

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1757 OF 2025

Ramesh Swaminath Singh

...Petitioner

Vs

The Slum Rehabilitation Authority & Ors.

...Respondents

Mr. Sankalp A. Sharma with Mr. Ameya Vaidya i/b. Karthic Iyer, for Petitioner.

Ms. Ravleen Sabharwal, for SRA.

Mr. Rakesh Pathak, AGP for the State.

Ms. K.H. Mastakar i/b. Komal Punjabi, for Respondent Nos.5 & 6 – BMC.

Mr. Aseem Naphade with Mr. Adil Mirza, for Respondent No.7.

Mr. Uzain Kazi with Mr. Rohit Vaishya i/b. YMK Legal, for Respondent No.8.

**CORAM: G. S. KULKARNI &
MANJUSHA DESHPANDE, JJ.**

DATE: 2 SEPTEMBER 2025.

P.C.

1. The challenge in this petition is to a notice dated 18 November 2024 issued by respondent No.1 -Slum Rehabilitation Authority under Section 13(2) of the Maharashtra Slum. Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short '**the Slum Act**'). The petitioner's contention is that such notice is required to be held to be illegal and more particularly, in view of the judgment and order dated 9 August 2024 being rendered in Writ Petition No.1060 of 2024 (filed by the petitioner alongwith the batch of petitions filed by the society and the other petitioners). The concern of the petitioner in respect of the petitioner's property admeasuring about 440 sq.meters in Survey No.273, Hissa No.1(part), CTS No.738/B/1A (part), of Village Malad (East), Taluka Borivali, Mumbai Suburban District. As seen from the judgment of this Court in the said Writ Petitions, it appears that there are 5 to 6 structures on the petitioner's land.

This apart, the petitioner's land is also reserved under the development plan by the Municipal Corporation for Garden/Park (ROS 1.5) and 18.30m wide DP road in the Development Plan 2034. It appears that despite a clear position and only 5 to 6 structures existing on the petitioner's land, considering the fact that in respect of a larger land which is adjoining the petitioner's land, on which there are about 128 slum dwellers, it is the petitioner's case that the petitioner's land is also being included by the Slum Rehabilitation Authority (SRA), in not only declaring the petitioner's land as slum but the same being included under the slum redevelopment scheme being pursued on the adjoining land. This merely because 5 to 6 tenants have agreed to join the slum scheme. It is submitted that considering the settled position in law as laid down by the Supreme Court in **Tarabai Nagar Co-op. Hog. Society (Proposed) vs. The State of Maharashtra & Ors.**¹ and **Saldanha Real Estate Private Limited Vs. Bishop John Rodrigues & Ors.**², the petitioner's land which is a "private land" could not have been included in the slum scheme and more particularly, as observed by the Division Bench in its judgment dated 9 August 2024 (supra) which followed the law declared by this Court in **Indian Cork Mills Private Ltd. Vs. State of Maharashtra & Ors.**³ and **Bishop John Rodrigues Vs. State of Maharashtra & Ors.**⁴, which now stand confirmed by the Supreme Court in the aforesaid decisions as noted by us. As held by the Supreme Court, the preemptory right of the owner of the land (petitioner in the present case) to develop his land, was required to be recognized

1 2025 SCC OnLine SC 1975

2 2025 SCC OnLine SC 1974

3 (2018)4 Bom CR 618

4 2024 SCC OnLine Bom 1632

and it is in such context the earlier petition of the petitioner was allowed by this Court setting aside the acquisition of the petitioner's land under Section 14 of the Slum Act.

2. A reply affidavit is filed on behalf of the Municipal Corporation. The stand of the Municipal Corporation is that there is reservation on the petitioner's land. The Municipal Corporation has, however, not taken a position that it does not require the land, and/or any steps are being taken to modify the development plan for deletion of the reservations.

3. As there is no such proposal and the Corporation is keen to acquire the land, however, in the manner as set out in the reply affidavit, the question would be that the entire land can never be available to the petitioner to be utilized for development in view of the reservation. Needless to observe that insofar as the reservation is concerned, the petitioner would become entitled to the compensation as the law would provide and more particularly, considering the provisions of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short '**MRTP Act**'). It is in this context, the Municipal Corporation has taken a stand that the petitioner would be granted TDR as contended in paragraphs 4 and 5 of the reply affidavit which read thus:

"3. I say that in this case, earlier a Writ Petition No.1060 of 2024 was filed by petitioner, when Hon'ble High Court passed an order dtd. 09.08.2024, thereby setting aside and quashed notification made under section 14 of Slum act and order dtd.26.07.2022 made under section 17 of Slum Act rendering *(FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on*

the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide,”

After perusal of the said section 126(1)(b) it is seen that TDR is one of the form of acquisition of land required for public purposes specified in this Act.

b. The said land is CTS No.738B/1A (part) of village Malad (E) is occupied by petitioner and there are 5-6 structures on it. Hence, the petitioner/ owner of the land if agrees to hand over the said land under reservation of 18.30m DP road for Garden/Park (ROS 1.5) without any encumbrance i.e. after demolition of the structures on his own and well levelled & compounded. As per DCPR-2034 Regulation No.32, Table 12-A, Sr.No.1 this office will issue 2 times TDR for area handed over under reservations to BMC subject to title verification from Law Officer of BMC, area certification from CTSO, Malad and after receipt of remarks for no compensation paid earlier/FSI void the acquisition process initiated by SRA over the property under reference.

5. In view of the same, the detail report of this office is submitted as under:

a. I say that the land bearing CTS No.7388/1A(part) of village Malad (E) of area Adm.440 sq.mt. is in the name of petitioners and others. The said land is reserved for Garden/Park (ROS 1.5) and 18.30m wide DP road in DP2034.

b. The relevant provision of Section 126(1)(b) is necessary to quote for ease of reference:

126. Acquisition of land required for public purposes specified in plans-

(1)(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index utilization from other dept. i.e. from Collector (MSD), SRA, BP. P/North ward office and NOC from ULC.

c. Further, if the owner of said land hands over area under reservation with the encumbrances As per DCPR-2034 Regulation No.32, Table 12-A, Sr.No.4 benefit up to extent of 50% of BUA as per zonal (basic) FSI of the plot area will be issued subject to conditions mentioned above and the structures on the land will be rehabilitated by the concerned ward of BMC. “

4. On the aforesaid backdrop, in our opinion, two questions would arise for consideration; **firstly**, merely because about 5 to 6 structures exists on the petitioner's land, whether the petitioner can perform be foisted by either the SRA or the slum society formed by the slum dwellers of the adjoining land or the developer appointed by such society, to include the petitioner's land in the slum scheme being implemented on the adjoining land. More particularly, when there also exists a DP reservation on the petitioner's land as noted hereinabove; **secondly**, on what consideration in law, merely because the adjoining land which has 128 slum structures being notified as slum under Section 3C of the Slum Act, was it right and proper for the SRA to ignore the position in law and more particularly, what has been observed in the decision of the Division Bench of this Court dated 9 August 2024, rendered on Writ Petition No.1060 of 2024 filed by the petitioner (supra) so as to issue the impugned notice under Section 13(2) of the Slum Act, on the presumption that the petitioner's land needs to be nonetheless classified as a slum rehabilitation area qua its 5 to 6 structures.

5. Such issues which involve application of principles of law as laid down by this Court and the Supreme Court for the writ petitions to be decided on its merits.

6. In the peculiar facts and circumstances of the case and in the light of the above observations, we are of the opinion that a strong prima facie case has been made out by the petitioner for interim protection. Accordingly, considering the interest of justice and the valuable rights of the petitioner guaranteed under Article 300A of the Constitution, we are inclined to pass the following order:-

ORDER

- (i) Rule. Respondents waive service. Hearing expedited.
- (ii) If the respondents desire to file further affidavits for final hearing of the petition, they shall do the same within a period of eight weeks.
- (iii) Pending the final adjudication of this petition, we direct status quo as of today to be maintained in respect of the petitioner's land, and/or the petitioner's land shall not form part of any slum rehabilitation scheme being undertaking on the adjoining plot either at the hands of the owners of the adjoining plots or by the developer appointed by any society of slum dwellers.

7. At this stage learned Counsel for the petitioner prays for leave to amend the petition to incorporate further prayers. We permit the petitioner to amend the petition. Let the same be amended within two weeks from today and amended copies of the petition be served on all the respondents.

8. Reply affidavits be filed within six weeks from today.

9. All contentions of the parties on the final hearing of the writ petition are expressly kept open.

10. We clarify that the aforesaid order would not prevent the slum scheme being undertaken on the adjoining land with which the petitioner is not concerned, if the same is otherwise being undertaken in accordance with law.

11. We also direct the Chief Executive Officer, SRA to place on record as to how the petitioner's land which has 5 to 6 structures could be declared as 'Slum'

merely because the adjoining land is declared as slum. At this stage we are informed by learned Counsel for SRA that all these decisions are not taken by the Chief Executive Officer and they are taken by the subordinate officers. We are quite surprised at this submission. This position also be made clear in the affidavit of the SRA as to whether the officers subordinate to the Chief Executive Officer take such decisions and under what authority in law. Let such affidavit be filed by the Chief Executive Officer and the same be filed within one week from today. Only for this purpose, we adjourn the proceeding to **9 September 2025**.

(MANJUSHA DESHPANDE, J.)

(G. S. KULKARNI, J.)