

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.84 OF 2014
IN
WRIT PETITION NO.1152 OF 2002

M/s.Priyanka Developers	Petitioner
versus	
The Chief Executive Officer, SRA	
and others	Respondents

Mr.A.R.Shaikh for Petitioner.

Mr.G.D.Utangale and Akhil Kupade i/by Utangale & Co. for
Respondent nos.1 and 2.

Mr.Chirag Balsara with Ms.Asha Nair i/by Diamondwalla & Co.
for Respondent no.3.

Ms.Madhubala Kajale, AGP for Respondent-State.

CORAM : MOHIT S. SHAH, C.J. AND
B.P.COLABAWALLA, J.

DATE : 10 February 2015

PC :

The Petitioner-developer has filed this petition under the provisions of Contempt of Courts Act, 1971 ('the Act') alleging violation of the order dated 31 July 2002 of this Court by the Chief Executive Officer of Slum Rehabilitation Authority-respondent no.1 herein ('SRA') by issuing Amended Letter of Intent ('LOI') dated 6 January 2010 (Exhibit-F).

2. The respondent no.3 in whose favour the amended LOI was issued, has filed affidavit-in-reply raising two preliminary objections. First is that this petition under the Act is barred by limitation, as provided in Section 20 of the Act. The alleged violation took place on 6 January 2010 and the contempt petition was required to be filed within one year as per the provisions of Section 20 of the Act. Section 20 of the Act mandates that no Court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. The learned counsel for respondent no.3 has also relied on the decision of Supreme Court in **Pallav Sheth Vs. Custodian**¹.

The second objection is that the slum rehabilitation project in question was initially given to the Petitioner and LOI in favour of the Petitioner was issued for slum redevelopment scheme in the year 1995. However, the Petitioner transferred its rights to another builder called Villayati Ram Mittal, who was appointed as developer for the said slum redevelopment scheme. The LOI was issued in favour of Villayati Ram Mittal on 11 August 2003. But since Villayati Ram Mittal was found to have violated the terms and conditions of the LOI, his appointment as developer was terminated and the co-operative

¹ (2001)7-SCC-549

society of slum dwellers of 432 persons appointed respondent no.3 herein M/s.Omkar Realtors & Developers Pvt.Ltd. as its developer. The SRA approved the change of developer i.e. appointment of respondent no.3 M/s.Omkar Realtors & Developers Pvt.Ltd. as developer on 2 March 2006. Therefore, once the Petitioner herein transferred his rights to Villayati Ram Mittal and once the LOI came to be issued in favour of Villayati Ram Mittal and thereafter in favour of respondent no.3 herein, the Petitioner gave up his right to develop the scheme in question and he has no locus to file present petition because the Petitioner was not a party to the writ petition in which the impugned order dated 31 July 2002 was passed and willful disobedience of which is complained of.

3. It appears that Villayati Ram Mittal challenged the order of SRA appointing respondent no.3 as developer before High Power Committee ('HPC') and also filed Suit No.719 of 2008 in this Court against SRA and Government of Maharashtra claiming damages and loss of profits alleging illegal termination. On the other hand, respondent no.3, who was appointed as developer vide order dated 2 March 2006, obtained Intimation of Approval dated 8 June 2006 and commencement certificate dated 21 April 2008 and provided transit accommodation to 408 slum dwellers by paying compensation/rent for temporary transit accommodation. Ultimately, the appeal filed by Villayati Ram Mittal before HPC

came to be disposed by the HPC by order dated 30 June 2010. The HPC remanded the matter to SRA after making observations in respect of certain issues, which do not detain us for the purposes of disposal of this contempt petition.

4. Against the aforesaid order of HPC dated 30 June 2010, Villayati Ram Mittal filed Writ Petition (L) No.2103 of 2010 challenging that part of the order in which the HPC had made observations about the regularisation order of SRA being required to be revisited. The co-operative society of slum dwellers challenged the order of HPC dated 30 June 2010 by filing a separate writ petition to the extent of remand of the matter to SRA. The respondent no.3 herein also challenged that part of the order by filing another writ petition. All the three writ petitions were heard together by this Court and while the writ petition of Villayati Ram Mittal was dismissed, the writ petition filed by the co-operative society of slum dwellers and the writ petition of respondent no.3 herein came to be allowed by order dated 26 October 2010 and this Court restored the order of SRA dated 6 March 2006 with certain further directions.

5. The order dated 26 October 2010 of this Court was challenged but the Supreme Court dismissed the Special Leave Petition (C) Nos.33292-33294 of 2010 by order dated 6 December 2010. Thereafter Villayati Ram Mittal filed Review

Petition (L) Nos.2/2011, 3/2011 and 4/2011 before this Court. While dismissing those review petitions as not maintainable vide order dated 16 December 2011, this Court also noted the following further developments :

"9. We may further note that the learned counsel for Omkar Realtors and Developers Private Limited brought to our notice the fact that as new developers they have acted on the LOI issued by the SRA and constructed three buildings of 15 storeys each.

10. In view of the above also, entertaining the present review petitions would set back the entire clock and come in the way of rehabilitation of 432 slum dwellers by the developers who have already obtained a Commencement Certificate for construction of free sale buildings, for which bookings have also been done and thus, third party interests have been created."

6. The said order dated 16 December 2011 dismissing the review petitions was challenged before the Supreme Court. But Special Leave Petitions (Civil) Nos.14038-14040 of 2012 also came to be dismissed by order dated 8 May 2012. It is, therefore, contended by the learned counsel for respondent no.3 that Priyanka Developers (Petitioner herein) which had left the scene in as far back as in the year 2003 by transferring its development rights to Villayati Ram Mittal, is now trying to stall the slum rehabilitation project where the respondent no.3 has

already constructed the rehabilitation buildings and accommodated all the slum dwellers and when the respondent no.3 is in the process of constructing the free sale component buildings, the present contempt petition has been filed with oblique motives.

7. Learned counsel for the Petitioner has not been able to give any explanation for the delay of three years in filing the contempt petition but has merely contended that "this act of the Respondent is continuous running contempt". We fail to understand as to how issuance of Amended LOI dated 6 January 2010 can be treated as a "continuous running contempt".

8. As per the settled legal position enunciated by Supreme Court in Pallav Sheth Vs. Custodian (supra), a contempt petition, whether under the provisions of Contempt of Courts Act, 1971 or under Article 215 of the Constitution of India, is required to be instituted within one year from the date of alleged contempt. Even if the period of limitation were to run from the date of knowledge of the alleged contempt, the present Petitioner which itself is a developer and which was the earlier developer for the very project in question and which had transferred its development rights in favour of Villayati Ram Mittal, who has lost in all the proceedings up to Supreme Court, has not stated anywhere about the time or date when the Petitioner got the knowledge of the alleged contempt.

9. Otherwise also, learned counsel for SRA has invited our attention to the Amended LOI dated 6 January 2010 wherein it is noted that the slum rehabilitation scheme in question was originally sanctioned in respect of land bearing C.S. No.431(Part), 1/431, 426(Part), 663(Part) and 432(Part) under the then prevailing Slum Redevelopment Scheme ('SRD'). Subsequently while converting the scheme from slum redevelopment to slum rehabilitation scheme, the revised slum rehabilitation scheme was approved in respect of C.S.No.1/431. The plot area of land C.S.No.432(Part) was not included in the original slum redevelopment scheme because the land was belonging to TATA Hydro Electric Power Company Limited and it had not given its no objection certificate. Thereafter, however, no objection certificate to implement the above slum rehabilitation scheme has been granted by TATA Hydro Electric Power Company Limited in respect of land C.S.No.432(Part). Moreover, the land bearing C.S.No.432(Part) was originally not declared as slum but in order to implement the slum rehabilitation scheme over the entire plot, which was in the interest of slum dwellers, the land bearing C.S.No.432(Part) admeasuring 2,866 sq.meters has been declared as slum under Clause 3(c)(i) of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971. The said land bearing C.S.No.432 is adjacent/contiguous to the slum rehabilitation scheme. Moreover, the amended LOI in question

dated 6 January 2010 further mentions that originally each eligible slum dweller was to be provided the rehab tenement of 225 sq.ft.. However, in view of the change in the Government policy, each eligible slum dweller was required to be given the rehab tenement of 269 sq.ft.. In view of the above, inclusion of land bearing C.S.No.432(Part) admeasuring 2,866 sq.meters was required to be included in the slum rehabilitation scheme. Therefore, the amended LOI was issued on 6 January 2010. The amended LOI also indicates that the area admeasuring 2,092.60 sq.meters is to be retained as recreational ground in the slum rehabilitation scheme.

10. Having regard to the above salient facts and particularly in view of the injunction dated 31 July 2002 having been granted against sanctioning new rehabilitation schemes without the permission of this Court in respect of open spaces which are reserved for gardens, playgrounds, recreational spaces, median, no-development zones, pavements, roads and carriage ways, it cannot be said that issuance of amended LOI dated 6 January 2010 was a new rehabilitation scheme, as contemplated by the said order dated 31 July 2002.

11. In view of the above peculiar facts of the case particularly the fact that land bearing C.S.No.432(Part) was already a part of the slum rehabilitation scheme but the said plot could not be included on account of absence of no objection certificate

from TATA Hydro Electric Power Company Limited, which subsequently came to be granted by the said company, we do not find any case having been made out by the Petitioner even on merits. The contempt petition is, therefore, dismissed.

(CHIEF JUSTICE)

(B.P.COLABAWALLA, J.)

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