

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 690 OF 2024

**1. MN KOLI CO-OPERATIVE
HOUSING SOCIETY LTD,**
Through its Chairman/Secretary,
1463, Mahim Causeway Road, Mahim,
Mumbai – 400 016.

... PETITIONER

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
Through the Principal Secretary,
Urban Development Department
through The Government Pleader Office,
Bombay High Court, PWD Building,
Mumbai.
- 2. CHIEF EXECUTIVE OFFICER,**
Slum Rehabilitation Authority,
Administrative Building, Pro Anant
Kaneekar Marg, Bandra (E),
Mumbai – 400 051.
- 3. MUNICIPAL CORPORATION OF
GREATER MUMBAI,**
Annexe Building, Mahanagarpalika Marg
No. 1, Fort, Mumbai – 400001.
- 4. THE APEX GRIEVANCE REDRESSAL
COMMITTEE,**
Government of Maharashtra,
Administrative Building, Pro Anant
Kaneekar Marg, Bandra (E), Mumbai – 400
051.

5. **ACCANOOR ASSOCIATES,**
having its office at MN Koli CHS Ltd,
1463, Mahim Causeway Road,
Mahim, Mumbai – 400 016.
6. **HRUB REALTY PVT LTD,**
having office at 2914/15, 29th Floor,
A Wing, Marathon Futurex, Mafatlal Mill
Compound, NM Joshi Marg,
Lower Parel (E), Mumbai – 400 051.

... **RESPONDENTS**

WITH

WRIT PETITION NO. 834 OF 2024

2. **HRUB REALTY PVT LTD,**
through its Director, having its office
at 209, 2nd Floor, Plot No. 61, Amit
Industrial Estate, Dr SS Rao Road,
Parel, Mumbai – 400 012.
3. **BASTIRAM K AVHAD,**
An adult, Indian citizen and inhabitant
Director of Hrub Realty Pvt Ltd,
having his office at 209, 2nd Floor,
Plot No. 61, Amit Industrial Estate,
Dr SS Rao Road, Parel,
Mumbai – 400 012.

... **PETITIONERS**

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
through the Principal Secretary,
Urban Development Department,
through the Government Pleader
Office, Bombay High Court,
PWD Building, Mumbai.

2. **CEO, SLUM REHABILITATION AUTHORITY,**
Administrative Building, Prof Anant Kanekar Marg, Bandra (E),
Mumbai – 400 051.
3. **THE APEX GRIEVANCE REDRESSAL COMMITTEE,**
Government of Maharashtra,
Administrative Building, Pro Anant Kanekar Marg, Bandra (E),
Mumbai – 4000 051.
4. **ACCANOOR ASSOCIATES,**
having its office at 503 and 603,
God Gift Tower, Hill Road and SV Road Junction, Next to Lucky Restaurant, Bandra (W),
Mumbai – 400 016.
5. **MN KOLI CO-OPERATIVE HOUSING SOCIETY LTD,**
Through its Chairman/Secretary,
1463, Mahim Causeway Road, Mahim,
Mumbai – 400 016.
6. **MUNICIPAL CORPORATION OF GREATER MUMBAI,**
Annexe Building, Mahanagarpalika Marg No. 1, Fort, Mumbai – 400001.

... RESPONDENTS

APPEARANCES

**FOR THE PETITIONER
IN WP/834/2024.**

Mr Ashish Kamat, Sr Advocate,
*with Rupesh Geete & Jaiveer
Dhakan, i/b Satyaki Law
Associates.*

**FOR PETITIONERS IN
WP/690/2024**

Dr Milind Sathe, Senior Advocate,
*with Mayur Khandeparkar,
Vaibhav Charalwar, Ajay
Vazirani, Shiraj Satelkar, Ms
Rakha Takkar, Ms Karen Kaya
& Hamza Mir, i/b Lexicon Law
Partners.*

**FOR THE RESPONDENT-
STATE IN WP/834/2024**

Mr Manish Upadhye, AGP.

**FOR THE RESPONDENT-
STATE IN WP/690/2024**

Ms Lavina Kriplani, AGP.

**FOR RESPONDENT NO. 2
IN BOTH WRIT
PETITIONS**

Mr Jagdish G Aradwad (Reddy).

**FOR RESPONDENT NO. 4
IN WP/690/2024**

Mr Abhijit Kulkarni,
*with Krushna Jaybhoy, Gaurav
Shahane & Ms Sweta Shah.*

**FOR RESPONDENT NO. 5
IN BOTH WRIT
PETITIONS**

Mr Swapnil Bangur,
*with Sagar Shetty & Ms
Shraddha Nagaonkar, i/b Sagar
Shetty.*

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 19th March 2024

ORAL JUDGMENT (Per GS Patel J):-

1. There are two Writ Petitions. Writ Petition No 690 of 2024 is by the MN Koli Co-operative Housing Society Limited. This is a slum society. It seeks these two reliefs:

“a. This Hon’ble Court be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction in the nature of Certiorari, calling for the papers and proceedings pertaining to Application No. 165 of 2021 filed by Accanoor before the AGRC and the Impugned Order dated 17th November 2023, being Exhibit “A”, and after examining the validity, legality and propriety of the said Impugned Order, be pleased to quash and set aside the same;

b. This Hon’ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of a Mandamus, directing the Slum Rehabilitation Authority/CEO SRA to blacklist Accanoor Associates and not accept any further slum schemes from such developer.”

2. There is a companion Writ Petition No 834 of 2024 filed by a developer called Hrub Realty Pvt Ltd (“**Hrub**”) represented by Mr Kamat. The prayers in that Writ Petition are identical.

3. Dr Sathe for the Society and Mr Kamath for Hrub wisely do not press prayer clause (b).

4. Mr Bangur appears for the society’s and Hrub’s common enemy, one Accanoor Associates, said to be a rival developer. The Society and Hrub are aggrieved by an order of 17th November 2023 by the Apex Grievance Redressal Committee (“**AGRC**”). By that order the AGRC reversed, for the second time in a row, an order of 7th October 2021 passed by the Chief Executive Officer (“**CEO**”), Slum Rehabilitation Authority (“**SRA**”).

5. The shortest possible background must suffice. The slum project is at Mahim. There is a composite building with three wings in three phases, planned to house a total of 348 slum dwellers in phases. One phase is to have 180 rehab tenements. Another phase will house 85 and a further 75 are presently still in slum structures.

6. We have the somewhat dubious assistance of Mr Kamat's list of dates. Concise it is not. There are 77 items in this chronology Spread over 13 densely printed pages, it has 77 dates. Only five are relevant. There is no dispute that Accanoor was the first anointed developer. Its appointment is of 3rd July 1985 when the Society entered into a Development Agreement with it.

7. Time passed.

8. The project did not get completed on schedule.

9. On 7th October 2021, the CEO of SRA passed an order in a proceeding under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act 1971 ("**Slums Act**"). The Respondents to that proceeding were Accanoor Associates and the Society. Hrub was not yet on the scene. The proceedings were taken up suo motu. The facts were set out. The CEO of SRA noted the rival arguments on both sides and particularly the contentions of the developer that there were many changes in the law, but it was 'ready and willing' to complete the process of shifting of tenants and said that it would complete the rehab building by August 2025. Accanoor asked that the show cause

notice be dropped. From page 679 to 681 is the reasoning of the CEO of SRA. In our view, it is admirably compact and precise. The CEO of SRA correctly identified the issues involved. He noted that the initial approval by the Brihanmumbai Municipal Corporation (“**BMC**”) was of 24th October 1989 for 348 slum dwellers. It was then converted to a slum redevelopment (SRD) project and later to a slum rehabilitation scheme (SRS). Rehab Building 1 of 188 tenements was constructed and had an Occupation Certificate (“**OC**”). Incidentally, it seems that this building now needs to be demolished because it is no longer in a sufficiently sound condition. Rehab Building 2 of 85 tenements was constructed without any Commencement Certificate (“**CC**”). The BMC’s structural audit of the two rehab buildings showed that both were in an extremely dangerous condition — i.e., that the rehab building occupants themselves needed further rehab and that the building had to be brought down. The CEO of SRA noted that no proposal had been submitted by Accanoor pursuant to the Housing Department letter of 22nd December 2017. Accanoor offered to demolish the building and put up 269 sq ft carpet area tenements to existing occupants. The Society pointed out that from 1985, Accanoor had not constructed a transit camp and had not paid transit rent. Although Accanoor had constructed Rehab Building 1 of 188 tenements, it had made allotments of only 184. Accanoor sold Transferable Development Rights (“**TDR**”) without completing the slum rehabilitation scheme. It is also reported that Accanoor was in default in another project as well. The CEO noted that Accanoor was only saying that it was willing to complete the rehabilitation project by August 2025, but it offered no justifiable explanation for the gross and inordinate delay. There was not a whisper, the CEO of

SRA held, as to why the project was not completed for nearly 30 years. The CEO of SRA held that these projects had be completed in a timely fashion on schedule. Consequently, holding that there was non-performance and an inordinate delay, the CEO of SRA terminated the appointment of Accanoor Associates and granted the Society the liberty to appoint a new developer of its choice.

10. On 15th March 2022, Hrub entered the frame pursuant to a society meeting following which the Assistant Registrar had reported that the Society had chosen Hrub.

11. Accanoor carried the CEO of SRA's order to the AGRC which passed an order on 4th August 2022 reversing the order of the CEO of SRA. This AGRC order went on a bit and said essentially that the delay could not be attributed to Accanoor because there were so many other factors in play such as complications of tunnel building by the BMC, Coastal Regulation Zone issues and attendant uncertainties, changes in slum rehabilitation norms and above all that the CEO of SRA had overlooked his own direction of 4th August 2021 asking Accanoor to submit a 'bar chart'. The CEO of SRA had indeed done that and the bar chart in question was submitted, We are told, two days later on 6th August 2021.

12. We have seen that bar chart. A copy is at page 670. It is a joke. There is no other way to put it. It is a brazen attempt to pull a fast one on everyone (including us). Unfortunately, this attempt succeeded before the AGRC. The so-called 'bar chart' is a one

single sheet of paper which has no particulars, no phases, no construction schedules, no details, no accurate timelines. It is merely captioned a bar chart and then in a simple Word table has three columns: activity, days and particulars. It now says a revised Letter of Intent (“**LoI**”) as per Development Control and Promotion Regulation 2034 (“**DCPR 2034**”) will be obtained in 90 days. Intimation of Approval (“**IoA**”) to the rehab building is the next entry, 15 days November 2021. This goes on for 18 such rows and now goes from August 2025 adventurously to June 2027. According to the AGRC, this is a very good thing in a project that began in 1985. To call this a bar chart means one of two things: either one is inflicting grievous harm on the English language, or neither Accanoor nor the AGRC really knows what a bar chart in construction and real estate development is. A bar chart is *not* a wishlist. A bar chart is *not* a tabulation in general terms. It has to have a detailed breakdown of activity set against time, with every component planned and staged, and time expressed in weeks or even days. A bar chart is a structured plan. What Accanoor produced was in no sense a bar chart. What it now shows is also not a bar chart. It is wholly worthless.

13. We wonder how the AGRC could ever believe that the public welfare purpose of the Slums Act is well served by accepting this kind of document and calling it a bar chart. We wonder if the AGRC even saw it — for there is not a mention of a single detail in this much-vaunted bar chart in the AGRC’s order.

14. Obviously, this order of the AGRC did not gladden the hearts of either the societies or Hrub and they came to the High Court in a pair of Writ Petitions. These were by consent allowed, setting aside the AGRC order of the 4th August 2022 and sending the matter back to the AGRC for a de novo consideration. The High Court order is of 21st December 2022. Apparently, the AGRC heard parties shortly thereafter, reserved judgment for a while, placed the matter for directions and then came the impugned order of 17th November 2023 challenged in this pair of Writ Petitions, one of which runs into five volumes. The impugned order is at Exhibit 'A' page 63.

15. The AGRC order challenged in this Petition inspires no confidence at all. It does nothing from page 63 to page 78 except recite the rival submissions of the parties. It then simply reiterates the position that it took in its first order, namely that the CEO of SRA had not examined this so-called bar chart, a nothingness if there ever was one. It is impossible to accept from any developer and we are not even considering the submission made by the societies and Hrub that Accanoor had elsewhere suffered at the hands of this Court for similar and other defaults but the bar chart on its own tells us how utterly unacceptable Accanoor's case really is.

16. The AGRC order overlooks every relevant consideration: The failure to meet deadlines. The fact that one rehab building is completed but only partially allotted. That the second rehab building was constructed without a CC. That both buildings are so

shoddily built that both are now in severe structural distress and need to be brought down altogether. All that the AGRC says is that over time there were many problems. But then this is a formula for every developer to constantly delay because there will be constant changes in the law. New development planning regulations will come into force, more benefits will be available. Rehab areas will increase in size. This will go on indefinitely and no project will ever be completed if this is the approach.

17. The AGRC has, most alarmingly, completely lost sight of its one overriding and overarching objective which is to achieve the purpose intended by the statute. That purpose is not served by allowing developers to delay projects for three decades. This is not how we will allow developers to treat slum dwellers who are protected by a statute. We will most certainly not allow the AGRC to come repeatedly to the aid of such errant developers.

18. This is not a case where for some arbitrary reason the society has decided that it does not want Accanoor. Accanoor's failures were so severe that the CEO of SRA took suo moto cognizance. The CEO of SRA's order correctly identified and focussed on Accanoor's defaults and correctly found no valid explanation for them. All that the AGRC found attractive in its reversal is that the CEO of SRA did not consider the bar chart.

19. We put it differently. Had the CEO of SRA passed a contrary order based on that bar chart, we would have held the CEO of

SRA's order to be perverse, so bad is that bar chart and so utterly unworthy is it of any credence. It is entirely devoid of merit.

20. All that the bar chart and all that Accanoor and all that Mr Bangur is instructed to say is that Accanoor is “sincere” and is “willing” to complete the project. But as John F Kennedy famously remarked in his inaugural address “sincerity demands proof.” Of such proof from Accanoor we have precisely nothing. This High Court has already done the AGRC a courtesy that it perhaps did not deserve by remanding the matter to it once. The first order of AGRC was — and we say this with no hesitation whatsoever — utterly perverse. The second is doubly perverse. It takes into account irrelevant material. It does not take into account a single relevant criterion. It is, in the words of Lord Greene MR in *Associated Provincial Houses v The Wednesbury Corporation*,¹ so outrageous in its defiance of logic and moral standards that no reasonable person could ever have arrived at this it. We are not even reaching the doctrine of proportionality.

21. Above all, what distresses us most and we say this at the cost of repetition is that the AGRC has somehow seemed to think it appropriate to consider only the travails of Accanoor. In the entirety of the reasoning in its order there is not a mention of the condition or the plight of the slum dwellers or even of those who are in the rehab buildings that are now required to be brought down. If the AGRC will not speak for and defend the interests of the slum

1 [1948] 1 KB 223.

dwellers then we are forced to ask the question, who will? One answer suggests itself, and that is that this High Court will; always.

22. And that is precisely what we proceed to do today when we make Rule absolute in terms of prayer clause (a) in both Petitions.

23. The AGRC order is quashed and set aside. The CEO order dated 7th October 2021 is restored and will operate.

24. Consequential steps must now be taken. Since Accanoor is now held to be validly terminated and the society has now appointed Hrub, the SRA will take the necessary steps to issue an LoI/Revised LoI in favour of Hrub.

25. There was an ad interim order of 4th December 2023. Mr Bangur seeks that the order be continued. The facts of this case are so shocking and Accanoor's case is so egregious that we absolutely refuse to do anything of the kind even for one minute.

(Kamal Khata, J)

(G. S. Patel, J)