

(2017) 02 BOM CK 0143
In the Bombay High Court
Case No : 283 of 2016

The State of Maharashtra

APPELLANT

Vs

Abdul Sattar Haji Usman and others

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 14](#), [Article 226](#), [Article 226](#), [Article 300A](#), [Article 300A](#) - Appoin

Citation : (2017) 02 BOM CK 0143

Hon'ble Judges : Manjula Chellur, G.S. Kularni

Bench : DIVISON BENCH

Advocate : G. W. Mattos, Sunil Yadav, J. Reis, Martina Sapkal, Arun Sapkal, Vijay Vaghela

Judgement

1. Heard the learned Counsel for parties. 2. The present appeal arises out of an order dated 12/04/2016 in Suit No.2862 of 2008 pertaining to an issue which was tried as a preliminary issue with regard to maintainability of the suit in the light of bar under Section 42 of the Maharashtra Slum Areas (Encroachment and Improvement) Act, 1971 (for short, "1971 Act"). By a detailed order, the learned Judge opined that the suit is maintainable as averred in the plaint at the behest of respondent nos.1 and 2. In order to understand the challenge raised in the suit as to why the present appellant raised objections to the maintainability of the suit, it would be necessary to understand the prayers sought in the suit as the same will throw light on the earlier litigations between the parties pertaining to acquisition of suit property under the 1971 Act. On perusal of the prayers, except prayer (a), what we notice is that rest of the prayers pertain to acquisition of land and also the proceedings in the acquisition under 1971 Act. The learned Judge, after referring to the dispute between the plaintiffs i.e. respondent nos.1 and 2 herein, and the respondent no.3 before us who was arraigned as defendant no.1 before the learned Single Judge, was justified in opining that so

far as title over the suit property is concerned, there is a dispute between the plaintiff and the defendant no.1 before the learned Single Judge. However, when the discussion was with regard to acquisition of land under 1971 Act with reference to prayer (b) onwards in the plaint, the learned Judge opined that the suit is maintainable. Therefore, the appellant State is before us. 3. We have gone through the impugned order. The impugned order is relevant as to why the learned Judge opined that the suit is maintainable with reference to the prayers in spite of Section 42 of the 1971 Act. The learned Judge opines that the bar goes to the validity and legality of the notification under Section 4 and declaration under Section 6 with reference to jurisdiction of the Court do exist but according the learned Single Judge, once these provisions are gone through, it would not be open to question the steps taken thereunder outside the machinery of the Land Acquisition Act, except by approaching the Writ Court. According to learned Judge, the situation can leave out cases where the acquisition is without following these provisions or taking steps thereunder or where the acquisition is vitiated by a fraud practiced by the authorities under the State. Therefore, according to learned Single Judge, the bar excluding the jurisdiction of the Civil Courts does not operate in cases where the plea is of nullity, which goes to the root of the matter. According to the learned Judge, a fraudulent act or an act ultra vires the law providing for it, are nullities where despite even an express bar of jurisdiction the Civil Courts can interfere. In other words, according to him, such fraudulent exercise would nullify the statutory bar on jurisdiction as well. 4. Ultimately, the Court has to see whether there was an opportunity to challenge the alleged fraud played by the authorities in acquiring the lands in question. 5. According to plaintiffs/respondents, their ancestors purchased the land in question much prior to 1977 notification made under Section 4(1) of 1971 Act. Apparently, according to them, the conveyance document was between the plaintiffs/purchasers and the defendant no.1. The defendant no. 1's contention before the suit Court is that Survey No.40 is not CTS No.40. Therefore, the subject-matter of declaration and acquisition under 1971 Act with reference to CTS No.40 is not the land said to have been purchased by the plaintiffs. According to us, we need not ponder over this controversy since the suit is still pending which has to decide whether CTS No.40 was the Survey No.40 which was purchased by the ancestors of plaintiffs/respondent nos.1 and 2. Now, we are only concerned with the issue as to whether these plaintiffs had an opportunity to challenge the declaration and acquisition of the alleged land. According to them, it is nothing but Survey No.40 later converted as CTS No.40. As we notice from record, in the year 1977, the first notification under Section 4(1) of the 1971 Act came to be issued in respect of CTS Nos.40, 40/1 to 129 admeasuring 3695.60 sq. meters. The whole confusion seems to have occurred because of decrease in the measurement of the land and also exclusion of certain numbers in the subsequent notification issued under Section 4(1) of 1971 Act. When second notification of 26/07/2002 came to be made under Section 4(1) of 1971 Act, the CTS numbers were 40, 40/1 to 64 and 73 to 128. On account of confusion created with regard to

exclusion of certain numbers and also the reduction in the measurement, we directed the appellant/authorities as well as the respondents to place on record why certain numbers were excluded and why there is decrease in the measurement of the land. 6. Today, a clarification note is filed on behalf of the appellant in respect of these two notifications explaining that by virtue of another notification in the year 2004 as a corrigendum, they have clarified what exactly was the measurement of the land that was declared to be slum and also intended to be acquired under the 1971 Act. By virtue of a notification dated 31/08/1977, the measurement of the land was 3695.6 Sq. meters comprised of CTS Nos.40, 40/1 to 129. It is explained by the learned AGP that by another notification dated 26/07/2002 under Section 4(1) of 1971 Act, refers to CTS Nos.40/65 to 40/72 in all admeasuring 56.3 sq. meters, were in the custody of the Court Receiver according to Competent Authority. Therefore in the notification dated 26/07/2002, these numbers were excluded. Hence in a corrigendum came to be issued on 18/05/2004 as explained in the present clarification note which clearly indicate what has to be read as the CTS numbers as well as the measurement by virtue of notification dated 26/07/2002. By this clarification, they referred to CTS Nos.40, 40/1 to 64 and 73 to 129 admeasuring an area of 3637.4 sq. meters as the correct area which was declared and intended to be acquired by virtue of notification dated 26/07/2002 issued under Section 4(1) of the 1971 Act. 7. Subsequently, after this corrigendum dated 18/05/2004, on 23/07/2004 a notice under Section 14(1) of the 1971 Act came to be issued for acquisition of land, followed by an award dated 26/10/2004. In this notice under Section 14(1), all the earlier CTS numbers referred in 1977 notification, except CTS Nos.40, 40/1 to 64, 40/73 to 129 were intended to be acquired. On receiving this notice, admittedly, Writ Petition No.2584 of 2004 came to be filed. In this writ petition, the challenge was with regard to declaration of slum in 2002, the acquisition of the land and slum rehabilitation scheme. Learned Judge, after referring to various notifications i.e. of 1977 to 2002 and 2004, was of the opinion that if there was inter se dispute between the purchasers of the land i.e. ancestors of the plaintiffs and the Archbishop, it can be thrashed out in a civil suit where the right, title and interest of the parties could be established. At page 181, learned Judge, while disposing of the above writ petition, refers to this argument made with regard to conveyance of title under the alleged Sale Deed. It is observed that after a gap of 30 years a Deed of Rectification has come into existence on 07/06/2004 and the said material would be of greater significance with regard to the title over the property. Learned Counsel appearing for respondent nos.1 and 2, fairly conceded that so far as the lands which the petitioners (plaintiffs now) claim to have acquired under the Sale Deed and alleged Deed of Rectification dated 07/06/2004 are concerned, the petitioners/plaintiffs have to first establish their title in an independent proceeding without which a claim of title cannot be sustained. Therefore, learned Judge opines that the said concession, however, does not conclude this aspect of the matter since petitioners intended to rely upon the Deed of Rectification dated 07/06/2004. After considering the effect of Deed of Rectification, the title in the suit so far as the declaration and acquisition

under 1971 Act, learned Judge proceeds to decide the challenge raised by the present plaintiffs/writ petitioners. The learned Judge was of the opinion that vesting has taken place under the law providing for acquisition of land for public purposes. Since declaration of slum is also now recognized for public purposes, so far as declaration and acquisition of land under Section 4(1) followed by notice under Section 14 (1), has reached finality. There was no justification in the challenge made by the petitioners who are the plaintiffs in the present suit. The learned Judge also says that the petitioners have disentitled themselves for grant of any relief under Article 226 by setting up what on its face is a sham Deed of Rectification. 8. Aggrieved by the dismissal of Writ Petition No.2584 of 2004, Appeal No.255 of 2006 came to be filed and the same came to be disposed of in the following order : "1. Heard the learned Counsel for the parties. By this Appeal, the Appellants have challenged this order dated 7.3.2005 whereby the learned Single Judge has rejected the Petition filed by the Appellants and declined to interfere with regard to the acquisition of land under the Slum Rehabilitation Scheme and sanctioning of the said Scheme. 2. Perused the reasonings given by the learned Single Judge while rejecting the petition. We do not find anything erroneous in the impugned order. Appeal is devoid of merits. Hence the Appeal stands dismissed. 3. We however make it clear that if the Appellants have any grievance with regard to the title, the same can be agitated in an appropriate civil proceedings." 9. Learned Single Judge opined that the petitioners have dis-entitled themselves for grant of any relief under Article 226 by setting up what on its face is a sham Deed of Rectification. However, the Division Bench, while disposing of the appeal, has stated if the appellants (present plaintiffs) have any grievance with regard to title, the same can be agitated in an appropriate civil proceedings. 10. Apparently, this order of the Division Bench never came to be challenged by the plaintiffs. This would not desist us from making an observation that so far as declaration and acquisition under the 1971 Act with regard to the above numbers as clarified by corrigendum on 18/05/2004, we are of the opinion that there cannot be any challenge so far as CTS Nos.40, 40/1 to 64, and 40/73 to 129. So far as CTS Nos.40/63 to 40/72 admeasuring 56.3 sq. meters, since it is not included in the declaration and acquisition, which is clarified by corrigendum dated 18/05/2004, the petitioners plaintiffs need not even challenge the acquisition since the authorities themselves are admitting that they have not acquired these lands under 1971 Act. 11. On the above backdrop we note the prayers of the Plaintiffs/ Respondent Nos.1 and 2 as made in the plaint, which are as follows: "(a) that this honourable Court be pleased to hold and declare that the plaintiffs and the Defendant No.3 are the owners of the plot bearing CTS No.40, 40/1 to 129 situated at village Vile Parle, Taluka Andheri, Koldongari, Sahar Road, Mumbai, admeasuring 3695.60 sq.mtrs. and have full right, title and interest in the same; (b) that this honourable Court be pleased to hold and declare that the plaintiffs are entitled to use, occupy the said property viz. CTS No.40, 40/1 to 129 situated at village Vile Parle, Taluka Andheri, Koldongari, Sahar Road, Mumbai, admeasuring 3965.60 sq.mtrs. (c) that this honourable Court be pleased to

direct the defendants 1, 2 and 4 and specifically defendant No.2 in pursuance of prayer clauses (a) and (b) above to hand over back the peaceful possession of the suit property viz. CTS No.40, 40/1 to 129 situated at Village Vile Parle, Taluka Andheri, Koldongari, Sahar Road, Mumbai, admeasuring 3965.60 sq.mtrs; (d) that this honourable Court be pleased to hold and declare that Section 14(1) of the Maharashtra Slum Areas Act,1971 is unconstitutional, ultra vires and is required to be struck down; (e) that this honourable Court be pleased to declare that the acquisition of the suit property under order dated 23.07.2004 is vitiated by fraud and further declare that the acquisition of the suit property is liable to be struck down; (f) that this honourable Court pleased to permanently restrain the defendants 1, 2 and 4 from in any manner interfering with the use, occupation and enjoyment of the suit property being CTS No.40, 40/1 to 129 situated at village Vile Parle, Taluka Andheri, Koldongari, Sahar Road, Mumbai, admeasuring 3695.60 sq.mtrs." Reading of the above prayers, would indicate that prayer (a) is one for which the Division Bench in the order dated 24 April 2006 in Appeal No.255 of 2006, had granted liberty to the plaintiffs to seek this relief against the private defendant namely defendant no.1, by observing that "if the respondents 1 & 2 (plaintiffs herein) have any grievance with regard to the title, the same can be agitated in an appropriate civil proceedings." As regard the prayer clause (b), (c), (e) and (f) are concerned, the same pertain to the acquisition of the land by the State Government under Section 14 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment)Act,1971, under which the suit lands already stand vested, in the State Government. Prayer clause (d) challenges the constitutional validity of Section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment)Act,1971 on the ground as urged in paragraphs 56 and 57 of the plaint that the said provision is violative of Articles 21 and 300A of the Constitution. 12. On the above case of the plaintiffs" the challenge of the State Government before the Single Judge was to the maintainability of prayer clauses (a), (c), (e) and (f) in so far as they pertain to the acquisition of the land under the the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment)Act,1971. The Appellant-State contended that the suit is barred in view of the provisions of Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment)Act,1971, section 42 reads thus: "42. Bar of Jurisdiction Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under this Act, to determine; and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act." It is also necessary to note that Section 35 of the Slums Act provides for a statutory remedy of an appeal against any notice, order or direction issued or given by the Competent Authority, to be preferred by an aggrieved person before the Tribunal as constituted under the Act. Section 35 reads thus: "35. Appeals. Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued or given by the

Competent Authority may appeal to the (Appellate Authority who shall be a person holding a post not below the rank of Additional Collector, to be notified by the State Government) within a period of thirty days from the date of issue of such notice, order or direction. (1A) Any person (a) aggrieved by any notice, order or directions issued or given by the Appellate Authority under subsection (1), within a period of thirty days from the date of issue of such notice, order or direction; (b) for the purpose of resolving dispute in relation to matters about eligibility of slum dweller, eligible slum dweller being denied tenement, developer not undertaking and completing the project as per the permission and approval so also within the stipulated time frame, transit accommodation being unavailable or not provided and likewise, may file an appeal before the Grievance Redressal Committee constituted by the State Government, by notification in the Official Gazette, for such area and consisting of the Chairperson and such number of members as the Government may deem fit. The qualifications of the Chairperson and the members of the Committee and the procedure to be followed for transacting its business shall be such as may be prescribed;] (2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the notice, order or direction appealed against. (3) On the admission of an appeal, all proceedings to enforce the notice, order or direction and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal; and if the notice, order or direction is set aside on appeal, disobedience thereto shall not be deemed to be an offence. (4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner. (5) The decision of the Administrator on appeal shall be final and shall not be questioned in any court." 13. The above provisions have become relevant in the facts of the present case as the plaintiffs had taken re-course to the statutory remedy to challenge the action of the competent authority taken under Maharashtra Slums Act as regards the suit lands. The plaintiffs had challenged the action of the Appellant notifying the suit land as a "slum" as also the subsequent land acquisition proceedings adopted under the Slums Act. The statutory appeal of the plaintiffs was dismissed. Thereafter, the plaintiffs had approached this Court in Writ Petition No.2584 of 2004 which came to be dismissed by a judgment dated 7 March 2005 by the learned Single Judge of this Court. The writ appeal of the plaintiffs against the judgment of the learned Single Judge also came to be rejected, however, with a liberty to adopt the grievance with regard to title in appropriate civil proceedings and accordingly, the present suit with the reliefs as noted above came to be filed. In the light of these undisputed facts, we examine whether the prayers (b), (c), (e) and (f) were maintainable. 14. Section 9 of the Civil Procedure Code provides for jurisdiction of the Civil Courts to try and entertain all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. However, exclusion of jurisdiction, is not to be readily inferred, and a presumption to be drawn is required to be in favour of existence of jurisdiction, rather than exclusion of jurisdiction of the Civil Court, to try the civil suit. The law in this regard is well

settled in catena of judgments. We may usefully refer to the decision of the Supreme Court in the case "State of A.P. v. Manjeti Laxmi Kantha Rao (Dead) by LRs. & Ors." (2000)3 SCC 689 wherein their Lordships in paragraph 5 have observed thus: "The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In Dhulabhai & Ors. v. The State of Madhya Pradesh & Anr., 1968 (3) SCR 662, it was noticed that where a statute gives finality to the orders of the special tribunals jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure." 15. However, the legal position qua reliefs pertaining to the land acquisition proceedings, sought in a civil suit, is well settled. In "S.P. Subramanya Shetty & Ors. v. Karnataka State Road Transport Corporation & Ors." AIR 1997 SC 2076 , the Supreme Court considering the jurisdiction of a Civil Court under Section 9 of C.P.C. where the relief prayed pertained to the land acquisition proceedings, their Lordships held that a civil suit relating to acquisition proceedings is not maintainable and by implication, cognizance under Section 9 of CPC, is barred. In para. 4 their Lordships have made the following observations:- "4. In view of the settled legal position that the notification had become final and the proceedings had attained finality, the Civil Suit was not maintainable. This Court has repeatedly held that a Civil Suit relating to acquisition proceedings is not maintainable and by implication, cognizance under Section 9, CPC, is barred. The Court cannot issue mandatory injunction against the State to de-notify the acquisition under Section 48. Therefore, the question of granting an injunction against the authority from proceedings in accordance with the law does not arise. The High Court, therefore, was right in refusing to grant injunction. The Court cannot compel the Government to withdraw the notification under Section 4(1) of the Act. It is for the Government to consider the same on merits and it keeping in mind subservience of public interest. In view of the fact that notification was upheld by this Court and has become final, the Government cannot retract from the steps taken." (Emphasis supplied) 16. In "State of Bihar v. Dharendra Kumar & Ors." AIR 1995 SC 1955 the Supreme Court was considering the issue whether the Civil Court would have jurisdiction to entertain a relief relating to validity of notification under Sections 4 and 6 of the Land Acquisition Act, it was held that the Civil Court has no jurisdiction and such validity can be challenged before the the High Court in proceedings under Article 226 of the Constitution of India. In

paragraph 2A their Lordships have made the following observations: The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under section 9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The state is enjoined to comply with statutory requirements contained in section 4 and section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration under section 6, the public purpose gets crystalised and becomes conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11A now prescribes limitation to make the award within 2 years from the last of date of publication envisaged under section 6 of the Act. In an appropriate case, where the Govt. needs possession of the land urgently, it would exercise the power under section 17(4) of the Act and dispense with the enquiry under section 5A. Thereon, the State is entitled to issue notice to the parties under section 9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under section 12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under section 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under section 4 and declaration under section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction. 17. Again in "Laxmi Chand and others v. Gram Panchayat, Kararia & Ors." AIR 1996 SC 523, in a civil suit instituted challenging validity of the acquisition and the award when earlier the plaintiff had approached the High Court challenging a notification under Section 4(1) of the Land Acquisition Act, 1894 and which petition came to be dismissed, their Lordships observed that the jurisdiction of the Civil Court to take cognizance of the cases arising under the Land Acquisition Act, by necessary implication, stood barred. In paragraph 3, it was observed thus: "It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the case arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136

respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court." 18. A similar view has been taken by the Supreme Court in the case "State of Andhra Pradesh v. Manjeti Laxmi Kantha Rao (D) by L.Rs. And others" AIR 2000 SC 2220 wherein the Supreme Court has reiterated the above position in law. 19. In the present case, the respondent nos.1 and 2 in the plaint nowhere have pleaded that this case falls under an excluded category, by pleading a specific non compliance of the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, on the part of the State Government. In fact the case as pleaded in the plaint nowhere indicates that apart from the respondent nos.1 and 2 taking re-course to the statutory remedy and such a recourse before the prescribed forum having failed and the Division Bench finally upholding acquisition of land under Maharashtra Slum Areas Act, 1971, we do not feel that a departure is required to be made to come to a conclusion that in the present case the statute has not given finality to the orders of the Slum Tribunal and the finality having so attained, the jurisdiction of the Civil Court to try and entertain the suit challenging the acquisition of the suit land is required to be held, to be excluded in view of the plaintiff taking re-courses to the remedy which was provided under the Act, and those proceedings having attained finality. 20. On the backdrop of the above significant aspects of this case, we may observe that the only premise on which the learned Single Judge has held the suit to be maintainable on all the prayers is on the issue of "fraud" as pleaded by respondent nos.1 and 2 in the plaint. The learned Single Judge has observed that this issue would go to the root of the matter and therefore, the prayers in the plaint challenging the acquisition proceedings as also the prayer which challenges the constitutional validity of Section 14(1) of the Maharashtra Slum Areas Act, 1971 would also be maintainable. In coming to this conclusion, the learned Single Judge has made reference to the decision of the Supreme Court in the case "Dhruv Green Field Ltd. v. Hukam Singh" (2002) 6 SCC 416 and in the case "Commissioner, Bangalore Development Authority v. Brijesh Reddy" 2013 ALL SCR 2685. 21. Considering the nature of reliefs and on the following reasoning which can be found in paragraph 19 of the impugned order, the learned Single Judge has held that all the prayers in the plaint are maintainable and bar under Section 42 of the Slums Act would not be applicable. Paragraph 19 on page 17 reads thus: "19. As I have noted above, the present suit being based on a plea of fraud against the State in a matter of acquisition under the Slum Act and also on a plea of ultra vires, the suit is clearly maintainable on the pleadings of the Plaintiffs. As of today, there is no evidence to either sustain or decline the pleas of fraud and ultra vires. The matter is argued on a demurrer, based on pleadings and admitted documents on record. There is no case for dismissing the suit for want of jurisdiction. The preliminary issue is, thus, answered in the negative." 22. On the averments as made in the plaint, we are unable to persuade ourselves to agree to the above reasoning of the learned Single Judge. The suit in question is not the first round of litigation to challenge the acquisition proceedings. In accordance with the provisions of the Slums Act, the respondent

nos.1 and 2 had adopted a statutory remedy of an appeal to challenge the notification declaring the suit land as a slum, as also the acquisition proceedings under the Slums Act. Respondent nos.1 and 2 failed before the successive forums and ultimately before the Division Bench of this court. Apart from that there were other proceedings which were adopted before the Revenue Authorities which also reached this Court where the challenge of Respondent Nos.1 and 2 came to be rejected. The issue in the first round of the proceedings before the learned Single Judge of this Court and, thereafter before the Division Bench, was the very challenge to the declaration of slum and acquisition of land under the Slums Act as also prayed in the present suit. 23. Even assuming, that Respondent Nos.1 and 2 were permitted to raise the issue of fraud, in the suit in question, we examine whether there is really a case made out in this regard in the plaint which would satisfy the requirement of Order 6, Rule 4 of the Code of Civil Procedure. We find the only averment pertaining to fraud is in paragraph 48 of the plaint. To exercise the requirement of law to explain the case of Respondent Nos.1 and 2 on fraud, we consider it appropriate to extract para 48 of the plaint : "48. The plaintiffs say that a fraud has been played in the matter of acquiring the said land and thereby depriving the plaintiffs use, occupation and enjoyment of the suit property. The plaintiffs say that every attempt has been made by the defendants 2 and 4 to somehow keep the plaintiffs, the real owners in the dark about acquisition of the said property and to take over the said lands without hearing the plaintiff's herein. The plaintiffs say that deliberately and knowingly notices were addressed to the Archbishop of Bombay in the said acquisition proceedings and including for declaration of slums. The plaintiffs say that initial notice of 31.10.2003 for acquisition under Section 14(1) was addressed to the Archbishop of Bombay. The plaintiffs say that when they protested by their letter dated 19.05.2004, though a letter of 31.05.2004 was written by the Housing department to the Acquisition officer to decide the ownership in the first place before the proceeding with the acquisition, the same was not done. The plaintiffs say that most important fact is that the letter dated 31.05.2004 which was written on their complaint was not endorsed to them and the plaintiffs came to know about the said letter only in 2008. It is thus clear that the defendants 2 and 4 have connived with each other to play a fraud in the matter to deprive the plaintiffs of their valuable rights in the property." The above averments in para 48 of the plaint, in regard to the case of fraud in our opinion are totally insufficient for the learned Single Judge to hold that all the prayers in the suit would be maintainable only because the Plaintiff has pleaded the above case of fraud for the Civil Court to adjudicate on the legality of the declaration of the slums and the legality of the land acquisition proceedings de hors the issue having attaining a finality before the Division Bench of this Court as noted above. Paragraph 48 of the plaint would also not satisfy the test as Order 6, Rule 4 of the Code of Civil Procedure would contemplate. The requirement of Order 6, Rule 4 of the CPC is specific which provides that in all cases in which the party pleading relies on fraud as one of the pleas, then, there ought to be particulars with dates and items which shall be included in the

pleading. The law in this regard is well settled. We may usefully refer to the decision of the Supreme Court in the case "Bishundeo Narain & Anr. v. Seogeni Rai & Ors." 1951 (38) AIR SC 280 wherein Lordship Justice Vivian Bose speaking for the Bench observed thus: "25. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence & coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice, however strong the language in which they are couched may be, & the same applies to undue influence & coercion. See Order 6, Rule 4 Civil P.C." 24. Adverting to the above settled principle of law, we are of the clear opinion that the averments on fraud as made in paragraph 48 are too general in nature so as to come to a conclusion that in the facts of the case Respondent Nos.1 and 2 be permitted to maintain the suit on the issue of declaration of the suit property as slum and the consequent land acquisition undertaken for that purpose. 25. In our clear opinion, the averments of fraud are not of a nature whereby we can permit Respondent Nos.1 and 2 to raise such a plea in the second round of litigation. There is no dispute that the declaration of the suit land as slum and acquisition of the land, were the subject matter of independent proceedings in which similar issues were raised by Respondent Nos.1 and 2 and now only because these issues are labelled as fraud by Respondent Nos.1 and 2, they would not differentiate the material case which stood concluded in the earlier proceedings and which attained finality in the order of the Division Bench of this Court, dismissing Writ Appeal No.255 of 2006 by order dated 24.4.2006 (Dr.S.Radhakrishnan & S.J. Vazifdar, JJ. As their Lordships then were). 26. As regards prayer clause (d) of the plaint, wherein the plaintiffs have prayed that Section 14(1) of the Maharashtra Slum Areas Act is unconstitutional and be struck down, it may be observed that the learned Single Judge has not specifically dealt with this prayer in the impugned order on the principles as mandated under the proviso to Section 113 of the Code of Civil Procedure. In any event challenge to the constitutional validity of Section 14(1) of the Maharashtra Slum Areas Act on the ground on which the respondents have assailed the same in the suit, is no more res integra in view of the decision of the Division Bench of this Court in the case "Sara Harry D'Mello & Ors. v. State of Maharashtra & Ors." 2013 (5) Bom.C.R. 167 wherein the Division Bench has upheld the constitutional validity of Section 14 of the said Act when tested on the ground of Article 14 and 300A of the Constitution. The decision in "Sara Harry D'Mello & Ors." (supra) was followed in the decision of the Division Bench of this Court in the case "Twin & Deccan Builders & Ors. v. State of Maharashtra & Ors." 2016 (1) Bom.C.R.328 in which one of us (G.S. Kulkarni, J.) was a member. 27. There is another glaring facet which cannot be lost sight, namely as to what would be the legal position if a party like plaintiff (Respondent Nos.1 and 2) had earlier taken recourse to a statutory remedy of an appeal and having failed in the appeal, ultimately became a subject matter of a challenge in the Writ Petition,

which came to be dismissed by the learned Single Judge of this Court and the writ appeal against the said order also failed (albeit the liberty to the plaintiffs to institute proceedings qua the title in civil proceedings.) The legal position in such a situation is well settled in a Constitution Bench decision of the Supreme Court in the case "Gulabchand Chhotalal Parikh v. State of Gujarat" AIR 1965 SC 1153. Their Lordships in paragraph 61 held that when the proceedings under Article 226 of the Constitution have attained finality between the same parties on the same controversy, then, the general principle of res judicata would come into play and a subsequent regular civil suit between the same parties with respect to the same matter shall operate as res judicata. In paragraph 61, Justice Raghubar Dayal speaking for the Constitution Bench observed thus: "61. We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under Articles 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We therefore, hold that, on the general principle of res judicata, the decision of the High Court on a writ petition under Article 226 on the merits on a matter after contest will operate as res judicata in a subsequent regular suit between the same parties with respect to the same matter." 28. Considering the above clear position in law, we are of the opinion that the prayers as made by Respondent Nos.1 and 2 in the plaint challenging acquisition of land under the Slums Act namely prayers (b), (c), (d) and (f), are wholly not maintainable. 29. We may also observe that even assuming we were to uphold the contention of Respondent Nos.1 and 2 that prayer clause (b) to (f) were maintainable, as held by the learned Single Judge, the entire sanctity of the judicial proceedings of the writ petition and the order passed by the Division Bench in appeal in which the legality of the land acquisition proceedings was undertaken, would be rendered inconsequential. This would not be permissible in law as noted above as also as a matter of judicial discussion. 30. Respondent No.3 is permitted to file written statement within four weeks. 31. Appeal is allowed in the above terms setting aside the observations of learned Single Judge in respect of fraud maintainability of suit as discussed above.