

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.673 OF 2015
WITH
WRIT PETITION (L) NO.674 OF 2015

Hind Ekta SRA CHS Ltd. (Proposed)	
and others	... Petitioners
v/s	
State of Maharashtra and others	... Respondents

Mr Darius Khambatta, Sr. Counsel with Mr Ajay Patil for Petitioners in WPL No.673 of 2015.

Mr P.K. Dhakephalkar, Sr. Counsel with Mr Chirag Balsara and Mr Ajay Patil for Petitioners in WPL No.674 of 2015.

Mr Sudhakar Pandaram i/b Mr Milind More, AGP for Respondent No.1.

Mr G.D. Utangale i/b M/s Utangale and Co. for Respondent Nos.2 to 4.

Mr S.G. Surana for Respondent Nos.5 to 7.

Mr Pravin Samdani, Sr. Counsel with Mr Ajit N. Jakhadi for Respondent No.8.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

DATE : 21ST SEPTEMBER 2015

ORAL JUDGMENT (PER S.C. DHARMADHIKARI J.) :-

1. By these petitions under Article 226 of the Constitution of India, the Petitioners pray for issuance of writ of certiorari or any

other appropriate writ, order or direction calling for the record and proceedings pertaining to Application Nos.3 and 4 of 2015 which were filed by the Respondent Nos.5 to 7 and 8 respectively and after scrutiny thereof, this Court should quash and set aside the order dated 27th February 2015 passed by a Committee known as the High Power Committee.

2. This relief is sought in the following facts and circumstances :-

The High Power Committee is a Committee set up by the State Government after it made requisite statement before this Court and which is part of a Full Bench judgment rendered in the case of Tulsiwadi Navnirman CHS Ltd. v/s State of Maharashtra and others, reported in 2008(1) BCR 1.

3. The Respondent Nos.1 and 3 and equally Respondent No.4 to these Petitions are Authorities exercising powers under the Maharashtra Slum Areas (Improvement, Clearance and

Redevelopment) Act 1971 (for short, the Slum Act). The Petitioner No.1 and Respondent Nos.5 to 7 are proposed Co-operative Housing Societies of slum dwellers / occupants on a property bearing City Survey Nos.1500 (part), 2124/2126 (part) of Mahim Mori Road, Mahim, Mumbai 400 016 (hereinafter referred to as the “**said property**”).

4. Respondent No.8 is a Private Limited Company incorporated and registered under the provisions of Indian Companies Act 1956 and carrying on business as builders and developers. It has been engaged and appointed by the slum dwellers on the property for redevelopment thereof.

5. It is common ground that the said property was declared as a slum. Thereafter, bearing in mind the deplorable condition of the occupants, the Petitioners – Proposed Society have decided to redevelop the same under the provisions of the Development Control Regulations for Greater Mumbai 1991, particularly Regulation No.33(10) as amended from time to time. They passed independent

resolutions in their respective General Body Meetings held on 3rd June 2006, 9th June 2006 and 15th June 2006. They appointed Respondent No.8 as their developer for implementation of the slum rehabilitation scheme on the said property. Thus, all respective Co-operative Housing Societies (proposed) of slum dwellers including the Petitioners, executed the documents favouring the appointment of Respondent No.8 as developer.

6. It is then contended that this developer did not take any steps for development of the said property though the requisite preparatory work was done by the Authorities, competent to certify the list of slum dwellers. Thus, out of the total residents of the property, 804 occupants were found eligible to get a permanent alternate accommodation under the Slum Rehabilitation Scheme whereas 685 were found to be ineligible. On 14th July 2010, a Certificate to that effect and styled as Annexure II came to be issued by the Competent Authority.

7. It is the case of the Petitioners that by three General

Body Meetings convened in the month of May and June 2015, they have terminated the appointment of Respondent No.8 as Developer and appointed M/s SLK Buildcon Pvt.Ltd. as their Developer. It is claimed that over 70 % eligible slum dwellers attended this meeting and supported the resolution. However, Respondent Nos.5 to 7, by obtaining the letter-heads of the Petitioner Society fraudulently submitted application to the Office of the Assistant Registrar, Co-operative Societies / SRA, Mumbai seeking reservation of a name for the Society. It is the Petitioners' case that these rival Societies are also functioning and working under the same name.

8. It is then claimed that on 16th June 2014 Respondent No.8 and after a lapse of nearly eight years, made an application to the Slum Rehabilitation Authority for issuance of a Letter of Intent (for short, “LOI”). The Petitioners, however, informed the Chief Executive Officer of the Slum Rehabilitation authority about termination of the appointment of Respondent No.8 as their developer. Still, the Slum Rehabilitation Authority prepared a draft

LOI but the same has not been issued.

9. It is in these circumstances that the Office of the Assistant Registrar, Co-operative Societies / SRA, Mumbai directed Respondent Nos. 5 to 7 to comply with the terms and conditions in respect of their application seeking reservation of a name. A detailed report was prepared by the Assistant Registrar on 11th July 2014 and he referred to the fact that the Petitioners have terminated the agreement of Respondent No.8 – Developer. It is in these circumstances that the report records that there are Circulars bearing Nos.72 and 80 which permit convening of meetings under the control and supervision of this Slum Rehabilitation authority so as to verify whether 70 % of the eligible slum dwellers are agreeable to the development being undertaken by Respondent No.8 or otherwise. This was also necessary so that appropriate decision can be taken in regard to the sanction of the LOI.

10. It is on the report of this Assistant Registrar that directions were issued to convene the meeting of the three Societies.

That is how reliance is placed upon the communications dated 14th July 2014 (Annexure 'H' to the Petition), 15th July 2014 (Annexure 'J' to the Petition) and 17th July 2014. However, on 18th July 2014, Respondent Nos.5 to 7 filed their Revision Applications against these communications before the Divisional Joint Registrar, Co-operative Societies, Mumbai. These Applications were opposed by the Petitioners but on 1st August 2014, the Divisional Joint Registrar, Co-operative Societies, granted a stay and that is why the meetings were postponed and could not be held.

11. Being aggrieved and dissatisfied with the above stay order, a Writ Petition was filed by the Petitioners viz. Writ Petition No.7449 of 2014. This Writ Petition was disposed of on 8th August 2014 with the direction to the Divisional Joint Registrar to dispose of the main applications expeditiously and in any event before 15th September 2014.

12. In the meanwhile, the Respondent Nos.5 to 7 once again applied for reservation of a name. On 11th September 2014, the

Divisional Joint Registrar, Co-operative Societies, Mumbai allowed the Revisional Application Nos.296, 297 and 298 of 2014 filed by the Respondent Nos.5 to 9. He quashed and set aside the letter dated 15th July 2014 issued by the Assistant Registrar, SRA.

13. Being aggrieved and dissatisfied with this order on the Revisional Applications, three Writ Petitions bearing No.8410, 8412 and 8414 of 2014 were filed by the Petitioners which were allowed on 18th December 2014. By the orders therein this Court quashed and set aside the Divisional Joint Registrar's order dated 11th September 2014.

14. The Petitioners place heavy reliance on the observations of this Court in the order passed in these Writ Petitions and point out that since the Divisional Joint Registrar's order was set aside, the Assistant Registrar directed the Petitioners to conduct the General Body Meetings. However, and strangely, on 23rd January 2015, the Assistant Registrar directed the Petitioners to cancel the General Body Meetings scheduled on 30th January 2015 and 31st January

2014 on the ground that the place at which meetings were to be held was not proper and that there would be law and order problem.

15. Therefore, the SRA decided to conduct this meeting itself and issued public notice on 2nd April 2015.

16. The Respondent Nos.5 to 7 and Respondent No.8 being aggrieved by this direction of SRA filed three Applications before the High Power Committee (for short, “HPC”) and the HPC initially passed an order directing the parties to maintain status-quo. Thereafter, this Court was approached by the Petitioners challenging the order of status-quo dated 30th January 2015 of the HPC. This Court directed the HPC to dispose of the main applications.

17. The Petitioners' grievance is that the Respondent Nos.5 to 7 and Respondent No.8 did not implead them as parties to the applications before the HPC and that is why they had to file Miscellaneous Applications for intervention. Be that as it may, the HPC heard all parties and has passed the impugned order.

18. By the impugned order, the HPC has set aside the direction of the SRA. It has directed the SRA to process the applications of Respondent Nos.5 to 7 and Respondent No.8 for issuance of LOI in accordance with law.

19. It is this direction and order which is impugned in these Writ Petitions.

20. Mr Dhakephalkar, learned Sr. Counsel appearing on behalf of the Petitioners in Writ Petition No.674 of 2015 submitted that the HPC has erred in law in interfering with the direction of the SRA. The SRA was empowered in law to issue a direction to the Petitioners to convene a meeting. Thereafter, the SRA itself decided to convene the meeting and all this was necessary to verify whether the proposal for redevelopment filed by the Respondent No.8 enjoys the support of 70 % of the eligible slum dwellers. If after eight years of appointment of Respondent No.8 as Developer and nearly five years after the issuance of Annexure II, no steps were

taken by Respondent No.8, then the SRA decided to verify whether the support of eligible slum dwellers and to implement the SRA Scheme is with Respondent No.8. Thus, the SRA desired to satisfy itself regarding issuance of the LOI or otherwise. Therefore, it relied upon its own Circulars. These Circulars take care of a situation arising in the present case. Mr Dhakephalkar relies upon the letters which have been issued by the SRA dated 15th July 2014, copies of which are to be found at pages 88 and 89 of the Petition. Mr Dhakephalkar would submit that the exercise and desired to be carried out by the SRA is traceable to these Circulars. In law, the SRA has been designated as the Authority to sanction the Slum Rehabilitation Schemes. It is also an Authority to register Co-operative Housing Societies of slum dwellers and for that purpose, the powers under the Maharashtra Co-operative Societies Act 1960 are also conferred on the SRA. Therefore, they issued these two communications. Mr Dhakephalkar also relied upon the order of the learned Single Judge passed in the Petitioners' Writ Petition by which the learned Single Judge quashed and set aside the Divisional Joint Registrar's order. Mr Dhakephalkar brings to our notice two

Circulars and copies of which are also annexed to this Petition as Annexures CC and DD at pages 231 and 233 being Circular Nos.80 and 148.

21. Mr Dhakephalkar submits that the HPC unnecessarily interfered with this very simple and innocuous direction of the SRA issued on 14th January 2015. The preparatory steps for convening the meeting have to be taken by the Chief Promoters. However, it is eventually the SRA which is convening and conducting the meetings. Mr Dhakephalkar submits that there is nothing which the HPC points out, by which the SRA is restrained from calling and conducting such a meeting. If the statutory functions and duties of the SRA have to be performed efficiently, then it must be given freedom and HPC by interfering with the communications of the SRA has set a wrong precedent. That would govern all cases of the present nature. In these circumstances, Mr Dhakephalkar would submit that the order of the HPC is unsustainable in law and vitiated by total non-application of mind to the relevant and germane factors and therefore it should be quashed and set aside.

22. Mr Khambata, learned Sr. Counsel appearing for Petitioners in WP(L) No.673 of 2015, adopts the arguments of Mr Dhakephalkar, but additionally submits that the issue raised really is whether the two Circulars of the SRA can be said to be contravening the judgment and order of this Court in the case of Avadhesh Tiwari /s Chief Executive Officer, reported in 2006 (4) All MR 67. Mr Khambata submits that before issuance of LOI, Circular No.148 mandates convening of General Body Meeting of the eligible members. Such a General Body Meeting has to elect Chief Promoter and thereafter to confirm whether the support of 70 % of the eligible slum dwellers is with the chosen Developer or these slum dwellers desire a change of developer. It is in these circumstances these two Circulars are issued and after satisfying itself that the Developer enjoys 70 % consent of eligible slum dwellers, the SRA should issue the LOI. To such a case, test laid down in Avadhesh Tiwari's case (supra) will have no application. This Court held that consideration of two Schemes by two different proposed Societies and simultaneously is not permissible. Such is not the case before

us. In these circumstances, Mr Khambata places heavy reliance on the judgments of another Division Bench of this Court in the case of Lokhandwala Infrastructure Pvt.Ltd. v/s State of Maharashtra, reported in 2011(2) All MR 856 and Omkar Realtors and Developers Pvt.Ltd. v/s Slum Rehabilitation Authority, reported in 2011(5) Bom.C.R. 379. For these reasons, he would submit that HPC's order be set aside and Writ Petitions be allowed.

23. On the other hand, the learned counsel appearing for the contesting Respondents and particularly Mr Samdani, learned Sr. Counsel appearing on behalf of the Respondent No.8 supported the order of the HPC. Mr Samdani submits that the two Circulars issued by the SRA bearing Nos.80 and 148 could not have been relied upon in the facts and circumstances of the present case. That was because no Circular or order of SRA can be contrary to the law laid down by this Court in Avdesh Tiwari's case (supra). In the present case, another Developer and Petitioners are anxious to dislodge Respondent No.8. Respondent No.8 cannot be displaced unless the scheme proposed by Respondent No.8 is taken to its logical end by

the SRA. The rival Developer is aware that his slum rehabilitation scheme for development of the same property could not have been considered by the SRA. He therefore brought about a situation where-under the so called proposed Societies and bearing the same names moved the SRA and stated that they have cancelled or terminated the agreement in favour of Respondent No.8. The SRA, instead of taking an independent decision and in terms of the statutory powers, acted at the behest of the Petitioners and this rival developer and therefore, decided to adopt a novel course. Firstly, this could not have been adopted in the teeth of the Division Bench judgment of this Court and secondly when the two Circulars cannot have any application, the SRA must decide independent of any meeting of the slum dwellers as to whether the LOI deserves to be granted or not. It should not have therefore delayed the matter and to assist the rival developer. The SRA could have taken action under an independent power conferred by section 13(2) of the Slum Act but it could not have been relied on the two Circulars. Therefore, the HPC rightly set aside the order / communication and directed the SRA to take a decision as to whether LOI in favour of

Respondent No.8 should be issued or not. Such a direction of the HPC, in the peculiar facts and circumstances of this case, cannot be termed as illegal or perverse, requiring interference in writ jurisdiction. He therefore submits that the Petition be dismissed.

24. For properly appreciating the rival contentions we must refer to the two Circulars and which are relied upon by both the Petitioners and the SRA. The first Circular is to be found at page 234 of WP No.674 of 2015. That Circular is dated 15th February 2008 and bears No.80. The subject of this Circular issued by the SRA would show that it deals with the presence of the representative of the SRA at a meeting and where the slum dwellers of the proposed Society or any Association would elect or select Chief Promoter and Developer. The Circular observes that when slum rehabilitation schemes are proposed and proposals from the proposed societies of slum dwellers are received and thereafter permissions are sought to reserve the name and allot a code number, so as to open a bank account with such request and proposals, the minutes of the meeting convened to elect the Chief Promoter, the

Developer, an Architect and authorization letter in their favour, power of attorney and development agreement are relied upon. However, whenever there are further steps taken on the basis of these documents and relying upon them, it is experienced that several disputes arise and inter alia regarding the election of the Chief Promoter, the Developer etc. There are complaints received from the affected parties by the SRA in this regard. All this goes to show that the progress and implementation of the slum rehabilitation scheme is affected and puts a question mark on its future. Therefore, it is directed that once the Annexure II is prepared, then a meeting which will be convened to elect a Chief Promoter, the Developer and the consent of the Developer, it would be mandatory that at such meeting convened representatives of the SRA are present, further video recording of the proceedings of the meeting has to be carried out. This Circular enlists the subjects or the agenda items for the meeting, the notice period and other ancillary issues and directions with regard thereto. The notice has to be issued to those who should remain present and participate in accordance with this Circular. These directions be issued to all

concerned so that they abide by them.

25. Circular No.148 has been issued on 2nd February 2015 and that refers and relies upon the prior Circular No.80 and thereafter states that the proceedings of the meeting and which would be convened to discuss the above agenda items should be transparent. An impartial Presiding Officer must conduct the meeting. That is why the SRA further directs that the meeting must be convened strictly in accordance with prior Circular. This Circular goes ahead and directs the Department of Cooperation, Government of Maharashtra to ensure that it must depute an official so as to preside over the Meeting. Thus, the meeting be convened and proceedings thereat now to be held under the control and supervision of the statutory Authority.

26. These Circulars are issued by the SRA in order to ensure that the Co-operative Housing Societies (Proposed) of the slum dwellers elect a Chief Promoter, a Developer and thereafter preparatory steps taken should not then be questioned by filing

complaints and applications etc. That would delay the implementation of the slum rehabilitation scheme. That is why all such meetings and to elect the Chief Promoter and Developer etc. have to be held in terms of these directions contained in two Circulars.

27. The facts and circumstances of the present case are undisputed. On the admitted documents, it is apparent that the Petitioner – Societies have appointed Respondent No.8 as Developer on 9th/17th June 2006 and independently executed development agreements and irrevocable power of attorney in favour of the Respondent No.8. Annexure II has been certified on 14th July 2010. It is the Petitioners who claim to be the same proposed Societies as Respondent Nos.5 to 7. It is the Petitioners who state that they convened the General Body Meeting and terminated the appointment of Respondent No.8 as a Developer and appointed M/s SLK Buildcon Pvt.Ltd. as their Developer. It is the Petitioners' claim that there is a fraud perpetrated by Respondent Nos.5 to 7 and they have utilised the letterheads with similar contents and names and

made application to the Assistant Registrar, Co-operative Societies, SRA, Mumbai for name reservation. Thus, it is the Petitioners who state that they represent the Housing Societies and not the Respondent Nos.5 to 7. However, undisputedly on 6th June 2014, an application was made by Respondent No.8 to the SRA requesting it to issue the LOI. We find that after this application was made that the Petitioners moved in the matter and requested the assistant Registrar, Co-operative Societies, SRA, Mumbai to comply with the terms and conditions of the application for name reservation.

28. The SRA does not dispute that it has received application dated 6th June 2014. If that is an application made by Respondent No.8 then it was incumbent upon the SRA to take a decision in accordance with law by following the case of Avadhesh Tiwari (*supra*).

29. Precisely, for the reasons and which take care of a situation like the present one that this Court directed in the said judgment that if one proposal or one scheme is under consideration

of the SRA, then it must take that scheme to its logical end, it must convey either issuance of LOI or refusal. When that scheme is under consideration of the SRA, no other scheme should be considered by the SRA parallelly and consideration of more than one scheme at the same time leads to confusion and chaos and may lead to avoidable disputes and complaints. There could be claims and assertions and which would go contrary to the object and purpose sought to be achieved by the Slum Act. If the slum rehabilitation schemes can be framed and implemented and equally planning laws have been amended so as to ensure that people residing in unhygienic and inhabitable conditions obtain a decent accommodation, then such schemes have to be expeditiously framed and implemented. It is part and parcel of prudent urban planning to avoid proliferation of slums in mega cities like Mumbai. The general impact on sanitation and hygiene in a city like Mumbai and caused by slums is tremendous. We have witnessed several scenes of garbage and waste thrown around particularly in slums. Slum or slum like structures which are constructed and spring up on public properties and lands are a risk to the health and safety of the residents of the

city as a whole. That is a reflection on planning. That is why SRA as a single Authority has been given several powers including that of the Planning Authority and of registration of Societies under the Maharashtra Co-operative Societies Act. A single window system is carved out and SRA must therefore take a decision and monitor and supervise implementation of the slum rehabilitation scheme. This is a scheme with public and private participation. If an opportunity is given to the slum dwellers to choose a developer after forming a Society and submit a proposal to the SRA for its sanction, then a single proposal being taken to the logical end serves the object of the Act better. In the present case, we do not see why the SRA did not take a decision on the application made by Respondent No.8 expeditiously. It could have independently satisfied itself about the financial power of the Respondent No.8 to implement the slum rehabilitation scheme and construct buildings by developing the property. If Respondent No.8 did not have the requisite support or the financial strength to take the scheme ahead, then nothing prevented the SRA from taking an appropriate decision including rejecting the Application seeking the LOI. However, the SRA allowed

the decision to be postponed and indefinitely. It allowed the Petitioners thereafter to set up a rival claim. It also allowed itself to be converted into a full fledged dispute redressal forum and to decide issues arising out of the Slum Act as also Maharashtra Co-operative Societies Act 1960. That is why the HPC reminded the SRA of its duties in law. We do not see the direction of the nature given by the HPC to be contravening any provision of law.

30. We have perused that order of the HPC and we find that what the impugned order really holds is that the SRA had before it a full fledged application of Respondent No.8. The HPC considered the rival contentions and thereafter found that it is undisputed that when the scheme was submitted by the Developer – Respondent No.8, he claimed support of 82 % of the eligible slum dwellers out of total 804. There is a complaint that no progress was made at site and that is why a group of people supported and formed another Society with another developer who was interested in developing / implementing subject slum rehabilitation scheme, that is what the intervention of the Petitioners is termed by the HPC.

The HPC then did not go into the issue whether the alleged resolution of termination of the authority of Respondent No.8 as Developer has been passed by the proposed Society in the presence of Assistant Registrar of SRA. It has also found that there is procedure laid down for change of developer under the slum rehabilitation scheme. Moreover, the Chief Executive Officer could have taken action under section 13(2) of the Slum Act.

31. We do not intend to express any opinion, much less, final on the contention and which was canvassed before the HPC and possibly found favour with it. All that we wish to emphasize is that if an application is made by Respondent No.8 and it claims to enjoy support of 82 % of the eligible slum dwellers, then, it was incumbent upon SRA to take that application to its logical end and conclusion. This is the expectation of the HPC from the SRA, more so, when the SRA could have taken note of any complaint with regard to the alleged inaction of Respondent No.8. It is empowered to do so under section 13 of the Slum Act. Hence eventual direction of the HPC to SRA cannot be faulted or interfered with.

32. Mr Dhakephalkar has criticized the findings of the HPC in the order which is impugned before us. He would submit that the Committee has recorded opinion that the order passed by the SRA is only based on the representation filed by the interveners viz. the Petitioners before us on 14th May 2014. Mr Dhakephalkar then criticized the findings in paragraph 12 of the impugned order and submits that HPC has virtually directed the SRA to grant the LOI in favour of Respondent No.8. Therefore, now there is no option to the SRA and it is obliged to grant the LOI in favour of Respondent No.8.

33. We do not read paragraphs 11 and 12 of the impugned order in the manner suggested by Mr Dhakephalkar and Mr Khambata. We do not think any mandate flows from the observations and findings of the HPC or that the SRA is therefore bound to issue the LOI. These observations must be read in context and if so read, we are of the opinion that they are made in the course of reminding the SRA about its duties and functions in law.

Beyond that, the HPC has done nothing. In paragraph 12 of the impugned order the HPC has reminded the SRA that the main object of implementation of Slum Rehabilitation Scheme is to uplift / improve the standard of living of the slum dwellers who are staying in slums for years together and if the proposal is delayed, the valuable rights of the slum dwellers for improvement of their dwelling conditions would be defeated and the very purpose of Slum Act would fail and will be frustrated. We clarify that such observations will not bind the SRA when it is taking a decision on the application submitted by Respondent No.8. If the SRA is the final decision making authority and such power vests in it, then, no Court or Tribunal or Committee can control or regulate it. None can direct the SRA to take a particular decision or reach a decision in a particular manner. There is enough guidance for the SRA in the form of provisions of Slum Act, Rules, Development Control Regulations etc. Further, the object and purpose of the Act is known to the SRA. Eventually, the decision has to be taken by its highest executive functionary. The SRA is a statutory authority and therefore must take an independent decision uninfluenced by any

observations made in any order. Therefore, impartiality and independence is expected from it. In such circumstances, there is no basis for the apprehension expressed by the learned Senior Counsel for the Petitioners.

34. We accordingly hold that the SRA will take a decision uninfluenced by any observations and conclusions in the impugned order and including an order of this Court.

35. We therefore proceed to dismiss this Petition and having clarified as above, we do not find that the HPC's order can be termed as vitiated, by errors apparent on the face of the record or perverse nor the HPC has exceeded its power and jurisdiction.

36. As a result of the above discussion, both the Writ Petitions fail and they are dismissed. In the circumstances, there will be no order as to costs. Ad-interim order stands vacated.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.) **

**** CERTIFICATE**

Certified to be a true and correct copy of the original signed Judgment/Order.