

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

WRIT PETITION NO. 1863 OF 2017

Nusli N. Wadia

v/s.

The State of Maharashtra & Ors.

...

.. Petitioner

..Respondents

...

Mr. Navroz Seervai, Sr. Counsel a/w. Ms. Rujuta Patel, Ms. Niyathi Kalia,
Mr. Sonu B. i/b. Negandhi Shah & Himayaatullah for the
Petitioner.

Mr. Pravin Samdani, Sr. Counsel a/w. Santosh Pathak a/w. Prachi Patel
i/b. Santosh Pathak for the Respondent No.5.

Mr. P. K. Dhakephaklar, Sr. Counsel a/w. Mr. Nivit Srivastava, Ms. Neha
Shah i/b. Maniar Srivastava Associates for the Respondent No.7.

Mr. A.L.Patki, Addl GP for the State.

Mr. Vijay D. Patil for SRA.

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**CORAM : A.A.SAYED &
SMT.ANUJA PRABHUDESSAI, JJ.**

**DATED : 31 MAY 2022
(IN CHAMBER AT 1.30 P.M. with
Smt. Anuja Prabhudessai,J. on VC)**

JUDGMENT: (PER A.A.SAYED,J.)

The above Petition is filed by the Petitioner seeking the following
reliefs:

“(a) This Hon’ble Court be pleased to issue a writ of certiorari and any other appropriate writ and/or order and/or direction, calling upon Respondent Nos.1 to 4 to produce the papers and proceedings pertaining to issuance of the impugned Notification dated 1st March 2016 (Exh.K) and order dated 30th August 2016 (Exh.M) as well as the second compensation notice dated 25th May 2017, and the impugned letter at Exhibit R hereto and after examining the legality and/or validity and/or propriety thereof, the same be quashed and set aside;

(b) This Hon’ble Court be pleased to quash and set aside the permissions issued by Respondent Nos. 2 to 4 in favour of Respondent No.5 and/or persons authorized by the Respondent No.5 and Respondent No.7 including all approvals and/or sanctions granted by Respondent Nos.2 to 4 in favour of Respondent No.5 and Respondent No.7 in respect of the said property;”

2. By the impugned Notification dated 1 March 2016 issued under section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (hereinafter referred to as ‘the Slum Act’), the State Government decided to acquire the subject property. By the impugned notice dated 30 August 2016, the Petitioner was called upon to

submit his written say on why the compensation for the acquired land not be fixed at Rs.28,51,236/-. By way amendment to the Petition, the Petitioner has also impugned the Award dated 25 May 2017 under section 17(1) of the Slum Act determining the compensation at Rs.88,43,640, out of which Rs.53,06,184/- (being 60% of the amount of Rs.88,43,640/-) is payable to the Petitioner. By the impugned letter dated 28 June 2017 (Exhibit R), the Petitioner has been called upon to accept the aforesaid amount within 8 days, failing which further steps were to be taken.

3. The relevant facts as averred in the Petition are as follows:

(i) The Petitioner is the owner of immovable property admeasuring 7,757.8 sq.mts out of CTS Nos.1, 1/1 to 16; 510, 510/1 to 8; 514, 5114/1 to 5; 518A/1 Part; 518A/2 Part; 561, 561/1 to 14 of Village Kaneri, Taluka Borivali (hereinafter referred to as 'the said property'). By Agreement dated 2-01-1995, the Petitioner appointed the Respondent No.6- Ivory Properties & Hotels Pvt.Ltd. as the Project Co-ordinator to carry out the development of certain properties, of which the said property is a part. By letter dated 01-02-2008, the Petitioner terminated the said Agreement dated 02-01-1995 with the Respondent No.6 and has filed a Suit being Suit No.414 of 2008 in this Court interalia against the Respondent No.6, seeking the following reliefs:

“(a) this Hon’ble Court be pleased to declare that the Agreement dated 2nd January,1995 stands vitiated by fraud of Defendant Nos. 1 to 4 and/or stands duly determined with effect from 1st February, 2008 and as a consequence thereof, the Sub-lease dated 6th April,1995 granted by Defendant No.1 to Defendant No. 18 stands annulled with effect from 1st February,2008;

(b) this Hon’ble Court be pleased to declare that the Powers of Attorney dated 2nd January,1995 executed by the Plaintiff in favour of Defendant Nos. 2 and 3 and two others and the Powers of Attorney both dated 8th December, 2003 executed by the Plaintiff in favour of Defendant Nos. 19 and 20 stand validly revoked and Defendant Nos. 2 and 3 and 19 and 20 are not entitled to exercise any powers or do any acts on behalf of or in the name of the Plaintiff thereunder;

(c) Defendant Nos. 1 and 18 its servants and agents should be restrained by a permanent injunction of this Hon’ble Court from carrying out any further construction or any other activities on the Suit lands or any part thereof.

(d) this Hon’ble Court be pleased to declare that the MOUs/Agreements set out below purported to be entered into between Defendant No.1, and Defendant No.3 purporting to act as the Plaintiffs Constituted Attorney and Defendant Nos. 6 to 17 are voidable and have been avoided/rescinded by the Plaintiffs and ought to be delivered up and cancelled. Letters dated 19th December, 1998 and 1st February, 2000 nominating Defendant No. 7; Letter dated 22nd December, 1998 and 5th February, 2000 nominating Defendant No.7; Letter dated 24 December, 1998, 8th February, 2000, 9th February, 2000, 27th May, 2000 and 30th May, 2000 nominating Defendant No.8; The MOU dated 29th June, 2001, the Agreement for Sale dated 9th May 2001 and the Conveyance dated 25th November,2002 with Defendant No.10; The MOU dated 14th February 2001, the Agreement for Sale dated 26th September,2001 and the Conveyance dated 6th June 2002 with Defendant No.11; the MOU/Agreements dated 27th December, 2001, 20th November, 2002, 5th February,2003 and 7th February, 2003 with Defendant No.12; the MOU/Agreements 20th November, 2002,12th February, 2003, 12th February, 2003 and 22nd August, 2003 with Defendant No.12; the MOU dated 16th October, 2002 with Defendant No. 14, the MOU dated 15th May, 2004, the Supplemental MOU dated 28th September,

2004, the Agreement for Sale dated 22nd March, 2005 with Defendant No.14; the MOU dated 14th June, 2003 and Agreement for Sale dated 12th December, 2003 with Defendant No. 15, the MOU dated 8th May, 2003 and the Agreement for Sale dated 21st August 2003 with Defendant No. 16 and the MOU dated 21st October, 2003, the Agreement for Sale dated 15th December, 2003, the Supplemental MOU dated 10th November, 2004 and the Supplementary Agreement for Sale dated 10th November, 2005 with Defendant No. 17.

(e) that Defendant Nos. 1 and 5 to 17 be ordered and decreed and are bounded and liable to demolish and remove the structures put up by them i.e. (Hypercity Mall, Inorbit Malls, Infinity Towers, IV Dimension, Spectrum Towers, Magnus Towers, Intelnet, Prism, Paradigm and Athena) on the said land.

(f) that Defendant Nos. 1 to 4 be ordered and decreed to jointly and severally pay to the Plaintiffs a sum of Rs. 350.998 crores as per particulars of claim Exhibit "H" hereto and interest thereon at the rate of 12% per annum from the date of suit till payment & realization."

The said suit is pending before this Court.

(ii) On 21 December 2012, the Petitioner received a notice from Respondent No.3-Additional Collector (Encroachment/Removal), Slum Rehabilitation Authority, under section 14(1) of the Slum Act. Upon receipt of the aforesaid notice, the Petitioner learnt that by Notification dated 20 July 2007 published in the Official Gazette on 2 August 2007 under section 4(1) of the Slum Act, the said property has been declared as slum. In response to the said notice dated 21 December 2012, the Petitioner by letter dated 28 December 2012 informed the Respondent No.3-Addl.Collector that no preliminary notice under section 4(3) of the Slum Act

was served upon the Administrator who was appointed and no intimation of the order dated 20 July 2007 passed under section 4(1) of the Slum Act declaring the said property as slum was served upon the Petitioner and that no personal hearing was given and the Petitioner reserved his right to challenge the same by filing appropriate proceedings and the notice dated 21 December 2012 was bad in law and the same was addressed to F.E.Dinshaw, who was dead.

(iii) On 27 June 2013, a public notice was issued by Respondent No.2-Slum Rehabilitation Authority (hereinafter referred to as "SRA") for information to the land owners/interested persons that the occupiers/hutment dwellers of the said property had formed a Co-operative Housing Society being Respondent No.5-Sangharsh Co-operative Housing Society has submitted a proposal for acquisition of the said property under the provisions of section 14(1) of the Slum Act in order to implement the scheme of Slum Rehabilitation and calling for objections.

(iv) By letter dated 24 July 2013, the Respondent No.4-Chief Executive Officer, SRA, intimated to the Petitioner that a hearing was fixed on 16 August 2013 to consider why the said proposal of the Respondent No.5-Society of the slum dwellers for acquisition of the said property should not be forwarded to the State Government under the provisions of section 14(1)

of the Slum Act. In response to letter dated 24 July 2013, the Petitioner by his letter dated 16 August 2013 informed the Respondent No.4-CEO,SRA that the letter dated 24 July 2013 was wrongly issued to Ms.Bachoo bai Woronzow Dackshaw and Mr.F.E.Dinshaw, who died long back and the acquisition proposed by Respondent No.2-SRA was bad in law and not for a public purpose and the same was initiated at the behest of certain builders. The Petitioner also pointed out that he has already instituted a suit being Suit No.414 of 2008 in this Court against the Respondent No.6-Ivory Properties & Hotels Pvt.Ltd. and the Petitioner ought not to be deprived of his rights to the said property, more particularly as the Petitioner was in the process of framing a scheme for redevelopment of the said property.

(v) The Petitioner attended the meeting fixed before the Respondent No.4-CEO,SRA on 16 September 2013 and pursuant to the directions of Respondent No.4-CEO-SRA, the Respondent No.5-Society furnished copies of certain documents to the Petitioner. On 7 October 2013, the Petitioner placed on record his objection to the proposed acquisition on the application of the Respondent No.5-Society.

(vi) On 12 June 2014, the Respondent No.2-SRA processed the Application of the Respondent No.5-Society and requested Respondent No.1-Government of Maharashtra through the Housing Department for

approval for acquisition of the said property under the provisions of section 14(1) of the Slum Act. The Petitioner by letter dated 7 October 2015 interalia informed the Respondent No.2-SRA that the Petitioner being the owner of the said property had a preferential right to develop the said property.

(vii) By the impugned Notification dated 1 March 2016 published in the Official Gazette, the Respondent No.1-State Government decided to acquire the said property under section 14(1) of the Slum Act. The acquisition notice on 21 December 2012 under section 14(1) of the Slum Act was issued in respect of land admeasuring 7757.80 sq mts which is more than the area of 7736.75 sq mts declared as slum under section 4(1).

(viii) Thereafter, by notice dated 3 May 2016, the Respondent No.2-SRA informed the Petitioner that pursuant to Notification dated 1 March 2016 issued by the Respondent No.1-Government of Maharashtra under provisions of section 14(1) of the Slum Act, the compensation for the said acquisition was required to be determined in accordance with the provisions of section 17(1) of the Slum Act and called upon the Petitioner to submit his say in the matter.

(ix) The Respondent No.4-CEO, SRA, thereafter proceeded to determine the compensation for the said property and by letter dated 30 August 2016 informed the Petitioner that the compensation was fixed at Rs.28,51,256. The Petitioner objected to the said compensation by his letter dated 20 September 2016 inter alia stating that he was not informed on what basis the compensation was arrived at and upon receipt of the details, he would file a detailed reply. During the pendency of the Petition, the Petitioner was served with the impugned Award dated 25 May 2017 under section 17 of the Slum Act and the impugned letter dated 3 July 2017 inter alia calling upon the Petitioner to collect the Demand Draft of Rs.53,06,184/-.

(x) The impugned Notification dated 1 March 2016 is malafide, arbitrary and violative of the Petitioner's rights under Article 14 and 300A of the Constitution of India and fails to recognize the preferential right of the Petitioner who is the owner, to redevelop the said property,

4. An Affidavit-in-Reply dated 20 July 2017 has been filed by Mr. Ajinkya Padwal, Deputy Collector (WS), Slum Rehabilitation Authority on behalf of Respondent Nos.2 & 4. In the said Affidavit, it is inter alia stated as follows:

(i) SRA is the Planning Authority for implementation of Slum Rehabilitation Project, which is established under Chapter 1-A of the Slum Act;

(ii) SRA is constituted, inter alia, for implementation of the Slum Rehabilitation Scheme in Mumbai City and Suburban District and to provide alternate accommodation to the eligible slum dwellers free of cost as per the Slum Rehabilitation Scheme;

(iii) Under section 4 of the Slum Act, the said property has been declared as slum area by Notification dated 20 July 2007, which was published in Official Gazette on 2 August 2007.

(iv) The impugned Notification was issued on 1 March 2016 and the said property stands vested absolutely in the State Government free from all encumbrances and the Petitioner is only entitled to compensation. The said property has been acquired by the State Government by following due process of law, giving full opportunity to the land owner and the acquisition is for public purpose and in the interest of public.

(v) If the Petitioner does not agree to the amount of compensation, there is a legal remedy available under section 17(6) of the Slum Act.

(vi) The subject land was forcibly encroached by the slum dwellers and since the subject property did not have adequate or basic amenities or being insanitary, squalid and over-crowded which is unfit for human habitation and detrimental to the health, safety and convenience. The

Petitioner who claims to be owner of the said property failed and neglected to provide basic amenities and sanitization for the health and safety of the occupants. Various representations were made by the slum dwellers to the Competent Authority for acquisition to implement slum rehabilitation scheme and the said property came to be acquired, which was in the interest, welfare and benefit of the slum dwellers. The Respondent No.5-Society had made an application dated 7 November 2005 for acquisition of the said property. Pursuant to the said application, a public notice, under section 14(1) of the Slum Act was issued to all concerned and the land owners. The public notice as required under section 14(1) was also published in newspapers. Notices were served upon the concerned persons as per section 36 of the Slum Act and hearing was also conducted.

(vii) After considering all objections and suggestions of all concerned persons and interested parties including the slum dwellers society, a proposal was forwarded to the State Government on 12 June 2014 for acquisition of the said land. After the issuance of the Notification under section 14 of the Slum Act in the official Gazette on 1 March 2016, a process for issuance of compensation as per section 17 of the Slum Act was commenced and the show cause notice dated 30 August 2016 was issued to the Petitioner for compensation.

(viii) The compensation as per section 17 of the Slum Act was declared on 25 May 2017 after giving a hearing to all concerned.

(ix) This Court has already upheld the Constitutional validity of sections 14 and 17 of the Slum Act and there are orders passed in various Petitions refusing to interfere with the Notification issued by the State Government, considering the aims and objects of the State Government to eradicate the slums and upholding the rights of the slum dwellers to have better standard of living and right of rehabilitation.

5. An Affidavit-in-Reply dated 1 September 2017 has been filed on behalf of the Respondent No.5-Society. It is interalia stated in the said Affidavit-in-Reply as follows:

(i) The present case is a classic example of an owner i.e. F.E.Dinshaw Trust (of which the Petitioner is an administrator/trustee), having left the land under acquisition unguarded, unprotected and unsecured and having left the land to be encroached upon and thereafter having completely neglected the plight of the slum dwellers for several decades. Suddenly, the owner is now expressed an interest for development of the said land. The Petitioner has not taken any steps for providing basic amenities to the occupants who are residing on the said land under inhabitable, inhumane

and unhealthy conditions.

(ii) The land was occupied by 387 slum dwellers, who are the members of the Respondent No.5-Society and do not even have the basic amenities.

(iii) Though the Petitioner had allegedly appointed the Respondent No.6 as Project Coordinator, no steps have been taken for redevelopment. The Petitioner had subsequently terminated the appointment of Respondent No.6 on 1 February 2008 and the Petitioner has also filed a suit in respect of such termination.

(iv) There is no genuine interest in undertaking the redevelopment of the said property and the Petitioner has no bonafide and genuine desire to implement slum rehabilitation scheme. The slum dwellers themselves had to take an initiative to redevelop the said land in accordance with the provisions of the Slum Act and Regulation 33(10) and Appendix IV of the DCR, 1991.

(v) The Petitioner has belatedly approached this Court to stall the redevelopment of the said land.

(vi) It is not open for the Petitioner at this stage to challenge the Notification dated 1 March 2016 for acquisition of the said land.

(vii) During the pendency of the Petition, an Award dated 25 May 2017 under the provisions of section 17 of the Slum Act has been declared by the Respondent No.2-SRA directing payment of Rs.53,06,184/- to the Petitioner towards compensation for acquisition of the said land.

(viii) The constitutional validity of section 14 of the Slum Act has been upheld by several judgments of this Court including in the case of **Sara Harry D'Mello v/s. State of Maharashtra & Ors.** 2013 (4), MhLJ 348;

(ix) Despite having knowledge of the fact that the Developer was undertaking the rehabilitation project as far back as on 10 December 2011, and the Developer having expended considerable amounts in furtherance of the redevelopment of the said land and having obtained various approvals for the said project right from 2009, the Petitioner has deliberately not made the Developer a party to the present Petition and the said Developer has been impleaded during the pendency of the Petition.

(x) More than 200 slum dwellers have handed over possession of their respective slum tenements to the Developer and the Developer has commenced paying compensation for temporary alternative accommodation to such displaced slum dwellers.

(xi) Despite the knowledge of the declaration dated 20 July 2007, under

section 4 of the Slum Act, declaring the said property as slum, the Petitioner has not challenged the same by filing an Appeal, as contemplated under section 4(3) of the Slum Act.

(xii) Notice dated 24 July 2013 was admittedly issued to the Petitioner, under which he was accorded an opportunity of being heard. Under the provisions of sections 4, 11, 12 and 14 of the Slum Act, the State Government has powers to acquire adjoining land of slum areas to execute the scheme for redevelopment.

(xiii) There is no illegality in the issuance of the Notification dated 1 March 2016.

6. An Affidavit-in-Reply dated 22 April 2019 has been filed to the amended Petition by Mr.Vasant Shinde, the then Administrator of Respondent No.5-Society, wherein it is stated as follows:

(i) Vide order dated 27 March 2019 passed by the Asst.Registrar, SRA, he was appointed as Administrator of Respondent No.5-Society.

(ii) By show cause notice dated 30 August 2016, the Petitioner was called upon by the Respondent No.4-CEO,SRA, to submit his say on the compensation.

(iii) Thereafter the parties to the said show cause notice dated 30 August 2016 were heard on several occasions on 20-09-2016, 24-10-2016, 21-11-2016, 02-01-2017, 24-01-2017, 14-02-2017, 22-02-2017, 23-02-2017, 07-03-2017 and 21-03-2017.

(iv) After hearing the parties, the Respondent No.4-CEO,SRA, declared the Award dated 25 May 2017 determining the amount of compensation which was calculated as per the provisions of section 17 of the Slum Act and vide impugned letter dated 28 June 2017 called upon the Petitioner to visit the office of Respondent No.2-Deputy Collector within 8 days to collect the amount of compensation. Since the Petitioner failed to comply with the said notice dated 28 June 2017, the Respondent No.2-SRA in accordance with the Slum Act filed Misc.Application dated 3 November 2017 in Land Acquisition Case No.112 of 2014 before the City Civil Court at Dindoshi to allow the Respondent No.2-SRA and Respondent No.4-CEO,SRA to deposit the said amount of compensation in Court. The Court has vide its order 6 April 2019 allowed the prayer of the Respondent Nos.2 & 4 to deposit the said compensation with the Asst.Registrar of the City Civil Court, Dindoshi.

(v) More than 260 members of the Respondent No.5-Society are out of their houses and Respondent No.7-Developer is paying rent to them and

the members of the Respondent No.5-Society are awaiting their new homes in order to live in clean and healthy environment having basic amenities like water, sanitation etc.

7. An Affidavit-in-Reply dated 22 April 2019 has been filed by Mr.Pravin Chamaria, on behalf of Respondent No.7-Developer. It is inter alia stated in the said Affidavit-in-Reply as follows:

(i) The Petitioner has not challenged the declaration of slum vide Notification dated 20 July 2007 under section 4(1) of the Slum Act. The Petitioner in paragraph 3(vi) of the Petition has admitted that the Competent Authority has vide a Notification dated 20 July 2007 declared the said property as slum. By his letter dated 28 December 2012, the Petitioner had informed the Respondent No.2-Deputy Collector that he reserves his rights to challenge the said Slum Notification, however he has failed to do so till the filing of the present Petition. The area of 21 sq mts which was erroneously not included in the Slum Notification issued on 20 July 2007 was declared as slum through Notification dated 4 December 2015.

(ii) The Respondent No.1-State of Maharashtra has in accordance with the provisions of section 14(1) of the Slum Act issued a public notice dated 27 June 2013 (Exh.D to the Petition) in two newspapers, one in Marathi and one in English viz. Navakal and Free Press Journal, calling upon for

objections if any from the interested parties.

(iii) Show cause notice under section 14(1) was also issued calling upon the Petitioner why the said property should not be acquired, which notices have been admittedly replied to by the Petitioner, including replies dated 26 July 2013 and 16 August 2013 (Exhibits.F & G to the Petition).

(iv) The Petitioner himself in para 3(xi) and (xiii) has contended that he has through various letters taken objection on the ground that since the suit bearing No.4114 of 2008 is pending before this Court, any decision with regard to acquisition under section 14(1) would amount to interference in pending suit.

(v) The Petitioner was accorded sufficient opportunity before issuing the Notification under section 14(1) of the Slum Act and the said fact is evident from the recommendation dated 12 June 2014 addressed by the Respondent No.4-CEO, SRA to Principal Secretary, Housing Ministry (Exh.I to the Petition). Upon perusal of the recommendations dated 12 June 2014, it is evident that the Petitioner has been heard on several occasions on 16-08-2013, 16-09-2013, 07-10-2013, 31-10-2013, 21-11-2013, 28-11-2013, 19-12-2013 and 03-01-2014, whereby the authorised representative of the Petitioner viz. Vijay Shirke was present along with his Advocate. It is only after considering the rival submissions and objections that the Respondent

No.4-CEO,SRA had recommended to the Principal Secretary, Housing Department, to consider the application made by the Respondent No.5-Society to acquire the said property. It is only thereafter the impugned Notification dated 1 March 2016 under section 14(1) of the Slum Act was issued.

(vi) The Petitioner was aware atleast since 2013 that the Respondent No.7-Developer had undertaken redevelopment of the said property. The Petitioner himself has admitted in paragraph 3(xx), K and Q of the Petition to have knowledge of Respondent No.7-Developer being appointed as a Developer and despite that deliberately and with malafide intention, in the first instance, the Respondent No.7-Developer was not made party to the Petition.

(vii) The said property came to be declared as slum rehabilitation area on 04-12-2015 by the Competent Authority appointed under the Slum Act, which has also not been challenged by the Petitioner.

(viii) The Respondent No.7-Developer was granted development rights under the Development Agreement dated 12 June 2008 executed by the Respondent No.5-Society for redevelopment of the said property in accordance with the Regulation 33 (10) and Appendix IV of the DCR 1991. The Respondent No.2-SRA had issued a Letter of Intent dated 24

November 2009 in favour of Respondent No.7-Developer. Subsequently, revised Letter of Intent was issued on 28 April 2017 setting out the terms and conditions for redevelopment of the said property.

(ix) The Intimation of Approval dated 23 February 2010 was issued by the Respondent No.2-SRA in respect of the proposed rehab building. The Commencement Certificate dated 13 June 2016 has been issued in favour of the Respondent No.7-Developer to commence the construction of the proposed rehab building and which has been revalidated from time to time and last of such revalidation was on 21 September 2017.

(x) There are total 390 slum dwellers and the Respondent No.7-Developer is currently paying rent in lieu of alternate accommodation to more than 260 eligible slum dwellers who have vacated and handed over the possession of their structures to Respondent No.7-Developer, and construction of the rehab building is ongoing in full swing for rehabilitation of slum dwellers, who have vacated their respective structures and awaiting their better home since long.

(xi) The Respondent No.7 has till date paid an amount of Rs.2,91,83,000/- to the Respondent No.2-SRA towards land premium for developing the said property.

8. We have heard the learned Counsel for the parties and perused the material on record.

9. The principal challenge in the Petition is to the Notification dated 1 March 2016 issued by the State Government for acquisition of the said property under section 14(1) of the Slum Act. The main contention urged by the learned Senior Counsel on behalf of the Petitioner is that under section 13 of the Slum Act, the Petitioner has a preferential right to develop his own property and therefore the impugned Notification dated 1 March 2016 is malafide, arbitrary and bad in law being violative of the Petitioner's rights under Article 14 and 300A of the Constitution of India. Heavy reliance is placed by the learned Senior Counsel for the Petitioner on the judgment of the Division Bench of this Court in **Indian Corks Pvt. Ltd. v/s. State of Maharashtra**; 2018 SCC Online Bom.1214. It is submitted that in the said case, the Notification under section 14(1) of the Slum Act was set aside interalia on the ground that the owners had a preferential right to develop their own property. Having given our due consideration to the rival contentions, we find that the Petitioner has not made out a case for granting any reliefs in the Petition, for the reasons we shall presently indicate.

10. The impugned Notification dated 1 March 2016 is extracted hereinbelow:

**“HOUSING DEPARTMENT
DATED THE 1ST MARCH 2016
NOTIFICATION
MAHARASHTRA SLUM AREAS (IMPROVEMENT,
CLEARANCE AND REDEVELOPMENT) ACT, 1971.**

No.Bhusampa.2014/C.R.112/Zopani-2.- Whereas, on representation from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, it appears to the Government of Maharashtra that in order to enable the said Authority to implement the Slum Rehabilitation Scheme in relation to the Slum Rehabilitation Area mentioned in the Schedule appended hereto (hereinafter referred to as “the said Schedule”), it is necessary that the land specified in the said Schedule (hereinafter referred to as “the said land”), should be acquired;

And whereas, as required by the proviso to sub-section(1) of section 14 of Chapter V read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Mah.XXVIII of 1971) (hereinafter referred to as “the said Act”), the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, has, by his Notice No.SRA/Dy.Coll./L.A./ SANGHARSHA/ C.R.No.30/ Hearing/ 2013/1001, dated the 24TH July 2013 served in prescribed manner and also by notice published in the daily Marathi newspaper “Navakal” and daily English Newspaper “The Free Press Journal” dated the 27th June 2013, and also by affixing in the conspicuous part in the premises situated in the said

land, as provided in section 36 of the said Act, called upon the persons mentioned in column (6) of the said Schedule, who are the owners of the said land or any other person interested therein to show cause, on fifteen days from the date of its publication in the Newspapers, as to why the proposal to acquire the said land for implementation of the Slum Rehabilitation Scheme for the concerned protected slum dwellers should not be sent to the State Government for approval;

And Whereas, the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, after considering the objections received in this behalf for the acquisition of the said lands, and pleading on behalf of the proposed Co-operative Housing Society of the Slum dwellers, entries as to the rights in the land record, reservation in development plan and the legitimate request of the protected slum dwellers, by his representation dated the 12th June 2014 submitted the report for the acquisition of the said land.

And whereas, as required by the first proviso to sub-section (1) of section 14 of Chapter V read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of Chapter I-A of the said Act, on representation from the Chief Executive Officer, Slum Rehabilitation Authority, Bandra, Mumbai, and after considering his report it appears to the State Government that in order to enable the Slum Rehabilitation Authority to carry out the development under the Slum Rehabilitation Scheme in the slum rehabilitation area mentioned in the said

Schedule, the said land should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 14 read with paragraph (A) of sub-clause (i) of clause (c) of section 3D of the said Act, the Government of Maharashtra hereby declares, by this notice, that it has decided to acquire the said land.

District	Taluka	Village	C.T.S. No.	Approximate area of the land decided to be acquired (In Sq. Mtrs.)	Name of the owners or other interested person of the land decided to be acquired.
(1)	(2)	(3)	(4)	(5)	(6)
Mumbai Suburban District	Borivali	Kandivli	1,1/1 to 16	449.5	Land Owner: 1.Smt.Bachuybai Warendav Deshukau
			510	694.30	2. Smt.Nesai Nevil Wadia (Administrator of Shri Edalji)
			510/1 to 8		
			514, 514/1 to 5	309.0	3. Shri F.E.Dinshwa
			518A/ 1 (pt.)	5480.00	Emla Malak: 1.Smt.Sumitrabai Ramlakash Tiwari
			561, 561/1 to 14	472.0	2. Ali Miyan Suleman 3. Ramanlal Ichhashankar Bhatt 4. Mandal Sitaram Gupta 5. Ramlaal Purushotam Gupta

			Total	7757.80	
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Boundaries:-

C.T.S. No.	On the East by C.T.S. No.	On the West by C.T.S. No.	On the North by C.T.S. No.	On the South by C.T.S. No.
1,1/1 to 16	561	510	Road	518A/2
510 510/1 to 8	1	518 A/2	Road 554	511
514, 514/1 to 5	518 A/2	518 A/2	518 A/2	518 A/2
			557	518 A/3
518A/1 (pt.)	518 B/1	Road	561/1 to 11	518 G 518 A/4
518 A/2 (pt)	Road, 518 A/ 3	Western Highway	1/1 to 16, 512/1 to 12	
561, 561/1 to 14	518 A/3	1, 1 to 15	Road	518 A/2

By order and in the name of the Governor of Maharashtra,
B.G. PAWAR,
Deputy Secretary to Government.”

11. It would be apposite to reproduce Sections 13 and 14 of the Slum Act. The said Sections 13 and 14 as amended by section 3D of Chapter IA of the Slum Act, read as under:

“13 – (1) Notwithstanding anything contained in sub-section (10) of Section 12, the Slum Rehabilitation Authority may, after any area is declared as the Slum Rehabilitation Area, if the landholders or occupants of such area do not come forward

within a reasonable time, with a scheme for re-development of such land, by order, determine to redevelop such land by entrusting it to any agency for the purpose.

(2) Where on declaration of any area as a Slum Rehabilitation Area the Slum Rehabilitation Authority, is satisfied that the land in the Slum Rehabilitation Area has been or is being developed by the owner in contravention of the plans duly approved, or any restrictions or conditions imposed under sub-section (10) of Section 12, or has not been developed within the time, if any, specified under such conditions, it may, by order, determine to develop the land by entrusting it to any agency recognized by it for the purpose:

Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why such order should not be passed.”

“14 (1) Where on any representation from the Chief Executive Officer it appears to the State Government that, in order to enable the Slum Rehabilitation Authority to carry out development under the Slum Rehabilitation Scheme in any Slum Rehabilitation Area, it is necessary that such area, or any land within adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the Official Gazette, a notice to the effect that the State Government has decided to acquire the land in pursuance of this section:

Provided that, before publishing such notice, the State Government, or as the case may be, the Competent Authority

may call upon by notice the owner of, or any other person who, in its or his opinion may be interested in, such land to show cause in writing why the land should not be acquired with reasons therefor, to the Competent Authority within the period specified in the notice; and the Competent Authority shall, with all reasonable despatch, forward any objections so submitted together with his report in respect thereof to the State Government and on considering the report and the objections, if any, the State Government may pass such order as it deems fit.

Provided further that, the State Government may delegate its powers under this sub-section to any officer not below the rank of Commissioner;

(1A) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.

(2) When a notice as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances.”

12. In **Murlidhar Teckchand Gandhi & Ors vs. State Of Maharashtra**, (Civil Appeal No. 11077 of 2017), the Supreme Court by judgment dated 29 August 2017, has held - ‘the provisions of section 14 of the Slum Act are independent, under which area is acquired by the State, subject to the hearing of the objection pursuant to show cause notice, and a decision has to be taken thereafter’.

13. In **Sara Harry D'Mello vs. State of Maharashtra**, 2013 (5) BCR 167,

the Division Bench of this Court has upheld the constitutional validity of Section 14 of the Slum Act. The Division Bench has interalia observed thus:

"75. Acquisition of slum lands under the provisions of the Slum Act are not merely for the benefit of a large number of persons residing in sub-human conditions in slums but also to ensure that improvement of their living conditions will lead to improvement of the urban economy which is very much dependent upon the labour force being supplied by the occupants of hutments in the slums. As per the settled legal position, scope of judicial review in such cases is to find out whether the principles for valuation set out in the legislation are relevant to the principles for determination of value of the land and since we find that the principles are relevant, the scope of the judicial review stops here and we are not concerned with the final outcome or the actual amount of compensation arrived at by the Competent Authority."

14. In **Pratapsinh Shoorji Vallabhdas & Ors. vs. State of Maharashtra and ors.**, (2017) 6 Bom 811 : 2016 SCC OnLine Bom 11532, the Division Bench of this Court, while considering the scope of Section 14 has observed thus:

"2. Now a days, we find that the landholders/owners of huge tracts of land in Mumbai City and Suburban Districts, leave them open, unguarded, unprotected and unsecured, allow them to be encroached and after they are encroached, structures are erected, which are nothing but huts and slums, they go on increasing, these and such other owners approach this court and complain that they are not responsible for the plight of the occupants of these slums. They are not responsible for endangering and threatening public health and safety. Though they neglect their own properties, but when their value in the market increases and they command a huge price, these so called owners resist acquisition of the land and assure the authorities and the court that they would improve the lot of these slum-dwellers and rehabilitate them.... The State acquires them so that those languish-

ing in slums obtain a decent housing accommodation and thereafter not only their life can be improved but public health and public safety is equally protected. That is protected by obtaining for such slum dwellers the basic amenities, from which they were deprived for decades together. No inbuilt toilet, no clean drinking water, no light, no ventilation, no roads, no health care facilities till date, but all this can be provided with private participation and their rehabilitation is the real purpose of this acquisition. Such a measure and specially by the welfare State is sought to be defeated by raising technical objections and challenges.

97. A bare perusal of section 14 would indicate as to how certain words were substituted therein by Maharashtra Act 11 of 2012. By Sub-Section (1) of section 14, the State Government, which has the power to acquire, on any representation from the competent authority, may consider acquisition of the property in order to enable the authority to execute any work of improvement or to redevelop any area or any structure in such area. It can, if necessary, acquire such area or any land within, adjoining or surrounded by such area and then it can publish a notice to that effect. That is a notice which is to be published in the official gazette indicating that the State Government has decided to acquire the area or land in pursuance of this section.

98. The proviso to Sub-Section (1) of section 14 states that before the notice is published, the State Government, as the case may be, the competent authority may call upon by notice the owners of or any other person, who, in its opinion, may be interested in such land to show cause in writing why the land should not be acquired with reasons therefor and the competent authority, upon considering the cause shown, namely any objections, together with his report in respect thereof, forward all this to the State Government. On considering the report and the objections, if any, the State Government may pass such order as it deems fit.

99. By Sub-Section (1A), it has been clarified that the acquisition of any of the land for any purpose mentioned in Sub-Section (1) shall be deemed to be a public purpose. By Sub-Section (2), the land shall, on and from the date of which the notice is so published vest absolutely in the State Government free from all encumbrances."

15. As stated in the Preamble, the Slum Act is enacted to make better provision for the improvement and clearance of slum areas in the State and their redevelopment (and for the protection of occupiers from eviction and distress warrants). It is an admitted position that neither the Notification dated 20 July 2007 issued under section 4(1) of the Slum Act declaring the said property as slum area, nor the Notification dated 26 August 2015 issued under section 3C(1) of the Slum Act declaring the said property as slum rehabilitation area have been challenged by the Petitioner by resorting to the remedy of filing an Appeal under the provisions of the Slum Act. Except for addressing communications to the Respondent Authorities showing his willingness to implement the Slum Rehabilitation Scheme and objecting to the Application dated 7 November 2005 of the said Respondent No. 5-Society for acquisition to implement the rehabilitation scheme, no proposal has been submitted by the Petitioner to implement the Slum Rehabilitation Scheme on the said property till date. In **Pratapsinh Shoorji Vallabhdas** (supra), it has been observed by the Division Bench of this Court that merely addressing communications without submission of scheme for redevelopment would not indicate sincere and genuine desire to implement the Slum Rehabilitation Scheme.

16. On the basis of a claim of preferential right under section 13 of the Slum Act without any scheme for redevelopment being submitted by the owners of a property, the owners cannot be allowed to stall the redevelopment, after the property is validly acquired by the State Government under section 14 of the Slum Act. The objects of enacting the Slum Act would be frustrated, if the slum rehabilitation areas are not redeveloped. In the present case, except for claiming violation of the rights of the Petitioner under Articles 14 and 300A of the Constitution based upon preferential right of the Petitioner to develop the said property under section 13 of the Slum Act, no arguments have been advanced on how the impugned Notification dated 1 March 2016 for acquisition of the said property can otherwise be said to be arbitrary or violative of the Petitioner's rights under Articles 14 or 300A of the Constitution.

17. In absence of any proposal for implementing Slum Rehabilitation Scheme being submitted by the Petitioner, despite the Petitioner stating in his letter dated 15th August, 2013 that he is in the process of submitting such scheme, the question of consideration by Respondent No.2-SRA of any preferential right of the Petitioner for redevelopment of the said property did not arise. There was thus no impediment in consideration of and acceptance of the Application dated 7 November 2005 of the Respondent

No.5-Society by the Respondent State/Authorities for acquisition of the said property in order to implement the slum rehabilitation scheme.

18. Evidently, there are serious disputes between the Petitioner and the Respondent No.6 in respect of the said property and a Suit being Suit No.414 of 2008 is pending in this Court. The Petitioner was all along aware of the Application dated 7 November 2005 of the Respondent No.5-Society for acquisition of the said property to implement the Slum Rehabilitation Scheme. The slum dwellers are living in unhygienic and unhealthy conditions since the year 2007. The slum dwellers cannot be made to wait perennially for implementation of Slum Rehabilitation Scheme. Learned Senior Counsel on behalf of Respondent No.5-Society has pointed out that vide Corrigendum dated 4 December 2015 the slum rehabilitation area mentioned in Notification dated 26 August 2015 was corrected by adding an area of 21.10 sq.mtrs.

19. As provided under section 13(1) of the Slum Act (as amended by section 3D of Chapter 1-A), the Petitioner was required to come forward with the Slum Rehabilitation Scheme within a reasonable time. Though not relevant for the purpose of the present Petition, it is required to be noted that section 13(1) of the Slum Act has been amended w.e.f. 26 April 2018 and the reasonable time appearing in the said section is now specified by

adding the words 'which shall not be more than one hundred and twenty days'. Learned Senior Counsel for the Respondent No.7-Developer has pointed out that under amended Circular No.144 of the Slum Rehabilitation Authority, at the time of filing of the proposal by the owners for a scheme for redevelopment, the condition of consent of 70% of slum dwellers stands relaxed.

20. We find that the CEO, SRA has complied with the principles of natural justice as required by 1st proviso to section 14(1) of the Slum Act. Notices to show cause why the proposal of the Respondent No. 5-Society to acquire the said property to implement the Slum Rehabilitation Scheme were published in the Marathi newspaper 'Navakal' and English newspaper 'The Free Press Journal' on 27 June 2013. The Petitioner was also admittedly served with a show cause Notice dated 24 July 2013. The Notice was affixed in conspicuous part of the said property as provided under section 36 of the Slum Act. The Petitioner was heard on several dates and the representative of the Petitioner viz. Mr.Vijay Shirke was present along with the Advocate of the Petitioner. After considering and turning down the objections of the Petitioner, the Report of the CEO, SRA was submitted to the State Government for acquisition of the said property. The Report records that the owners have not submitted any Slum Rehabilitation

Scheme. Upon considering the said Report, the same was accepted by the State Government and the impugned Notification dated 1 March 2016 under section 14(1) of the Slum Act came to be issued by the State Government for acquisition of the said property. The Petitioner was thus accorded sufficient opportunities before issuing the impugned Notification dated 1 March 2016 under section 14(1) of the Slum Act and due process of law was followed. The said property by virtue of impugned Notification under section 14(1) of the Slum Act now stands vested absolutely in the State Government free from all encumbrances from 1 March 2016. The acquisition of the said property is deemed for public purpose as laid down in section 14(1)(A) of the Slum Act. In the circumstances, we do not find any illegality or malafides or arbitrariness in the issuance of the Notification under section 14(1) of the Slum Act for acquisition of the said property. No rights of Petitioner under Article 14 of the Constitution or Article 300A of the Constitution can be said to have been infringed.

21. Quite apart from the above, we find that much water has flown under the bridge. In view of sub-section (2) of section 14 of the Slum Act, the said property now vests absolutely in the State Government free from all encumbrances from the date of the Notification i.e. 1 March 2016. As far back as on 15 August 2013, by his letter, the Petitioner had interalia stated

that he was in the process of framing scheme for redevelopment of the said property. No such proposal for redevelopment has been submitted by the Petitioner. In his letter dated 7 October 2015, the Petitioner, had interalia stated that the Petitioner being the owner had a preferential right to develop the said property. The Petitioner was aware atleast since the year 2013 that the Respondent No.7-Developer had undertaken redevelopment of the said property. The present Petition has, however, been filed only on 20 March 2017. The Petition, therefore, suffers from delay and laches.

22. As stated in the Affidavit-in-Reply filed on behalf of Respondent No.7-Developer, the Respondent No.7-Developer was granted development rights under the Development Agreement dated 12 June 2008 executed by the Respondent No.5-Society for redevelopment of the said property in accordance with the Regulation 33 (10) and Appendix IV of the DCR 1991. The Respondent No.2-SRA had issued a Letter of Intent on 24 November 2009 in favour of Respondent No.7-Developer. Subsequently, revised Letter of Intent was issued on 28 April 2017 setting out the terms and conditions for redevelopment of the said property. The Intimation of Approval was issued on 23 February 2010 by the Respondent No.2-SRA in respect of the proposed rehab building. It is pointed out on behalf of the Respondent No. 7-Developer that the Environment Clearance was obtained on 28

September 2011. The Commencement Certificate was issued in favour of the Respondent No.7-Developer to commence the construction of the proposed rehab building on 13 June 2016, which has been revalidated from time to time and last of such revalidation was on 21 September 2017. Out of the total 390 slum dwellers, the Respondent No.7-Developer is currently paying transit rent to more than 260 eligible slum dwellers who have vacated and handed over possession of their respective structures on the said property to Respondent No.7-Developer. The construction of the rehab building is in progress for rehabilitation of eligible slum dwellers who awaiting their better home. The Respondent No.7-Developer has paid an amount of Rs.2,91,83,000/- to the Respondent No.2-SRA towards land premium for developing the said property. Learned Senior Counsel for the Respondent No.7-Developer has produced photographs which show that the construction on the said property is in progress. He has tendered a Chart showing the following costs incurred by the Respondent No.7-Developer:

Costs Incurred by the Respondent No.7 till date

Sr. No.	Particulars	Cost incurred upto 07-11-2019
1.	Admin & Selling cost	2,29,32,461
2.	Architect & Consultancy Fees	1,49,22,500
3.	Cost of rent & alternate accommodation	15,17,16,007

4.	Finance Cost	13,25,18,501
5.	Liaison & Legal Fees	3,45,61,164
6.	Other cost	28,23,481
7.	Rehab Construction Cost	72,03,210
8.	Sale Construction Cost	20,17,666
	Total	36,86,94,990

23. The decision of the Division Bench in **Indian Cork Pvt. Ltd.** (supra) relied upon by learned Senior Counsel for the Petitioner would have no application in the facts of the present case where despite opportunities no proposal for implementation of slum rehabilitation scheme is submitted by the Petitioner and Lol has already been issued and has been acted upon by the Respondent No. 7-Developer as indicated above. Even otherwise, it is now not possible to set the clock back!

24. Learned Senior Counsel for the Respondent No. 5-Society has rightly placed reliance on the judgement dated 31 October 2018 of Division Bench of this Court in Writ Petition (L) No.2632 of 2018 (**Rajesh G. Jain v/s. State of Maharashtra & Ors.**). In the said case, the Division Bench, in more or less similar facts, dismissed the Writ Petition. The said judgement dated 31 October 2018 of the Division Bench was challenged before the Supreme Court by filing SLP Nos. 24317-24318/2019, which were dismissed by the Supreme Court on 4 October 2019.

25. Once the Notification dated 1 March 2016 for acquisition of the said property is validly issued, the consequences of declaring the award determining the compensation has to follow. The impugned award dated 25 May 2017 was declared after following the principles of natural justice and admittedly, the Petitioner's Advocate was present before the CEO, SRA and was heard. The award has been challenged only on the ground of inadequacy of compensation. If the Petitioner is aggrieved by the quantum of compensation granted under the award, he would have to resort to the remedy of filing an Appeal under section 17 (6) of the Slum Act. In view of alternate remedy available to the Petitioner of filing an Appeal, we are not inclined to entertain the challenge to the award determining the compensation and the Petitioner would be at liberty to file an Appeal in respect of the quantum of compensation payable to him.

26. For all the aforesaid reasons, there is no merit in the Petition. Even otherwise, this not a fit case to exercise the extraordinary and discretionary writ jurisdiction of this Court. The Petition is accordingly dismissed. There shall be no order as to costs.

(SMT. ANUJA PRABHUDESSAI,J.)

(A.A.SAYED,J.)