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

WRIT PETITION NO.1015 OF 2014

Prasanna S. Chamankar & Ors.

.Petitioners

Vs.

The State of Maharashtra & Ors.

..Respondents.

Mr. A.Y. Sakhare, Senior Counsel a/w Mr. Piyush Shah for Petitioners.

Mr. Milind More, AGP for Respondent No.1.

Mr. P.K. Dhakephalkar, Senior Counsel a/w Mr. J.G. Reddy, for
Respondent No.2.Mr. A.V. Bukhari, Senior Counsel i/b Mr. Rahul Nerlekar for Respondent
No.3.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 19th March 2015.

P.C.:

1 The Petitioners who are the Architects by profession have raised two fold challenges in the present Petition.

2 The first challenge is that the communication dated 4th January 2014 issued by the Respondent No.2-the Slum Rehabilitation Authority is in conflict with the provisions of the Architects Act, 1972 and the Rules framed thereunder. The second challenge is that the conduct of the Respondent No.2 in permitting the licence Surveyors to submit the

Development Plan is also not permissible.

3 The Respondent No.1 the Slum Rehabilitation Authority has been established by the State Government with the object of rehabilitation of the slums in the City of Mumbai. The function of the said Authority is to survey and review the existing position in the slums to formulate the scheme for rehabilitation of the slum area, to implement the Slum Rehabilitation Scheme and other allied duties and functions. As per the Development Control Rules framed by the said Authority, 70% of the eligible hutment-dwellers are required to show their willingness to join the Slum Rehabilitation Scheme and to come together to formulate co-operative society. The said Society has to pass a resolution, electing the Chief Promoter authorising the Chief Promoter to apply for development of the scheme etc. As per the Scheme either the Society can itself take up the work of development or appoint a Developer for the said purpose. The Promoter has to appoint an Architect in consultation with the proposed Co-operative Society.

4 The impugned communication has been issued by the Respondent No.2- Authority since it has come across various complaints

regarding appointment/termination of the Architects for the development of the Scheme.

5 Shri Sakhare, the learned Senior Counsel appearing for the Petitioners submits that when the procedure is prescribed under the Rules framed, in exercise of rule making powers delegated under the Architects Act, the Respondent No.2 has no authority to provide guidelines which are in conflict with the said rules. The learned Senior Counsel submits that the Respondent No.3-The Council of Architecture alone who can provide for appointment or termination of an Architect, and the Respondent No.2 has no power to encroach upon the said provisions.

6 Shri Sakhare in this respect relies on an order passed by the Division Bench of this Court dated 28th October 2014 in Writ Petition No.7765 of 2013 to which one of us (Shri Justice A.S. Gadkari) is a Member.

7 Shri Sakhare further submits that the Development Control Rules framed by the Town Planning Authority permits only the Architects to apply for development etc. and as such the Respondent No.2 is

unjustified in permitting the licenced surveyors to apply for development.

8 Shri Dhakephalkar, the learned Senior Counsel appearing for the Respondent No.2 on the contrary submits that the order issued by the Respondent No.2 is only an order to streamline the process of appointment/termination of the contract, and in any case there is no conflict between the provisions framed under the said Rules and the said guidelines. Shri Dhakephalkar submits that main purpose of the said guidelines is to indemnify the Respondent No.2 in case there is any dispute between the Architect and the Developer/Co-operative Society. The learned Senior Counsel therefore submits that the petition is without substance and is liable to be dismissed in limine with costs.

9 Shri Bukhari, the learned Senior Counsel appearing for the Respondent No.3 supports the contention of the Petitioners.

10 No doubt that the Respondent No.3 is a central body enacted under the provisions of the Architects Act and entitled to frame the Rules insofar as the conduct etc of the Architects are concerned. The reliance placed by Shri Sakhare is mainly on the Regulation 13 of the Architects

(Professional Conduct) Regulations, 1989. As a matter of fact, the Regulation No.13.1 itself provides that the agreement between the Architect and the client may be terminated by either one giving the other a written notice of not less than 30 days, should either fail substantially to perform his part of responsibilities/duties, so long as the failure is not caused by the one initiating the termination.

11 In any case, the said Regulations can only govern the conduct of the Architects. The Respondent No.3 has no authority to govern the conduct of the clients of the Architect. The relationship between the Architect and the Developer/Co-operative Society is purely contractual in nature. On the contrary the impugned guidelines are in tune with the Regulation No.13. Clause 2 of the said guidelines specifically provides that the Developer has to give a written notice to the Architect that his services with regard to the Slum Rehabilitation Scheme are terminated. The Developer has also to submit an acknowledgement of the notice given to the Architect before the Slum Rehabilitation Authority. The main purpose of the said guidelines is to indemnify the Respondent No.2 in case there are any proceedings initiated or pending on account of termination, between an Architect and the Developer/Co-operative Society. We find no

conflict with the Regulations notified by the Respondent No.3 and the impugned communication.

12 Insofar as the second limb of submission is concerned, admittedly the Development Control Rules adopted by the Respondent No.2 permit the licence Surveyors to submit the development plans. The said Development Control Rules are not challenged by the Petitioners. Unless such provisions in the Development Control Rules is held to be invalid, the reliefs as claimed in prayer clause (c) cannot be considered.

13 The Petition is therefore devoid of substance and liable to be dismissed in limine.

14 The Writ Petition is accordingly dismissed.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)