

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.11453 OF 2014

Akhil Hirabaug Sahakari Grihanirman

Sanstha Ltd.

...Petitioner

V/s.

1.The State of Maharashtra &amp; Ors.

...Respondents

AND

## PUBLIC INTEREST LITIGATION NO.33 OF 2015

Mr.Sanjay Hule

...Petitioner

V/s.

1.The State of Maharashtra &amp; Ors.

...Respondents

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Mr.Drupad S.Patil, for the Petitioner in W.P. No.11453 of 2014.

Mr.Shekhar Bhise, AGP for Respondent – State.

Mr.Uday Warunjikar with Mr.Siddhesh Pilankar, for Respondent No.2.

Mr.A.Y.Sakhare, Senior Advocate with Mr.D.R.More, for Respondent No.3.

Mr.G.S.Godbole i/b. Mr.Pavan S.Patil, for the Petitioner in PIL No.33 of 2005.

Mr.A.P. Kulkarni, for Respondent No.4.

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CORAM : MOHIT S. SHAH, C.J. AND  
G.S.KULKARNI, J.

DATE : 17 APRIL 2015

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**PC :**

1. On 9 April 2015 this Civil Writ Petition was extensively heard and we had indicated that when the Pune Municipal Corporation as the owner of the land itself is ready and willing to rehabilitate the slum dwellers, the slum dwellers cannot insist for appointment of private developer for rehabilitation. We have also referred in our order dated 9 April 2015 to the decision dated 6 May 2009 of another Division Bench of this Court in Writ Petition No.2258 of 2008 (*Ashok B. Desai & Ors. Vs. The State of Maharashtra & Ors.*).

2. In view of the above decision of the Municipal Corporation rejecting the proposal for NOC on the scheme proposed by the Society through a private developer, the learned Counsel for the Society prayed for time to seek withdrawal of the petition.

3. Learned Counsel for the petitioner further states that he has instructions to argue the petition on merits. Similarly, the learned Counsel for petitioner in Public Interest Litigation No.33 of 2015 has also addressed us on merits. Both the learned Counsel have submitted that in view of the Special Regulations for Pune Municipal Corporation and Pimpri-Chinchwad Municipal Corporation, Slum Rehabilitation Authority appended to "Appendix A" to the Government Notification dated 11

September 2014, as it is not open to Pune Municipal Corporation to undertake any slum rehabilitation scheme on its own and that such slum rehabilitation scheme can only be implemented through a private SRA registered developer. In support of the said contention, heavy reliance is placed on SR 4(1), SR 4(2), SR 6(2) which read as under:-

“SR-4: APPROVAL TO SRS:

SR-4(1): The land owner or his power of attorney holder or the lease holder with at least 5 years of un-expired lease period and concurring with lease terms of the land, shall be allowed to redevelop the slum area either directly upon registration with Slum Rehabilitation Authority or through a developer registered with Slum Rehabilitation Authority, subject to the provisions laid down in these Regulations.

SR-4(2): Slums on the lands belonging to the Government, Semi-Government Bodies, Municipal Corporations, Public Authorities and Trusts shall be rehabilitated under the provisions of these Regulations through a private SRA registered developer only.

SR-6(2): INITIATION OF THE SCHEME:

The following procedure shall be adopted while examining and sanctioning any SRS in accordance with the provisions of these Regulations.

(I) ... ..

(II) Where 70 percent or more of the eligible hutment-dwellers in a slum or pavement in a viable stretch at one place agree to join a SRS, it

may be considered for approval. Provided that nothing contained herein shall apply to Slum Rehabilitation Schemes undertaken by the State Government or a Public Authority or, as the case may be, a Government Company, as defined in Section 617 of the Companies Act, 1956 which is owned and controlled by the State Government.”

So also, SR 12(i), (ii) & (iii) reads as under:-

“SR-12: PREMIUM FOR OWNERSHIP AND TERMS OF LEASE:

(i) Where SRS is proposed to be undertaken on lands owned by the Government, Semi-Government Undertakings and Local Bodies, the developer registered with SRA shall pay premium at the rate of twenty five percent of the land cost as per ASR or in-situ construction area equivalent to such premium where premium and construction cost both are calculated as per ASR.

(ii) Upon payment of land premium, the CEO (SRA) shall issue a Letter of Intent in such case to the developer and the land owning authority. The No Objection Certificate (NOC) for building permission of the land-owning authority shall be given in respect of such land under slum within 30 days after receipt of the letter of intent. In the event of such NOC not being given within the period, it shall be deemed to have been given.

(iii) The part of the land belonging to the Government / Semi-Government / ULB/ Public Trusts/ MHADA / PMC/ PCMC / PCNTDA / MIDC, on which the rehabilitation project will be constructed shall be leased to the Co-operative

Housing Society of slum dwellers for a period of 30 years at lease rent of Rs.1001 for 4000 sq.m. of land and part thereof, which shall be renewable for further periods of 30 years at a time. The same dispensation shall apply to the land under the free sale component and such land shall be leased directly, and not through the slum dwellers, to the registered Co-operative Housing Society / Association of the purchasers of tenements in the free sale component and, pending the formation of such Co-operative Housing Society / Association of the purchasers of tenements in the free sale component, such land shall be leased to the developer. The said lease deed shall be executed within 60 days from the date of issuing building permission to the project.”

4. Learned Counsel for the petitioners in the Writ Petition as well as Public Interest Litigation submit that in view of the above Special Regulations, even slums on the land belonging to the Municipal Corporation can be rehabilitated only through a private SRA registered developer and, therefore, Pune Municipal Corporation erred in rejecting the proposals of the Society of slum dwellers for rehabilitation through private SRA registered developer selected by the respective society with the consent of more than 70% of the slum dwellers.

5. Having heard the learned Counsel for the parties, we do not find any merit in the above contention. The Special Regulations do not prohibit the Municipal Corporation or any

other Public body which owns a land on which slums are situated, from undertaking rehabilitation project. All that SR-4(2) means is that when slum rehabilitation project is to be undertaken on the lands belonging to a Public body, it can be done only through a private developer who has to be a SRA registered developer and it cannot be done through a private developer who is not registered with SRA. In fact at the hearing Mr.Sakhare, learned Senior Advocate appearing for SRA states, on instructions, that Pune Municipal Corporation and Pimpri-Chinchwad Municipal Corporation are both registered as developer with SRA and, therefore, there is no impediment to these Municipal Corporation to undertake slum rehabilitation project on the lands belonging to the respective Municipal Corporation.

6. Even otherwise, we are of the view that there is nothing in the aforesaid Special Regulations prohibiting the concerned Municipal Corporations owning the land on which slums are situated from undertaking slum rehabilitation project. In fact SR 6(II) quoted hereinabove also makes it clear that when a slum rehabilitation scheme is undertaken by a Public body which owns a land, it does not require to obtain consent of 70% or more eligible hutment dwellers.

7. Similarly, the controversy has already been examined by this Court in the case of "*Ashok B. Desai Vs. State of*

*Maharashtra*” decided on 6 May 2009. In the said decision also this Court has taken a view that the slum dwellers have right to be rehabilitated but not through a developer of their own choice if the slum rehabilitation is undertaken by the Municipal Corporation.

8. We also record the statement being made by the learned Counsel for Pune Municipal Corporation that the slum rehabilitation scheme for rehabilitation of Hirabaug Colony will be commenced and completed as expeditiously as possible. A statement was made on 9 April 2015 that the Municipal Corporation shall endeavour to complete the scheme within a period of two years. We, therefore, direct that the Slum Rehabilitation Scheme for the above colony shall be commenced and completed as early as possible and in any case by 31 December 2017, and the eligible slum dwellers will be given rehab tenements as per the decision to be taken by SRA.

9. Accordingly, we do not find any merit either in the Writ Petition or in the Public Interest Litigation. Both, the Writ Petition and Public Interest Litigation, are dismissed.

(CHIEF JUSTICE)

(G.S.KULKARNI, J.)