

(2022) 11 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition (Lodging) No.19626 Of 2022

Deena Pramod Baldota

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 —
Section 3B(4)(c), 3B(4)(e), 3B(5), 3C, 3C(1), 3D(c)(i)(A), 4, 12(1), 12(10), 13, 13(1),
14, 14(1), 14(2)

Citation : (2022) 11 BOM CK 0048

Hon'ble Judges : Nitin Jamdar, J; Sharmila U. Deshmukh, J

Bench : Division Bench

Advocate : Dr. Birendra Saraf, Bhushan Deshmukh, Vaibhav Charalwar, Abhijeet Patil, L. T. Satelkar, Raju Suryawanshi, Dr. Virendra Tulzapurkar, Mandar Soman, Santosh Pathak, Purva Naik, Kailash Pathak, Law Origin, Mayur Khandeparkar, Nimish Lotlikar

Final Decision : Dismissed

Judgement

Sharmila U. Deshmukh, J

1. Rule. Rule made returnable forthwith and is heard finally by consent of the parties.
2. By this Writ Petition, Petitioner challenges the notification dated 26/5/2022 issued by the Housing Department of the Government of Maharashtra under section 14(1) of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act), acquiring Petitioner's land bearing CTS No.355 (part), 355/267 to 307, 355/352 to 357, 355/411 to 443, 491 (Part), 491/1 to 4 admeasuring near about 5115.2 sq. meters situated at village Kurar, Taluka Borivali, Mumbai Suburban District.
3. The factual matrix of the matter is as under:

Petitioner is owner of the property which is subject matter of the impugned notification dated 26/5/2022. On 2/9/1976 a notification was issued under Section 4 of the Slum Act declaring the subject property as "slum", which was challenged by the Petitioner, on 7/11/2011, before the Slum Tribunal, the proceeding whereof is still pending. On 10/8/2015, the Society of slum dwellers 'Sahyog SRA CHS (Proposed)'-Respondent No 4 submitted an application to the Chief Executive Officer of Slum Rehabilitation Authority (CEO/SRA) requesting the CEO, SRA to acquire the subject property under Section 14(1) of Slum Act for implementation of the slum rehabilitation scheme under Development Control Regulation 33(10) through one Omkar Realtors and Developers Pvt Ltd. On 1/10/2015, the Deputy Collector, SRA directed the City Survey Officer, Malad to undertake joint measurement and submit a report, which was submitted on 11/7/2016. On 16/8/2016, Respondent No.4-Society filed an Application before CEO/SRA seeking declaration of the subject property as "slum rehabilitation area" under Section 3C of the Slum Act. Pursuant to the application, the Deputy Collector/SRA visited the subject property on 8/9/2016 .

4. On 27/9/2016 public notice was issued by the office of the SRA inviting suggestions and objections to declaration of the subject property as slum rehabilitation area under section 3C(1) of the Slum Act. Detailed written objections was submitted by Petitioner on 24/10/2016 opposing the declaration of the subject property as "slum rehabilitation area". On 17/6/2017 notification was issued declaring the subject property as 'slum rehabilitation area', which was challenged by the Petitioner by filing Appeal No.9/2017 before the Slum Tribunal. On 17/12/2019 the said appeal was dismissed by the Slum Tribunal, confirming the subject property as slum rehabilitation area. On 11/8/2021 notice under section 14(1) of the Slum Act was issued by the Deputy Collector /SRA calling upon the Petitioner to remain present for hearing. On 18/10/2021 detailed representation was submitted by the Petitioner stating that she is ready and willing to undertake redevelopment of the subject property and as the owner of the suit property she had preferential right to undertake redevelopment in view of the statutory provisions of the Slum Act and judgments of this Court in the matter of Anil Gulabdas Shah v. State of Maharashtra Writ Petition No.974/1999 and Writ Petition No.131/2000 and in the matter of Indian Cork Mills Pvt. Ltd. vs. State of Maharashtra 2018(4) BCR 618. On 29/11/2021 the CEO/SRA passed an order rejecting the objection raised by the Petitioner and recommended the acquisition of the suit property under section 14(1) of the Slum Act. Against the said recommendation, the Petitioner filed an appeal before the Apex Grievance Redressal Committee on 27/12/2021, which is pending. On 27/1/2022, Petitioner addressed a communication to the Principal Secretary, Housing Department, Government of Maharashtra reiterating her readiness and willingness to undertake redevelopment of the suit property and requested to defer consideration of recommendation of Slum Rehabilitation Authority dated 29/11/2021 till final adjudication of the Appeal pending before the committee. On 26/5/2022 notification was issued by the Housing Department of Government

of Maharashtra under section 14(1) read with paragraph (A) of sub-clause (i) of clause (c) of Section 3D of Chapter I-A of the Slum Act acquiring the subject property. On 28/5/2022 legal notice on behalf of the Petitioner was issued to CEO/ SRA reiterating the submission made by the Petitioner in her representations dated 18/10/2021 and 27/1/2022.

5. Thereafter the present Petition has been filed seeking the following substantive reliefs:

"a) This Hon'ble Court be pleased to call for the record and proceedings of the case from Respondent Authorities.

b) This Hon'ble Court be pleased to issue an appropriate writ of certiorari or any other appropriate writ, order or direction in the like nature, under Article 226 of the Constitution of India, thereby quashing and setting aside the impugned Notification dated 26/5/2022 issued by the Housing Department of Govt. of Maharashtra u/sec.14(1) of the Maharashtra Slum Areas (IC & R) Act, 1971 for acquisition of the Petitioner's land bearing CTS No.355 (part), 355/267 to 307, 355/352 to 357, 355/411 to 443, 491 (Part), 491/1 to 4, admeasuring near about 5115.2 sq. meters situated at village Kurar, Taluka Borivali, Mumbai Suburban District.

c) This Hon'ble Court be pleased to issue an appropriate writ of mandamus or any other appropriate writ, order or direction in the like nature under Article 226 of the Constitution of India, thereby directing the SRA not to accept and/or process any Slum Rehabilitation Scheme at the instance of the Respondent No.4 or any other developer in respect of the subject property bearing CTS No.355 (part), 355/267 to 307, 355/352 to 357, 355/411 to 443, 491 (Part), 491/1 to 4, admeasuring near about 5115.2 sq. meters situated at village Kurar, Taluka Borivali, Mumbai Suburban District. "

6. Respondent No 4, Proposed Society of slum dwellers, has filed its Reply Affidavit stating that the said land is occupied by 246 slum dwellers who are deprived of basic amenities such as clean toilets, clean drinking water, electricity etc. The Affidavit further states that the Petitioner has not produced any documents evidencing the Petitioner's bonafide and genuine desire to implement slum rehabilitation scheme. Respondent No 5, the developer, who is developing the subject property and had intervened in the present Petition, has filed its Affidavit in reply and an Additional Affidavit setting out the steps taken by it towards the redevelopment of the subject property and the progress of the slum scheme. An Affidavit in reply has been filed by SRA-Respondent No 2 and 3 raising a preliminary objection that the Petitioner has already challenged the recommendation of SRA leading to the impugned notification before the Apex Grievance Redressal Committee, which is pending. The Affidavit further sets out the facts leading to acquisition of the subject property. An additional Affidavit came to be filed by the Petitioner, in view of query raised by the Court during the hearing of the Petition, setting out the steps taken in support of its contention of

readiness and willingness to re-develop the subject property.

7. Heard Dr. Birendra Saraf- Learned Senior Advocate for the Petitioner, Dr. Virendra Tulzapukar- Learned Senior Advocate for Respondent No 4 Society, Mr. Raju Suryawanshi- Learned Counsel for Respondent No 2 and 3 (SRA) and Mr. Mayur Khandeparkar- Learned Counsel for Respondent No 5 Developer.

8. Dr. Birendra Saraf, Learned Senior Advocate for Petitioner, submitted as follows:

Petitioner as an owner of the subject property has preferential right to carry out redevelopment of the property, the right being borne out from the provisions of Section 3B(4)(c) and (e), Section 12 (10) and Section 13(1) of the Slum Act, which evidences that at every stage notice to owner is contemplated and it only upon failure of owner to submit a scheme within 'reasonable time' as contemplated under Section 13(1) of Slum Act, consequences of appointment of other agency or acquisition should follow. In the context of "reasonable time" appearing in Section 13(1) of Slum Act, he submits that the starting point for commencement of "reasonable time" begins from the date of notice to the owner of the property by CEO/SRA calling upon the owner to submit the scheme and in the present case no such notice having been given, it cannot be construed that the Petitioner has failed to submit a scheme within reasonable time. In the alternative, even if the date of declaration of notification is taken as the starting point, it cannot be said that Petitioner has not come forward within reasonable time as time and again she has expressed her readiness and willingness to re-develop the subject property, which is borne out from the various representations made by the Petitioner. The fact that after declaration under section 3C on 17/6/2017, Petitioner had filed an appeal, in which order of status quo was operative from 27/6/2018 till 17/12/2019 till the dismissal of the Appeal will have to be taken into consideration. It is only after the process under Section 13 is exhausted, the invocation of Section 14 is justified. As per the provisions of Section 14 of Slum Act, the State Government is required to consider her objections and pass reasoned order which has not been done in the present case, vitiating the impugned notification. The recommendation of CEO/SRA dated 29/11/2021 is erroneous in as much as the recommendation takes into consideration the modified Section 13(1), which came into effect in the year 2018, subsequent to the notification under Section 3C of the Slum Act in the year 2017. In support of the submissions, reliance is placed on the judgment of Indian Cork Mills Pvt. Ltd. (supra).

9. Dr. Virendra Tulzapukar- Learned Senior Advocate for Respondent No 4 Society, submitted as under:

The issue involved in the present case is not about the preferential right of Petitioner, which he admits that the owner of the private land has, but, the dispute is about the "reasonable time" within which the owner is expected to come forward with the scheme of redevelopment; that the date of knowledge of

the proposed acquisition is the starting point of the reasonable time and within a reasonable period or 120 days as contemplated by modified section 13(1) of Slum Act, the owner has to come forward with the scheme of redevelopment. The representation of the Petitioner dated 18/10/2021 and 27/1/2022 wherein she has indicated her willingness to undertake redevelopment of the property, is in fact an exercise of the preferential right to redevelop and once the right is exercised, the scheme should follow. The Petitioner has not come forward with a scheme leaving the State Government with no option but to acquire the property under section 14(1). The failure to submit a scheme for redevelopment is on account of the fact that the owner did not have any financial ability to carry out the scheme of redevelopment, which according to him, is amply clear from the additional affidavit filed by the Petitioner. Learned Senior Advocate relied upon the judgments of this Court in F. E. Dinshaw Charities & Ors. vs. State of Maharashtra & Ors. WP No.1460/2019 , Rajesh G. Jain vs. State of Maharashtra & Ors., WP(L) No.2632/2018; Nusli N. Wadia vs. The State of Maharashtra & Ors. WP No.1863/2017, and Atesham Ahmed Khan and Ors. vs. Lakadawala Developers Pvt. Ltd. & Ors. 2011(3) Mh. L. J. 604 in support of his submission that in the absence of any proposal being submitted, the question of consideration of any preferential right for redevelopment of the suit property does not arise.

10. Mr. Mayur Khandeparkar-Learned Counsel appearing for Respondent No.5 - Developer submitted as follows:

The SRA scheme is progressing and he has obtained 74% consent of the slum dwellers and Annexure II has been prepared in October 2022 and the stage is now for the purpose of obtaining Letter of Intent. After expressing willingness to redevelop the project the Petitioner has continued with her challenge declaring the subject property as 'slum' and even to the notification issued under section 3C of the Slum Act. Section 3C and Section 4 of the Slum Act operate in the same field in as much as section 3C is only for the purpose of Chapter IA and it makes no difference whether the area has been declared as slum under section 4 or under section 3C. There is a finding recorded by the Slum Tribunal in the Appeal against Section 3C Notification that the survey report produced on record shows non availability of basic amenities. The contention regarding pre-amendment and post amendment Section 13 of the Slum Act makes no difference as the Petitioner failed to submit the scheme within reasonable time. The show cause notice issued to the Petitioner under section 14 of Slum Act is a combined notice under section 13 and 14 of Slum Act and there is no requirement of a separate notices. After dismissal of appeal in the month of December 2019, even if the period of 120 days is to be considered it was over in the year 2022 and no scheme has been submitted by the Petitioner. The "reasonable time" or the period of 120 days is to be strictly construed as there is waiver of the requirement of 70% or 51% consent of the slum dwellers in case redevelopment is undertaken by the owner and the same is borne out from the circular 144-144A issued by the SRA. The statement made by the learned

counsel for the Petitioner that he will withdraw the challenge to the notification under section 14(1) which is pending before Apex Grievance Redressal Committee has severe consequence in as much as after the challenge to the notification is withdrawn nothing survives in the matter. Section 14 of Slum Act is an independent provision and same is already been dealt with by the judgment of the Apex Court in the case of Murlidhar Teckchand Gandhi & Ors. vs. State of Maharashtra & Ors. Civil Appeal No.11077/2017.

11. Mr. Raju Suryawanshi- Learned Counsel for Respondent No 2 and 3 (SRA) adopted the submissions of Respondent Nos.4 and 5 and further submitted that the decision of the Indian Cork Mills Pvt. Ltd. (supra) is distinguishable on facts as in that case the Petitioner was not aware of the proceedings, which is not so in the present case. He further submits that the Petitioner has participated at every stage and has challenged the notification and therefore no assistance can be derived by the Petitioner from the decision of Indian Cork Mills (supra).

12. Learned Counsel for Petitioner in rejoinder meets the preliminary objection raised by learned Counsel for SRA, during the hearing of the present writ petition, stating that the appeal filed by the Petitioner impugning the recommendation dated 29/11/2021 will be withdrawn. He further contends that the filing of appeal does not defeat the preferential rights of the owner because in event the declaration under section 3C of Slum Act is set aside, there is no question of exercise of preferential rights; that the show cause notice issued to the Petitioner under section 14 (1) cannot be said to be notice under section 13(1) as contended by the Respondent No.5 as the notice does not spell out that the same is a joint notice issued under section 13(1) and 14 of the Act. No exercise is carried out by SRA under section 13 of Slum Act and after the notification issued under section 3C SRA has right away proceeded to acquire the property under section 14, which is not the proper procedure; that no reasoned order has been passed by the State Government or is on record; that issuance of notification under section 14(1), is exercise of quasi judicial power and in the absence of reasons given for exercise of quasi judicial power, same is vitiated by law. As per the judgment in the case of Indian Cork Mills Pvt. Ltd (supra) it is necessary that while issuing notification under section 3C, notice be issued to the owner and thereafter under section 13(1) redevelopment be proposed and only in the event of failure thereof, proceedings under section 14 are required to be adopted. He further distinguished the judgments F. E. Dinshaw Charities & Ors. (supra) , Rajesh G. Jain (supra), Nusli N. Wadia (supra) and Atesham Ahmed Khan (supra) relied upon by the Respondent No.4 Society that in these cases, notices were issued to the owner and there is no answer from the SRA as to why notices are being issued selectively. The delay, if any, has occasioned due to Covid-19 situation and unless and until a notice is issued to the Petitioner calling upon him to submit the scheme for redevelopment "reasonable time" contemplated under section 13(1) does not commence.

13. We have considered rival submission of the parties. In the present case,

Petitioner challenges the notification issued under Section 14 of Slum Act, seeking to enforce her preferential right as owner of the subject property, the time for exercise of which, according to Petitioner, will commence upon receipt of notice from SRA calling upon her to submit the scheme for re-development and only upon her failure within a reasonable time from receipt of the notice from SRA to submit a scheme, the provisions of Section 14 can be invoked.

14. The Slum Act was enacted to make better provision for the improvement and clearance of slum areas in the State and their re-development and for the protection of occupiers from eviction and distress warrants. The statutory scheme of the Slum Act provides for declaration of an area as slum or slum rehabilitation area and implementation of slum re-development scheme either through the land-holders/owners and/or the occupants or by entrusting the same to outside agency or through process of acquisition, the aim being speedy rehabilitation of the slum dwellers so as to ensure habitable living conditions for the slum dwellers.

15. In this context it will be apposite to refer to certain provisions of Slum Act in its application under Chapter I-A of Slum Act :

"3B(5) The Slum Rehabilitation Scheme so notified under sub-section (3) shall, generally lay down the parameters for declaration of any land as the slum rehabilitation area and indicate the manner in which rehabilitation of the occupants of the area declared as Slum Rehabilitation Area shall be carried out. In particular, it shall provide for all or any of the following matters, that is to say,-

(a) the parameters or guidelines for declaration of land as the Slum Rehabilitation Area ;

(b) basic and essential parameters of development of Slum Rehabilitation Area under the Slum Rehabilitation Scheme;

(c) provision for obligatory participation of the owners, landholders and occupants of the land declared as the Slum Rehabilitation Area under the Slum Rehabilitation Scheme in the implementation of such Scheme;

(d) provision relating to transit accommodation or entitlement of compensation in lieu of transit accommodation to the slum dwellers pending development of the Slum Rehabilitation Area;

(e) provision relating to allotment of tenements either in situ or otherwise, on development free of cost to the protected occupiers of the building in such Slum Rehabilitation Area;

(f) provision relating to allotment of tenements either in situ or otherwise, on ownership or on rent, to the other non-protected occupiers up to the 1st January 2011, subject to the availability of tenements as per the terms and conditions and guidelines so notified in the Official Gazette, by the Chief Executive Officer with the prior approval of the State Government;

(g) scheme for development of the Slum Rehabilitation Areas under the Slum Rehabilitation Scheme by the landholders and occupants by themselves or through a developer and the terms and conditions of such development; and the option available to the Slum Rehabilitation Authority for taking up such development in the event of non-participation of the landholders or occupants;

(h) provision regarding sanction of Floor Space Index and transfer of development rights; if any, to be made available to the developer for development of the Slum Rehabilitation Area under the Slum Rehabilitation Scheme;

(i) provision regarding non-transferable nature of tenements for a certain period, etc."

* * * * *

"Section 12(10). Subject to the provisions of the Act, and of any other law for the time being in force in relation to town planning and to the regulation of the erection of buildings where a clearance order has become operative, the owner of the land to which the (clearance order) applies, may redevelop the land in accordance with the plans approved by the Competent Authority, and subject to such restrictions and conditions (including a condition with regard to the time within which the redevelopment, shall be completed), if any, as that Authority may think fit to impose."

* * * * *

Section 13(1). Notwithstanding anything contained in sub section (1) 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 redevelopment of such land by order determine to redevelop such land by entrusting it to any agency for the purpose."

16. A plain reading of Section 3B(5) and in particular sub-section (g) shows that the slum rehabilitation scheme shall provide for development of Slum Rehabilitation Area by the land holders and occupants by themselves or through developer and the option available to the SRA for taking up such development in event of non-participation of the landholders or occupants. Section 13(1) provides that if the owners, land holders or occupants do not come forward within a reasonable time, with a scheme for redevelopment of such land, the Slum Rehabilitation Authority may by order determine to redevelop such land by entrusting it to any agency for the purpose. A cumulative reading of the above provisions shows conferment of preferential right on the owner of the land to re-develop the slum rehabilitation area albeit with a corresponding duty to submit a scheme within reasonable time. This frame of statutory scheme, in our opinion, is in consonance with the stated object of Slum Act.

17. Recognizing the preferential right of owner to re-develop as observed above

and considering that no serious dispute has been raised by the Respondents pertaining to the Petitioners' preferential right as owner to redevelop the property, the issue as to whether the owner has preferential right to re-develop need not detain us any further. As to whether the Petitioner has been permitted to exercise her right, we find that by conveying her readiness and willingness to re-develop in the representations made to the SRA and State Government, the Petitioner has in fact exercised her preferential right. In response to the notice issued under Section 14(1) inviting objections to the acquisition, the Petitioner had filed her representation dated 18/10/2021, stating therein that she is ready and willing to re-develop the subject property and beseeching the SRA to enable her to exercise her preferential right to undertake the redevelopment of the subject property. Thereafter subsequent to the recommendation of SRA dated 29/11/2021 recommending the acquisition of property, the Petitioner addressed a representation dated 27/1/2022 to the Principal Secretary, Housing Secretary reiterating the readiness and willingness to redevelop the subject property. We do not find any objection being raised by SRA to the exercise of the right by the Petitioner and it is not as if the statutory authorities have failed to recognise this preferential right of the Petitioner as the owner of the subject property.

18. Elaborate submissions were advanced by the learned Senior Advocate for Petitioner on the aspect of the starting point of commencement of "reasonable time" within which the owner has to come forward as contemplated in Section 13 of Slum Act. The said issue is irrelevant in the facts of the present case as the Petitioner has already exercised her preferential right as owner of the subject property.

19. In the year 1979 the subject property was declared as slum under section 4 of the Slum Act, of which the Petitioner claims to have no notice. Even if it is accepted that the Petitioner was not aware that the subject property was declared as slum in the year 1979, the petitioner admittedly became aware of the same in the year 2011 when she filed an appeal impugning the notification declaring the subject property as slum under Section 4 of the Slum Act. The said Appeal is stated to be still pending. During the pendency of the said Appeal, the matter proceeded further in as much, in the year 2015 an application was made by the Society for acquisition under Section 14 of Slum Act and in the year 2016 SRA issued public notice inviting objections to the declaration of the subject property as slum rehabilitation area under Section 3C, to which detailed objection was raised by the Petitioner and notification under Section 3C was issued in the year 2017. It is therefore but clear that the Petitioner had ample knowledge of the consequences of the declaration of the subject property as slum and/or slum rehabilitation area. It is evident from the representations dated 18/10/2021 and 27/1/2022 that the Petitioner is well aware of the statutory provisions as well as the authoritative pronouncements of this Court pertaining to slum re-development and in spite of being aware of the same has till date failed to submit a scheme for re-development till date.

20. The substantial challenge raised by learned Counsel for Petitioner to the impugned notification is that since no notice has been issued by SRA, the acquisition is illegal. We do not find any statutory provision in the Slum Act which provides that for want of notice by SRA the acquisition proceedings are rendered bad in law. In support of his submission, heavy reliance is placed by the Learned Counsel for Petitioner on the decision of this Court in the case of Indian Cork Mills Pvt Ltd (supra). It is necessary to consider the factual matrix in the case of Indian Cork Mills Pvt Ltd (supra) , where the Petitioner therein sought quashing of the acquisition proceedings and permission to submit proposal for slum rehabilitation scheme and direction to SRA to process the proposal and grant necessary approvals within a period of two weeks. In the context of the relief sought, the issue which arose for determination before the Court in the case of Indian Cork Mills Pvt Ltd (supra) was about the preferential right of the Petitioner as owner of the property to undertake the redevelopment of slum rehabilitation area and whether failure of statutory authorities to recognize this right results in rendering the acquisition bad in law. This Court recognized the preferential right of the owner and held the acquisition bad in law in view of the fact that the statutory authorities had failed to recognize the said preferential right of the owner.

21. Having gone through the decision of Indian Cork Mills Pvt Ltd (supra) in detail, it is our view that decision does not assist the case of the Petitioner. The decision of Indian Cork Mills Pvt Ltd (supra) does not lay down any proposition that for want of notice to owner, whatsoever may be the fact situation, sequitur would be quashing of the acquisition proceedings. There is no such absolute proposition of law laid down by Indian Cork Mills Pvt Ltd (supra).

22. Before granting any relief in writ jurisdiction, the facts and circumstances have to be considered, particularly whether the owner had bonafide interest to develop the property so as to benefit the slum dwellers or the owner was merely trying to create hurdles in achieving the ultimate object of rehabilitation of slum dwellers. If it is found that the owner was given opportunity to develop the property, was incapable of doing so or did not have any bonafide interest then Writ Court will not stall the process of rehabilitation of slum dwellers at the behest of such owner. The Respondent No 4 has rightly emphasized the conduct of the Petitioner, who is seeking equitable relief from this Court, to urge that the Petitioner has not interest in developing the property. In this context the conduct of the owner in the present case will have to be considered.

23. At the center of this dispute is the property ad-measuring 5115.2 sq. meter on which there are about 246 structures. There is a finding of fact by the Slum Tribunal based on the inspection report of SRA that the said area suffers from basic amenities; that the construction of huts are partly permanent and partly temporary; gutters were open; there is no adequate water supply available for the occupants; huts are congested; there is absence of internal roads; there is no proper sunlight and no availability of fresh air and public street light; there is

inadequate public toilets and the map of the said site shows that the said property is very congested. It is admitted position that from 1976 the said property has been declared as slum area and even after 40 years neither the State Authorities nor the owners have taken any concrete steps to ensure that the said property is redeveloped and the occupants therein are provided with habitable conditions. It is only upon application by the slum dwellers, notification came to be issued under section 3C in the year 2017 and it is only thereafter that the owners are seeking to exercise their preferential right. The neglect by the owners has led to the state of subject property lacking in basic amenities.

24. At the hearing, on a query being put by the Court as to whether the Petitioner is ready with the scheme, an additional affidavit came to be filed by the Petitioner dated 14/9/2022. The said affidavit reiterates that the Petitioner is still ready and willing to redevelop the property and goes on to contend that in that respect the Petitioner was in touch with several developers and has initiated talks with one M/s.Goel Ganga India Private Limited to develop the said property in joint venture. Perusal of the said affidavit shows that the talks with said M/s. Goel Ganga India Pvt Ltd commenced with communication dated 24/12/2019 and vide resolution dated 16/3/2021 passed by M/s. Goel Ganga India Pvt Ltd it was resolved to enter into an agreement with the Petitioner for redevelopment of the said property. Even this additional affidavit is silent on the point as to whether any further joint venture agreement was executed between the Petitioner and said M/s. Goel Ganga India Pvt Ltd but, from the affidavit, it is amply clear that from the year 2019 till March 2021 the Petitioner did not have financial wherewithal to undertake redevelopment of the said property. In view of this situation, the representation made by the Petitioner expressing her willingness to redevelop the property is not fortified and even during hearing of this petition there is no such scheme put forward by the owner.

25. Considering the object of the Slum Act which is to make better provisions for improvement and clearance of the slum area in the State and for redevelopment and protection of occupiers from eviction and distress warrant, we find that the Petitioner has not been able to demonstrate her bonafides even as of today. We do not find any scheme forthcoming. In the present case we find that the Petitioner being owner of the property has failed to demonstrate a genuine and bonafide desire to redevelop by coming forward with a scheme for redevelopment.

26. Learned Senior Advocate for Petitioner, in rejoinder, attempted to justify the delay on the ground of Pandemic. The submission is liable to be rejected as there are no pleadings in that respect and general submissions are made across the bar. To consider the submission of delay on the ground of Pandemic, it is necessary for the Petitioner to lay down the foundation in the pleadings with respect to the manner in which the Pandemic had resulted in delay in non submission of the scheme. Sans any specific pleadings in that respect, we are not inclined to consider the ground of pandemic. Though existence of Pandemic

is matter of common knowledge, it is matter of pleading as to how the Petitioner was affected and was unable to submit the scheme as there were relaxations during lockdown and online functioning was taking place.

27. It is not a position in law that irrespective of the conduct of the owner, irrespective of lack of bonafide, irrespective of neglect by owner and incapacity even after giving an opportunity to submit the scheme, the acquisition will be set aside. The decision in case of Indian Cork Mills Pvt Ltd (supra) does not lay down such an absolute proposition of law as such a fact situation never arose for consideration of the Division Bench. Further, the petitioner therein sought quashing of the acquisition proceeding and permission to the Petitioner to submit proposal for implementation of the scheme. In the present case, only relief sought by the Petitioner is quashing of the notification issued under section 14(1) of the Slum Act and direction to SRA not to accept the scheme at the instance of Respondent No.4 or any other developer. No relief is sought that Petitioner be permitted to submit the scheme. This aspect has been rightly emphasised by the Respondents.

28. We also have to take note of decisions of two Division Benches of this Court which negated the claim of owners challenging the acquisition under the Slum Act, after examining the facts of the case. It is pertinent that the Division Benches in the case of F. E. Dinshaw Charities & Ors (supra), Rajesh G. Jain (supra) and Nusli N Wadia (supra) has made a reference to the decision of Indian Cork Mills Pvt. Ltd. (supra),. Though facts in the case of F. E. Dinshaw Charities & Ors (supra), Rajesh G. Jain (supra) and Nusli N Wadia (supra) are different, it needs to be emphasised that facts of each case are necessary to be examined in matters such as the present one.

29. The Petitioner's submission that the recommendation of SRA dated 29/11/2021 is vitiated as it takes into consideration the modified Section 13 of Slum Act, which is inapplicable to the present case is liable to be rejected. A careful perusal of the recommendation dated 29/11/2021 would show that after considering the entire history commencing from 1976, the year of declaration of the subject property as slum, SRA has come to a conclusion that in larger public interest it is necessary that the subject property be acquired under Section 14(1) of Slum Act. As far as the objection raised by the Petitioner that only after exhausting the remedy of appointment of some other agency under Section 13, acquisition process under Section 14 can be invoked, the issue is no longer res integra and is covered by the judgment of Apex Court in the case of Murlidhar Tekchand Gandhi (supra) wherein it has been held as under:

"The provisions of section 14 are independent under which area is acquired by the State, subject to the hearing of the objection pursuant to a show cause, and a decision has to be taken thereafter. This Court in previous round of litigation has upheld the notification under section 4 of the Act declaring it to be 'slum area'. Obviously considering its miserable condition decision was rightly taken to acquire it. There is no express provision or implied condition indicating that

provisions of other sections should be followed for acquisition. An acquisition is permissible under Section 14 to redevelop "clearance area". However acquisition is permissible without declaring an area as 'clearance area'. The manner of acquisition is prescribed under Section 14, we cannot add or subtract anything in the provision."

30. Another challenge mounted by the learned Counsel for Petitioner to the notification issued under Section 14 of Slum Act is that State Government has not passed a reasoned order on her objections. This submission made across the bar does not find place in the pleadings. In the pleadings, the case of the Petitioner in paragraph

25 of the Petition, is that the State Government without considering the objections raised by the Petitioner and even without giving any opportunity of hearing has passed the impugned notification. It is borne out from the Petition that the Petitioner was heard by the SRA and the objections alongwith the recommendation of SRA was forwarded to the State Government.

31. The pre-requisite of Section 14 of Slum Act is that where it appears to the State Government on representation from the Competent Authority, that to execute any work of improvement or to redevelop any slum area or any structure in such area, it is necessary that such area should be acquired, the State Government may acquire the land by publishing in Official Gazette, a notice of such acquisition. The proviso permits this exercise of power after show cause notice is issued to the owner by the State Government or the Competent Authority and the Competent Authority is required to forward the objections submitted together with his report to the State Government, which upon considering the report of the Competent Authority and objections, may pass such order as it deems fit.

32. In the present case, show cause notice was issued to the Petitioner on 11/08/2021 under Section 14(1) of Slum Act, to which detailed representation was filed by the Petitioner on 18/10/2021. SRA vide its report dated 29/11/2021 dealt with the objections of the Petitioner and recommended the acquisition of the subject property. Upon considering the report, the recommendation was accepted by the State Government and the impugned Notification dated 26/05/2022 for acquisition of the subject property was issued in order to implement the scheme for redevelopment. After meeting the requirement of the proviso to Section 14 of Slum Act, of giving sufficient opportunity to the Petitioner, the impugned Notification has been issued. The impugned Notification records the subjective satisfaction of the State Government and once subjective satisfaction has been recorded and in term of the statutory provisions, then the acquisition is legal and valid and no interference is warranted. refer to the observation of Apex Court in the case of Murlidhar (supra) where the Apex Court has held as under:

"The pre-requisite for exercise of power under Section 14 is the satisfaction of

State Government that authority can execute work of improvement in "slum area" or any building in such area or redevelop "clearance area" and it is necessary that land within, adjoining or surrounded by any such area be acquired, it can initiate proceedings under section 14(1) of the Act. The State can make acquisition subject to conditions prescribed in provisions contained under Section 14 of the Act".

34. The present Petition invokes the extraordinary writ jurisdiction under Article 226 of Constitution of India, seeking quashing of the impugned Notification dated 26th May, 2022 issued under Section 14 of Slum Act. In view of sub-section (2) of Section 14, the subject property now vests absolutely in the State Government free from all encumbrances from the date of the impugned Notification. Ultimately the Court is called upon to adjudicate matter structured by provisions of beneficial legislation, competing rights of land owner and slum dwellers will have to be balanced, after considering the facts and circumstances. In exercise of its extraordinary writ jurisdiction under Article 226 of Constitution of India, the Court has to consider all the relevant facts and circumstances and is required to satisfy itself that its interference will serve the interest of justice. This aspect assumes importance specially while examining a challenge to the re-development under Slum Act, in view of the avowed object sought to be achieved. It is a welfare measure undertaken to provide better standard of living for the slum dwellers.

35. Another aspect which is required to be considered that the Respondent No 4 Society has reposed its trust in Respondent No 5 Developer who has obtained the prescribed consent and is proceeding with the slum rehabilitation scheme. The Respondent No 4 Society has vehemently opposed the Petition and it is apparent that foisting any other developer on the Respondent No 4 Society will lead to further delay in the rehabilitation of the slum dwellers.

36. In our considered opinion, considering the totality of the facts in the present case, we do not find any bonafide intention on the part of the Petitioner to redevelop the subject property. At this stage, after 40 years of the declaration of the area as slum and especially when the slum dwellers are now looking for better living conditions, in view of the steps being taken by Respondent No.5-Developer, we are not inclined to set the clock back extending the wait of the slum dwellers indefinitely while the owner takes its own time to submit the scheme and implement it, especially when we find from the Petitioner-owner's affidavit that the petitioner's financial ability to implement the complete scheme is dependent on the joint venture with some other developer, which may or may not fructify.

37. The overwhelming facts, in the present case, justify the acquisition proceedings and we find that public interest demands that the slum rehabilitation scheme should not be stalled at the instance of the owner, who has neglected her property resulting in the slum dwellers living in inhuman condition for years and who now seeks to further stall the redevelopment scheme, which is evident from

the relief sought in the present Petition, without submitting any proposal for rehabilitation.

38. Considering the above, we find no reason to interfere with the impugned Notification acquiring the subject property. The Writ Petition is accordingly dismissed. Rule stands discharged.