons whose names are reflected in the property card cannot be faulted and this Writ Petition is an abuse of the process of the Court and ought to be dismissed with costs.

13. The alternate argument of Mr. More was that in any event no prejudice has been caused to the Petitioners because admittedly the letter dated 20th June, 2007 reflects that M/s. J.S. Anand & Associates, Advocates, were representing M/s. Fazalbhoy Construction Co as well as M/s. Morinaga Traders (the predecessor of the Petitioners) and they were admittedly heard by the Additional Collector before the Notification dated 1st September, 2010 was issued. In these circumstances, Mr. More submitted that the Petition was meritless and deserved to be dismissed.

14. With the help of learned counsel, we have perused the papers and proceedings in this Writ Petition as well as the impugned notification dated 1st September, 2010. As far as the challenge to the constitutional validity of section 14 of the Slum Act is concerned, the same has been upheld by this Court in the case of ***Sarah Harry***

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D'Mello Vs. State of Maharashtra & Ors.[1] In this view of the matter, Mr. Kamdar very fairly did not press this point before us.

15. As far as the challenge to the Notification dated 1st September, 2010 is concerned, we find considerable force in the submissions of Mr More, learned AGP appearing on behalf of the Respondent Nos.1 and 2. The facts as set out above clearly reveal that the said land was notified as a slum under section 4(1) of the Slum Act way back in the year 1977. This was done because the owners of the land were unable to provide even the basic amenities such as sanitation, electricity, hygiene etc. It is in these circumstances that the Respondent No.3 – Society was formed by the slum dwellers and they held a meeting on 23rd April, 2006 wherein it was resolved that for their benefit a slum rehabilitation scheme be implemented on the said land. Accordingly, the members of the Respondent No.3 – Society had a joint meeting with one M/s Paras Enterprises wherein it was decided to appoint the said M/s. Paras Enterprises as their developer for redevelopment of the said land where Respondent No.3 – society

1 (2013) 4 MH LJ 348 : (2013) 5 Bom.C.R.167

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is situated. As stated earlier, the said land was declared as a slum way back in the year 1977 and it was realised that till the said land was acquired, it would not be possible to take any further steps or actions for implementing or executing the rehabilitation scheme. It is in these circumstances that representations were made by the Respondent No.3 – society to the concerned authorities to take steps for acquisition of the said land which was already declared / notified as a slum.

16. On the basis of these representations, Respondent No.2 by its notice dated 5th November, 2007 issued to the Chief Promoter of Respondent No.3 as well as to the land owners (whose names were reflected in the property card), called upon them to show cause in writing as to why the said land should not be acquired for the purpose of execution of works of improvement in relation thereto. On the same day, a public notice was also published by Respondent No.2 in the newspapers. As the Petitioners (or it predecessor) had not taken any steps from 1963 till 2008 to enter their names in the property card, Mr. More is perfectly justified in contending that the authorities

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cannot be faulted for issuing the notice dated 5th November, 2007 to the persons whose names were reflected in the property card. One must also not lose sight of the fact that these slum dwellers have been residing in uninhabitable conditions from 1977 till date and it is to improve their living conditions that the said land has been acquired. From 1977 till date, the Petitioners or their predecessor did not take any steps to ensure that these slum dwellers are provided habitable living conditions. In these circumstances, we do not think that the Petitioners are justified in invoking our extraordinary, equitable and discretionary writ jurisdiction under Article 226 of the Constitution of India to contend that the impugned Notification is bad in law for want of notice to the Petitioners. This is more so in the facts of the present case because the Petitioners slept over their rights, if any, and from 1963 till 2008, neither the Petitioners nor their predecessor (Morinaga Traders) took any steps to include their name in the property card in relation to the said land. Therefore the authorities were fully justified in issuing the notice dated 5th November, 2007 to the persons whose names were reflected in the property card.

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17. Even otherwise we find that M/s J.S. Anand and Associates, Advocates, by their letter dated 20th June, 2007 sought to claim ownership of the said land on behalf of their clients, M/s Fazalbhoy Construction Co. and M/s Morinaga Traders (the predecessor of the Petitioners). This is borne out from the opening paragraph of the said letter which reads as under :-

> *"Under instructions from my client M/s Fazulbhoy Construction and Marinaja Traders, owners of Plot bearing CTS No.247 (part), Gilbert Hill division, Andheri (West), Mumbai 400 058, I have to submit to you as under:-"*

18. In the said letter, it was contended that the said land belongs to their clients as owners and that the said land had been taken up by his clients, alongwith Grace United Properties for development under Regulation 33(10) of the DCR, 1991. It was therefore submitted that the slum dwellers would be rehabilitated as per the provisions of Regulation 33(10). Thereafter, M/s J.S. Anand and Associates appeared before Respondent No.2 and in fact even filed their written arguments opposing the acquisition proceedings. In the said written arguments, it was contended that under an agreement dated 1st August, 1967 entered into between M/s Morinaga Traders

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and M/s Fazalbhoy Construction Co., M/s Morinaga Traders had sold, transferred and assigned all their rights and interest in the said land to M/s Fazalbhoy Construction Co. and that it was in exclusive use and possession thereof. After hearing all the concerned parties (including J.S. Anand & Associates, advocates) on several dates mentioned earlier, the Additional Collector forwarded his report to the Government (Housing Department) and recommended that the said land be acquired under section 14(1) of the Slum Act. It is in these circumstances that the Notification dated 1st September, 2010 came to be issued acquiring the said land for the purpose of implementing the Slum Rehabilitation Scheme for the benefit of the members (slum dwellers) of the Respondent No.3 – society. Considering these facts, we find that Mr. More is justified in contending that in any event the predecessor of the Petitioners (Morinaga Traders) and M/s. Fazalbhoy Construction Co., as co-owners, were heard before the issuance of the impugned Notification dated 1st September, 2010 and therefore they can have no grievance against the acquisition proceedings on the ground of want of notice.

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19. In the facts narrated earlier, we do not think that justice lies on the side of the Petitioners for us to exercise extraordinary, equitable and writ jurisdiction under Article 226 of the Constitution of India and strike down the acquisition of the said land. This acquisition has been initiated for the benefit of the slum dwellers who have been languishing on the said land in a virtually inhabitable state for the past 50 odd years. This Court cannot lend its assistance to parties like Petitioners who have not only been complacent about improving the living conditions for the slum dwellers on the said land, but also in ensuring that their names are recorded in the property card so as to reflect them as owners of the said land. It is too late in the day for the Petitioners to contend that the acquisition proceedings are bad-in-law in view of the fact that no notice was served upon them. In these circumstances, this contention of Mr Kamdar stands rejected.

20. Mr Kamdar then sought to contend that the acquisition proceedings are bad in view of the fact that before acquisition proceedings could be initiated under section 14(1), it was mandatory for the statutory authorities to follow the procedure as laid down in

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section 5 of the Slum Act. Mr Kamdar submitted that section 5 stipulates that where the Competent Authority is satisfied that any slum area or any part thereof is capable of being improved at a reasonable expense, so as not be a source of danger to the health, safety or convenience of the public of that area, it may serve upon the owner or owners and every mortgagee of the properties, a notice informing them of its intention to carry out such improvement works as in its opinion are necessary and asking each of them to submit his objections or suggestions, if any, to the Competent Authority, within thirty days from the date of such notice. Mr Kamdar submitted that admittedly this procedure has not been followed and therefore the acquisition proceedings are bad-in-law. In this regard, Mr Kamdar also relied upon the judgment of this Court in the case of ***Maruti V. Mane and another v/s Smt Ramkali Sitaram Kushawaha and others.***[2]

21. Section 5 of the Slum Act contemplates notice being given to the owners or mortgagees of the land on which improvement

2 Appeal No.324 of 2004 in Writ Petition No.608 of 2004, decided on 14th February 2011.

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works are to be carried out by the Competent Authority. In the present case, admittedly till 2011, the names of the Petitioners were never reflected in the property card as owners thereof. The persons whose names are reflected in the property card and neither the co-owners of the Petitioners are before us making any grievance that the acquisition proceedings are bad because of the alleged non-compliance of section 5. In this view of the matter, we are afraid, in the facts of the present case, we are unable to take cognizance of this argument at the instance of the Petitioners. As stated earlier, admittedly the Petitioners had taken no steps to ensure that their names were reflected in the property card so as to declare to the public at large that they are owners of the said land. The parties to whom the notices were issued under section 14(1) of the Slum Act have never raised this objection. Furthermore, this objection was also never raised before the Competent Authority by M/s J.S. Anand and Associates, Advocates who represented M/s Fazalbhoy Construction Co. and M/s Morinaga Traders (predecessor of the Petitioners). In this view of the matter, we are unable to take cognizance of this argument at this late stage. Considering the fact that the Petitioners till 2008 never took

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any steps to have their names inserted in the property card and the fact that this argument was never canvassed before the Competent Authority, it is too late in the day to canvass this argument before us. In these circumstances, the reliance placed by Mr. Kamdar on a decision of this Court in the case of ***Maruti V. Mane (supra)***, is totally misplaced. We however clarify that our order will not prevent the Petitioners from participating in any proceedings to determine the compensation payable for the said acquisition and raising a claim or seeking enhancement of the compensation if already determined. Such claims and the proceedings of the above nature shall be decided on their own merits and in accordance with law, uninfluenced by this order.

22. For all the foregoing reasons, we find no merit in the Petition. It is accordingly dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B.P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI J.)**[**]

[**] **CERTIFICATE:** Certified to be a true and correct copy of the original signed Judgement/Order.

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