



Pradnya

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION NO. 700 OF 2003**

1. **YUSUF YUNUS KANTHARIA,**  
of Bombay, Indian Inhabitant,  
residing at A-17/18,  
Samsuddin Nagar, Jarimari  
Andheri Kurla Road, Sakinaka,  
Mumbai- 400 072.

**... PETITIONER**

~ VERSUS ~

1. **BOMBAY HOUSING AND AREA  
DEVELOPMENT AUTHORITY,**  
having office at Grihanirman Bhavan,  
Kala Nagar, Bandra (East),  
Bombay - 400 051.
2. **MAHARASHTRA HOUSING AND  
AREA DEVELOPMENT  
AUTHORITY,**  
having office at Griha Nirman  
Bhavan, Kala Nagar, Bandra  
(East), Mumbai - 400 051.
3. **SPECIAL LAND ACQUISITION  
OFFICER,**  
Maharashtra Housing and Area  
Development Authority, Bombay,  
having office at Griha Nirman  
Bhavan, Kala Nagar,  
Bandra (East), Mumbai - 400 051.

4. **MAHARASHTRA HOUSING AND  
AREA DEVELOPMENT BOARD,**  
having office at Griha Nirman  
Bhavan, Kala Nagar,  
Bandra (East), Mumbai – 400 051.
5. **STATE OF MAHARASHTRA,**  
through its Housing and Special  
Assistant Department,  
Mantralaya, Mumbai – 400 032.

**... RESPONDENTS**

**APPEARANCES**

<b>FOR THE PETITIONER</b>	<b>Mr. Omprakash Pandey, a/w Mr. Rahul Pandey, Ms. Pramila Pandey, Mr. Alok Singh, i/b Pandey &amp; Co.</b>
<b>FOR RESPONDENT- STATE</b>	<b>Mr. Nishigandh Patil, AGP.</b>
<b>FOR RESPONDENT- MHADA</b>	<b>Mr. P. G. Lad, a/w Ms. Sayli Apte, Ms. Shreya Shah.</b>

**CORAM : M. S. Sonak &  
Kamal Khata, JJ.**

**RESERVED ON : 23rd July 2024  
PRONOUNCED ON : 1st August 2024**

**JUDGMENT (Per M S Sonak J):-**

1. Heard learned counsel for the parties.
2. The Petitioner was the owner of a plot of land measuring 979 sq. metres bearing survey No.314 (part) Dharavi Division, Bombay,

together with the chawl known as Kantharia Chawl at 29-C, Kattawadi, Dharavi Division, Dharavi Cross Lane (Municipal Ward No.GN-6322), hereafter referred to as the “said property.”

3. By order dated 14th July 1988 issued by Special Land Acquisition Officer (SLAO), Maharashtra Housing and Area Development Authority (“MHADA”) (Respondent No.3), the Petitioner’s said property was acquired by MHADA under Section 93(5) of the Maharashtra Housing and Area Development Act, 1976 (“MHADA Act”). The Petitioner has raised several objections regarding such an acquisition. However, at this point in time, such challenges cannot be gone into. The only grievance that survives consideration is that the Petitioner has not been paid compensation whatsoever for the acquisition of the said property, though almost 36 years have passed. This is quite callous and insensitive, apart from the same violating Articles 14, 21 and 300-A of the Constitution.

4. This Petition was first considered by the Division Bench comprising R. M. Lodha, J. (as His Lordship then was) and A. S. Aguiar, J. on 22nd July 2003. The matter was adjourned to enable the Respondents to file their affidavits.

5. The SLAO, MHADA (Respondent No.3), filed an affidavit on 2nd August 2003. After perusing the same, the Division Bench of RM Lodha and AS Aguiar JJ made the following order on 5 August 2003, which is transcribed below for the convenience of reference.

*“Heard Mr. Mishra, learned counsel for the petitioner  
and Mr. Mattos, learned A.G.P.*

2. *We are distressed to observe that the reply affidavit filed by Special Land Acquisition Officer, MHADA on 2nd August, 2003 virtually leads us nowhere. The said respondent even does not know whether for compulsory acquisition of petitioner's land of which possession was taken way back in the year 1989, the award has been passed or not. There is no justification in the submission that the original records of the acquisition are not traceable. An expropriated owner cannot be defeated of his right of compensation because of the deficiencies in the functioning in the office of Special Land Acquisition Officer. In the affidavit it is stated thus -*

*“The possession of the said land and the building thereon was taken by the Collector, Survey Branch and the same was handed over to the Executive Engineer, UR-II, PMGP, MHADA on 5th June, 1989 and the said fact was thereafter intimated to the Superintendent, Bombay City Survey and Land Records, vide his letter dated 5th September, 1989. I say that since the records are presently pending with the SLAO, Bombay Building Repairs and Reconstruction Board, it would have to be verified after going through the entire gamut of records whether any Award has been passed and this fact cannot be ascertained unless the original records are traceable. I say that the concerned officer from the office of the Executive Engineer, RU-III, Bombay Building Repairs & Reconstruction Board, who is on deputation in my office has been strenuously taking all steps along with the concerned staff of the SLAO, Bombay Building Repairs & Reconstruction Board, to trace out the original file. It is humbly submitted that a period of 4 weeks be granted to my office to trace out the said records to verify whether any Award has been passed. In the event, the said records are traced and an Award has been passed, then the said fact shall be communicated to the respondent No.1 to deposit the amount with my office within a period of 4 weeks*

*thereafter. In the event, the said records are not traceable, then my office would have to follow the procedure prescribed for determining the compensation and pass the Award which can be done either by obtaining the necessary information in respect of the prevailing rent for the relevant period from the office of the Municipal Corporation of Greater Mumbai or by calling upon the petitioner to produce the relevant rent receipts for the period of 5 years prior to acquisition proceedings. I say that upon completing this exercise, my office shall thereafter pass an Award within a period 4 weeks thereafter.”*

3. *We are not at all satisfied with the aforesaid reply and direct the respondent No.3 to make all efforts in tracing the original records of the acquisition proceedings without any further delay and positively within two weeks from today and in the light thereof, file fresh affidavit informing the court whether award for compulsory acquisition of petitioner’s land/property has been passed and payment made or not. The respondent No.3 is also directed to remain personally present before this court on the next date of hearing with all available record.*

4. *S. O. two weeks.*

*The parties may be provided an ordinary copy of this order duly authenticated by Court Associate on payment of usual copying charges.”*

6. The matter was then taken up before a Division Bench with a different composition on 19th August 2003, on which date “Rule” was issued in this Petition. After the issue of Rule, none of the Respondents bothered to file any further affidavits in this matter. Considering the controversy involved and the length of time for which this Petition was pending, we took up this matter for final

disposal on 23rd July 2024 and, upon hearing the arguments, reserved the matter for orders.

7. The matter had earlier come up before our Bench on 15th July 2024, on which date we requested the learned AGP to obtain instructions on whether any compensation was paid to the Petitioner in the meantime. The matter was adjourned to 19th July 2024 to enable the learned AGP to obtain instructions.

8. On 19th July 2024, the learned AGP failed to obtain any instructions but merely sought a further adjournment until 23rd July 2024. Therefore, the matter was adjourned to 23rd July 2024, clarifying that the AGP must either obtain instructions or instruct the concerned officer to remain present in the Court with all instructions and records.

9. On 23rd July 2024, the learned AGP stated that since this was an acquisition by MHADA, it was for MHADA to clarify whether compensation was paid or not. Mr. Lad, learned counsel for MHADA, did not dispute that no compensation was paid to the petitioner to date. He relied on the affidavit filed by Special Land Acquisition Officer, MHADA (Respondent No.3) on 2nd August 2003, even though scathing comments were made on this affidavit by the Co-ordinate Bench of R. M. Lodha, J. (as His Lordship then was) and A. S. Aguiar, J. in their order dated 5th August 2003. In short, there was no defence whatsoever for the failure to pay any compensation to the Petitioner, even though the said property was acquired by orders dated 8th July 1988 and 14th July 1988.

10. The affidavit filed by Dattatray Sambhaji Doiphode, Special Land Acquisition Officer, MHADA (Respondent No.3), states that the impugned acquisition orders were made after following all due procedures and complying with the principles of natural justice. The affidavit admits that the possession of the said property along with the chawl thereof was taken by the Collector, Survey Branch and handed over to the Executive Engineer, UR-II, PMGP, MHADA on 5th June 1989. The affidavit states that this fact was thereafter intimated to the Superintendent, Bombay City, Survey and Land Records, vide letter dated 5th September 1989.

11. The affidavit then states as follows:-

*“I say that since the records are presently pending with the SLAO, Bombay Building Repairs and Reconstruction Board, it would have to be verified after going through the entire gamut of records whether any Award has been passed and this fact cannot be ascertained unless the original records are traceable. I say that the concerned officer from the office of the Executive Engineer, RU-III, Bombay Building Repairs & Reconstruction Board, who is on deputation in my office has been strenuously taking all steps along with the concerned staff of the SLAO, Bombay Building Repairs & Reconstruction Board, to trace out the original file. It is humbly submitted that a period of 4 weeks be granted to my office to trace out the said records to verify whether any Award has been passed. In the event, the said records are traced and an Award has been passed, then the said fact shall be communicated to the respondent No.1 to deposit the amount with my office within a period of 4 weeks thereafter. In the event, the said records are not traceable, then my office would have to follow the procedure prescribed for determining the compensation and pass the Award which can be done either by obtaining the necessary information in respect of the prevailing rent for the relevant period from the office of the*

*Municipal Corporation of Greater Mumbai or by calling upon the petitioner to produce the relevant rent receipts for the period of 5 years prior to acquisition proceedings. I say that upon completing this exercise, my office shall thereafter pass an Award within a period 4 weeks thereafter.”*

12. The records have, to date, not been traced. There is no Award for determining the compensation payable to the Petitioner after his property was acquired in July 1988. The affidavit states that in the event the records were not traceable, then the 3rd Respondent would have to follow the procedure prescribed for determining the compensation and pass the Award, which could be done either by obtaining the necessary information in respect of the prevailing rent for the relevant period from the office of the Municipal Corporation of Greater Mumbai (“MCGM”) or by calling upon the Petitioner to produce the relevant rent receipts for the period of 5 years prior to the acquisition proceedings. The 3rd Respondent had, in fact, given assurance to this Court that on completing such exercise, an Award would be made within four weeks.

13. Unfortunately, though 36 years have passed since the acquisition of the Petitioner’s property, neither have the records been traced, nor is the exercise of determining and paying compensation completed by the Respondents. Neither in the affidavit filed on record nor in the oral submissions made before this Court a shred of justification is offered for this inordinate and insensitive delay in taking away a citizen’s property and not paying him any compensation for almost 36 years. Such conduct on the Respondent’s part amounts to virtual expropriation of a citizen’s property without the authority of law and without paying any



compensation. Such an action violates Articles 14, 21 and 300-A of the Constitution as was held by the Hon'ble Supreme Court in the case of **Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others**<sup>1</sup>.

14. Mr Lad learned counsel for MHADA, submitted that the basis for determining the amount for acquiring lands in municipal areas is governed by Section 44 of the MHADA Act. He submitted that the Special Land Acquisition Officer ("SLAO") (MHADA)-the 3rd Respondent, will now determine this amount after granting the Petitioner reasonable opportunity within some time-bound schedule that this Court could direct. He submitted that the land is now already vested in the State Government/MHADA, and therefore, the relief of quashing the acquisition or restoring the land to the Petitioner has become infructuous and, in any event, should not be granted at this point in time.

15. Though this is a case of callousness on the part of the State Government and MHADA, considering the larger public interest involved, we are not inclined to interfere with the acquisition finalised in 1989 or direct the restoration of possession of the acquired property to the Petitioner. The grant of any such relief might not even be feasible at this point in time because the Petitioner's acquired land must have been utilised for the purpose for which it was acquired. However, the Petitioner must be suitably compensated at the earliest for acquiring his land and denial of compensation for the past 36 years. As noted earlier, there is not

---

<sup>1</sup> (2013) 1 SCC 353

even a shred of justification for this inordinate and unexplained delay in paying compensation to the Petitioner for the past 36 years.

16. Section 44 of the MHADA Act, referred to by Mr Lad, provides that where any land, including any building thereon, is acquired and vested in the State Government under Chapter V of the MHADA Act and such land is situated in any area within the jurisdiction of any Municipal Corporation or Municipal Council, the State Government shall pay for such acquisition an amount which shall be determined in accordance with the provisions of Section 44 of the MHADA Act.

17. Sub-section (2) of Section 44 provides that where the amount has been determined with the concurrence of MHADA by agreement between the State Government and the persons to whom it is payable, it shall be determined and paid in accordance with such agreement. In the present case, not even any attempt was made to reach to some agreement with the Petitioner on the quantum of compensation due and payable.

18. Sub-section (3) of Section 44 provides that where no agreement can be reached, the amount payable in respect of any land acquired shall be an amount equal to one hundred times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification referred to in Section 41 as may be determined by the Land Acquisition Officer ("LAO"). Sub-section (4) of Section 44 provides that the net average monthly income referred to in sub-section (3) shall be calculated in the manner and

in accordance with the principles set out in the First Schedule to the MHADA Act.

19. Sub-section (5) of Section 44 provides that the LAO shall, after holding an inquiry in the prescribed manner, determine in accordance with the provisions of sub-section (4) the net average monthly income actually derived from the land. The LAO shall then publish a notice in a conspicuous place on the land and serve it in the prescribed manner, calling upon the owner of the land and every person interested therein to intimate to him, before a date specified in the notice, whether such owner or person agrees to the net average monthly income actually derived from the land as determined by the LAO. If such owner or person does not agree, he may intimate to the LAO before the specified date what amount he claims to be such net average monthly income.

20. Sub-section (6) of Section 44 provides that any person who does not agree to the net average monthly income as determined by the LAO under sub-section (5) and the amount for acquisition to be paid on that basis and claims a sum in excess of the amount may prefer an appeal to the Tribunal, within thirty days from the date specified in the notice referred to in subsection (5). Sub-section (7) of Section 44 provides that on appeal, the Tribunal shall, after hearing the appellant, determine the net average monthly income and the amount to be paid on that basis, and its determination shall be final and shall not be questioned in any court.

21. Section 45 of the MHADA Act is concerned with the portion matter of the compensation, which is not quite relevant in the present proceedings. Section 46 of the MHADA Act provides

that after the amount for acquisition has been determined, the LAO shall, on behalf of the State Government, tender payment of and pay the amount to the persons entitled thereon. Sub-section (2) of Section 46 provides that if the persons entitled to the amount do not consent to receive it, or if there be any dispute as to the title to receive the same or as to the apportionment of it, the LAO shall deposit the amount in Greater Bombay, in the Bombay City Civil Court, and in any other municipal area in the Court of the District Judge, and that Court shall deal with the amount so deposited in the manner laid down in Sections 32 and 33 of the Land Acquisition Act, 1894.

**22.** Section 47 of the MHADA Act empowers the LAO to require any person to furnish such relevant information in his possession as may be specified in the LAO's order for the purpose of determining the amount for acquisition or for apportionment thereof. The LAO shall, while holding an inquiry under sub-section (5) of Section 44 of the MHADA Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the matters specified under sub-clauses (a) to (e).

**23.** Section 48 of the MHADA Act provides that when the amount for acquisition is not paid or deposited on or before taking possession of the land, the LAO, on behalf of the State Government, shall pay the amount determined with interest thereon, from the date of taking possession until the amount is paid or deposited, at the rate of 4 per cent per annum for the first six months and thereafter at the rate of 9 per cent per annum.

24. Despite the above provisions, the SLAO has failed to discharge his statutory duties and determine and compensate the Petitioner. The right to receive compensation towards the compulsory acquisition of the Petitioner's property cannot be defeated based on the insensitive excuse about misplaced case papers. Despite this Court granting the Respondents more than sufficient time by its order dated 5th August 2003, none of the Respondents have bothered to trace out the records or take necessary steps towards determining and paying the compensation amount to the Petitioner.

25. In fact, there is complete non-compliance to the directions issued by the Co-ordinate Division Bench in its order dated 5<sup>th</sup> August 2003. Now that the matter was taken up for final hearing, Mr Lad could not submit anything beyond what was stated in the SLAO's affidavit filed on 2nd August 2003. Mr. Lad, however, submitted that the SLAO could now be directed to determine the compensation amount consistent with the provisions of Chapter V of the MHADA Act in general and Section 44 in particular. He submitted that some time-bound directions be issued so there is no further delay in determining and paying compensation to the Petitioner.

26. In our judgment, the Respondents, particularly the 3rd Respondent, must now be directed to determine the compensation payable to the Petitioner. However, until such determination is made, considering the gross facts that the Petitioner's property was acquired in 1988-89 and that the Petitioner has not been paid any compensation to date, some directions will have to be issued to immediately pay the Petitioner some compensation in the interim.

To leave the Petitioner once again to the MHADA's mercy without immediate payment of any compensation would not be appropriate in the gross facts of this case.

27. In **Tukaram Kana Joshi and others** (supra), the Petitioners' properties stood notified under Section 4 of the Land Acquisition Act, 1894, on 6th June 1964 for an industrial development project. No subsequent steps in the acquisition proceedings were taken up thereafter, and the same lapsed. The predecessors-in-interest of the Petitioners were illiterate farmers who were absolutely unaware of their rights and, hence, too inarticulate to claim them. Hence, they could be persuaded by the respondent authorities to hand over actual physical possession of their lands to the Maharashtra Industrial Development Corporation ("MIDC") in 1964. The Petitioners, after about 24 years, petitioned the High Court for the award of compensation, which was dismissed on the grounds of delay, laches and the inability of the Petitioners to produce certain documents. The Petitioners, therefore, appealed to the Hon'ble Supreme Court.

28. The Hon'ble Supreme Court held that the Petitioners could not have been non-suited on the grounds of delay and non-availability of records. The Court held that depriving the Petitioners of their immovable properties was a clear violation of Article 21 of the Constitution, and they were seriously discriminated against qua other persons whose lands were acquired and compensation paid. The Court held that this kind of discrimination not only breeds corruption but also disrespect for governance, as it leads to frustration and, to a certain extent, forces persons to take the law into their own hands. Such discrimination

cannot be accepted and excused as it remains a slur on the system of governance and justice alike and an anathema to the doctrine of equality, which is the soul of our Constitution. The Court held that in a welfare State, “*statutory authorities are bound not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons*”.

29. The Hon’ble Supreme Court noted that the State’s functionaries took possession of the Petitioners’ lands without any sanction of law. The Petitioners had repeatedly asked that they be granted compensation for the deprivation of their properties. The Court held that the State must either comply with the procedure laid down for acquisition, requisition, or any other permissible statutory mode. The State, especially a welfare State governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution.

30. The Court explained the distinction between the principle of “*eminent domain*” and “*police power*” of the State. Under certain circumstances, the police power of the State may be used temporarily to take possession of property. Still, no absolute power is vested in the State to take over a citizen’s property without paying adequate compensation towards such a takeover. The Court said that such actions almost amount to the State encroaching on the property of the private citizens in the exercise of “*absolute power*”, which in common parlance is also called abuse of power or use of muscle power. The Court observed that in the case before it, the authorities have treated the Petitioners-land owners as ‘*subjects*’ of medieval India but not as ‘*citizens*’ under our constitution.

31. The Court held that the Petitioners whose lands were taken over by the State authorities could not have been deprived of their legitimate dues for about half a century. The Court held that “*Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals, etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage*”.

32. The Court referred to **K. Krishna Reddy v. Collector (LA)**<sup>2</sup>, where it was held that “*After all, money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one-half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time.*”

33. In **Dharnidhar Mishra (D) and Another vs. State of Bihar and Others**<sup>3</sup>, the Hon’ble Supreme Court was concerned with a

---

<sup>2</sup> (1988) 4 SCC 163 : AIR 1988 SC 2123

<sup>3</sup> 2024 SCC OnLine SC 932.



case where a citizen's property was acquired. Still, no compensation was determined or paid for almost 42 years. The Hon'ble Supreme Court held that in 1976, when the Petitioner's property was acquired, the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. This right could not have been deprived without due process of law and upon just and fair compensation. The Court held that though the right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, it continued to be a human right in a welfare State and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. *This means that the State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article.* [See: K. T. Plantation (P) Ltd. vs State of Karnataka, (2011) 9 SCC 1].

**34. In Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chenai<sup>4</sup>,** the Hon'ble Supreme Court held that the State, in exercising its power of "eminent domain," may interfere with a person's right to property by acquiring it. However, such an acquisition must be for a public purpose, and reasonable compensation must be paid.

**35. In N. Padmamma v. S. Ramakrishna Reddy<sup>5</sup>,** the Hon'ble Supreme Court held that *"If the right of property is a human right as also a constitutional right, the same cannot be taken away except in*

---

<sup>4</sup> (2005) 7 SCC 627 : 2005 SCC OnLine SC 1361

<sup>5</sup> (2008) 15 SCC 517 : 2008 SCC OnLine SC 953

*accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed”.*

36. In **Delhi Airtech Services (P) Ltd. vs. State of U.P.**<sup>6</sup>, the Hon’ble Supreme Court, while recognising the right to property as a basic human right, held that “*It was accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. “Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists”.*

37. Most of the above decisions were considered by the Hon’ble Supreme Court in **Dharnidhar Mishra (D) and Another** (supra). The Court held that in cases where properties were acquired without payment of just and fair compensation, the Petition should not be rejected for delay and laches. The Court held that delay and laches cannot be raised in a case of continuing cause of action or if the circumstances shock the judicial conscience of the Court. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice and not defeat it. [See : P. S. Sadasivaswamy v. State of T. N., (1975) 1 SCC 152].

---

<sup>6</sup> (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673

38. In the present case, there is no question of any delay and laches attributable to the Petitioner. Fortunately, no such plea is raised or pressed by any of the Respondents. Instead, this is a case of gross, inordinate, and unexplained delay by the statutory authorities in paying compensation to the Petitioner for acquiring his property in 1988-1989. The action, or rather, this inaction of the statutory authorities, violates the Petitioner's Constitutional and Human rights. The MHADA must be made to compensate the Petitioner for infringing his Constitutional and Human rights.

39. Therefore, by applying the law laid down by the Hon'ble Supreme Court to the gross facts of the present case, we have no hesitation in concluding that the Respondents (State and MHADA), by acquiring the Petitioner's property in 1989-90 but not paying the Petitioner any compensation till date have violated the Petitioner's human right and constitutional right. Though, for reasons discussed above, this will not be a fit case to direct the Respondents to restore the possession of the Petitioner's acquired property to the Petitioner, this is a fit case to direct the Respondents to determine the compensation expeditiously and in the interim pay some compensation to the Petitioner immediately.

40. Based on instructions, learned counsel for the Petitioner submitted that the Petitioner's property measured about 979 sq. mtrs. and it had a chawl known as Kantharia Chawl constructed on it. He submitted that the rooms in the chawl were let out to several persons and the Petitioner, in 1988-89 would earn at least Rs.10,000/- per month. There is no dispute about the area and location of the acquired property. Considering the location of the property and its area, there is no reason not to accept the statement

that the Petitioner was earning at least Rs 10000/- per month by renting the chawl rooms until the SLAO carries out the exercise contemplated by Section 44 of the MHADA Act.

41. Based on the above and going by the principles set out in Section 44 read with the First Schedule to the MHADA Act, the compensation payable to the Petitioner would work out to approximately Rs.6,00,000/- as of 1988-89. For the first six months, the interest payable on this amount would have been 4 per cent per annum. But beyond six months, the interest payable would be at the rate of 9 per cent per annum. Thus, as of today, the Respondents must pay the principal amount of Rs.6,00,000/- and interest of Rs.18,90,000/-, that is, the total amount of Rs.24,90,000/-, to the Petitioner immediately, within 15 days from today. This figure is rounded off to Rs 25,00,000/- In addition, the MHADA must pay Rs 500,000/- to the Petitioner for violating his Constitutional and Human rights.

42. Mr Pandey submitted that the Petitioner only earned a minimum of Rs.10,000/- per month by letting out the chawls. Still, the Petitioner could earn much more each month from the entire acquired property of 979 sq. mtrs. He submitted that compensation must be determined having regard to inflation and the purchasing power of money. He submitted that the compensation must also be paid for the violation of human rights and costs incurred by the Petitioner towards litigation.

43. Our above determination of Rs 25,00,000/—is essentially ad hoc. Ultimately, the SLAO will have to determine the compensation based on the provisions of Section 44 read with the

First Schedule to the MHADA Act by adjusting this amount of Rs 25,00,000/-. Though we do not reasonably foresee any such eventuality, should the determined compensation amount be less than Rs.25,00,000/-, the Petitioner will have to restore the excess to the SLAO / MHADA unless the Petitioner wishes to seek enhancement in terms of the provisions of Sections 44 and 46 of the MHADA Act. But there shall be no question of adjusting the compensation of Rs 5,00,000/- now awarded to the Petitioner for infringing his Constitutional and Human Rights.

44. Therefore, the quantum of Rs.25,00,000/- now determined by us, is not final on either side. Still, the same is an ad-hoc determination considering the location and area of the acquired property. Besides, there is no dispute that the Petitioner had constructed a chawl on the acquired property, and it is reasonable to expect that the rooms in the chawl were let out against rent or license fees. Therefore, all contentions of the Petitioner and the Respondents regards the quantum of compensation are kept open.

45. This Writ Petition is now disposed of by issuing the following order:-

### **ORDER**

(a) The Respondents 1 to 4 must, within 15 days from today, pay the Petitioner an amount of Rs.25,00,000/- as interim compensation towards the acquisition of the Petitioner's property in 1988/89 (without payment of any compensation till date);

(b) In addition, the MHADA must pay Rs.5,00,000/- to the Petitioner for violating his Constitutional and Human rights also within 15 days from today;

(c) The 3rd Respondent (SLAO) must hold an inquiry and determine in accordance with the provisions of sub-section (4) the net average monthly income actually derived from the acquired property. The SLAO must then intimate the Petitioner in writing and find out whether the Petitioner agrees to the determination made by the SLAO. If the Petitioner disagrees, he should inform the SLAO of the amount he claims such net average monthly income should be. This exercise must be completed within six months from today;

(d) If the Petitioner does not agree to the net average monthly income determined by the SLAO and the amount of compensation to be paid to him on that basis, the Petitioner will be at liberty to appeal to the Tribunal within 30 days from the date of his intimation to the SLAO about the net average monthly income claimed by him;

(e) If the Petitioner institutes an Appeal before the Tribunal, the Tribunal is directed to dispose of such Appeal within four months of its institution;

(f) After determining the compensation by the SLAO and/or the Tribunal, if the Petitioner still does not consent to receive the amount so determined, the SLAO must deposit this amount in the Bombay City Civil Court at the earliest.

For this purpose, the SLAO will be entitled to make adjustments for an amount of Rs.25,00,000/- to be paid to the Petitioner under this order. After that, it will be for the Bombay City Civil Court to deal with the amount so deposited in the manner laid down in Sections 32 and 33 of the Land Acquisition Act of 1894. However, there shall be no question of adjusting the compensation of Rs.5,00,000/- now awarded to the Petitioner for infringing his Constitutional and Human Rights;

(g) The compensation, with interest, must be paid to the Petitioner as expeditiously as possible and, in any event, within an outer limit of one year from today.

46. The Rule is made absolute to the above extent. The Respondent MHADA shall pay the cost of Rs.1,00,000/—to the Petitioner within 15 days.

47. The MHADA must file and serve its compliance report on or before 30 August 2024 regarding payment of Rs.31,00,000/- (Rs.25,00,000/- interim compensation, Rs.5,00,000/- compensation for infringing Constitutional and Human Rights., and Rs.1,00,000/- costs.) to the Petitioner.

48. All concerned, including the SLAO and MHADA, must act on an authenticated copy of this order.

**(Kamal Khata, J)**

**(M. S. Sonak, J)**