

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

WRIT PETITION (L) NO. 2346 OF 2015

Fakira Gyanba Ukhande	}	Petitioner
versus		
High Power Committee and Ors.	}	Respondents

Mr. R. B. Raghuwanshi with Mr. Anand Sangvikar and Mr. Dinesh Kadam for the Petitioner.

Mr. Jagdish G. Reddy (Aradwad) for
Respondent Nos. 1, 2 and 6.

Mr. P. K. Dhakephalkar – Senior Counsel with
Mr. Ajay Patil for Respondent No. 4.

Mr. Bharat Mehta – AGP for Respondent No.7.

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

DATED :- OCTOBER 21, 2015

P.C. :-

By this Petition under Article 226 of the Constitution of India, the Petitioner challenges the order at Annexure 'M' dated 1st January, 2015 at page 232 of the paper book.

2) This application was filed by the Petitioner before us and he sought a declaration that the execution and implementation of the scheme, more particularly the Sanjay Nagar Slum Rehabilitation Scheme is not in accordance with law and should be stayed. The appointment of one M/s. Maniyar Realtors and Shri. Indrajeet Deshmukh of Vastu Creations as Developer and Architect respectively in

pursuance of the Resolution passed on 12th February, 2010 may be declared invalid and direction be given to Respondent No. 3 Society to appoint a new Developer and Architect in a fair and transparent manner. The two Letters of Intent dated 3rd February, 2012 and 16th August, 2012 be declared as null and void. Finally, the Annexure – II prepared and certified on 11th May, 2001, 13th August, 2007 and 30th March, 2012 be declared as null and void *ab-initio* and all actions in pursuance thereto be set aside.

3) The Petitioner has raised three fold contentions and for appreciating them, we must note the following facts:-

The Petitioner/Applicant is a resident of Room No. 9, Sanjay Nagar, Near New English School, Government Colony, Bandra (East), Mumbai – 400 051. The Petitioner has been held eligible at Sr.No. 29 of certified Annexure – II dated 11th May, 2001 issued by the Deputy Collector (Encroachment and Removal), Bandra and the Competent Authority. This Annexure – II was certified for Sanjay Nagar Slum Rehabilitation Scheme and which was for rehabilitation of Sanjay Nagar Co-operative Housing Society's members on plot of land bearing CTS No. 629 (part) of village Bandra, Admeasuring 1155 square meters for total of 65 slum dwellers, out of which 56 slum dwellers were held eligible for benefits of the scheme. The proposal was submitted by a

Developer, namely, M/s. Maniyar Realtors on behalf of this Co-operative Housing Society. That could not be proceeded further by the said Developer, as the Slum Rehabilitation Scheme was not viable. They could not make arrangement of finances and the proposal of the scheme lapsed in the office of the Slum Rehabilitation Authority (SRA). Adjacent to this plot of land was another plot and the dwellers situated thereon formed another Co-operative Housing Society. They proposed to amalgamate the scheme of their plot and that of the Sanjay Nagar Co-operative Housing Society. The total area thus was 1568 square meters. The Development Control Regulations for Greater Mumbai, particularly Regulation 33(10) was invoked. The certified Annexure – II dated 13th August, 2007 in favour of the Sanjay Nagar Co-operative Housing Society was issued and for an area admeasuring 1568 square meters for a total of 141 slum dwellers, out of which 71 were held eligible for benefit of this scheme.

4) The SRA noted the allegations, namely, with regard to the convening of meeting, the resolutions thereat and the decisions pursuant thereto, but the fact remains that the SRA issued a Letter of Intent on 3rd February, 2012 for land bearing CTS No.629(part)/1237-B (part) of village Bandra (East) for Sanjay Nagar Co-operative Housing Society. After issuance of the Letter of Intent, the Deputy Collector

(Encroachment and Removal) and Competent Authority, again issued a certified Annexure – II dated 28th February, 2012 for a total of 34 slum dwellers, out of which 20 were held as eligible. The record therefore indicates the area and piece of land for which the Slum Rehabilitation Scheme came to be considered and sanctioned is CTS No.629(part)/1237B(part) of village Bandra (East). Annexure – II reveals that near about 206 slum dwellers were residing on the property, out of which 128 were declared as eligible. 116 are eligible for residential tenements, 8 for commercial tenements and 3 for residential cum commercial tenements. 78 tenements have been held as non-eligible. The project affected persons are generated in the Slum Rehabilitation Scheme and they are 24 in number.

5) In this background, Mr. Raghuwanshi appearing for the Petitioner would submit that the SRA as also the High Power Committee (HPC) failed to take into consideration the Petitioner's objection that the Collector, Mumbai Suburban District has, pursuant to a letter addressed by the Executive Engineer of SRA dated 22nd February, 2013 informed him on 14th March, 2013 that so long as the Government is not in receipt of a report from the concerned authorities with regard to implementation of the Slum Rehabilitation Scheme, the SRA's application cannot be considered and it is therefore rejected.

Mr. Raghuwanshi would submit that the SRA, in the affidavit in reply filed in this Petition erroneously mentioned that the No Objection Certificate (NOC) of the Collector is deemed to have been granted. In that regard, Mr. Raghuwanshi invites our attention to the affidavit in reply filed on behalf of the SRA. Para 12 of this affidavit, according to Mr. Raghuwanshi contains a false and misleading statement that the application dated 22nd February, 2013 is neither rejected nor granted. Since the issue is pending for more than stipulated period and in terms of the Regulation, namely 2.8 of amended DCR 33(10), the permission is deemed to have been granted. Mr. Raghuwanshi submits that this is not a case of deemed permission but a case of deemed No Objection Certificate (NOC). There is nothing like a deemed NOC.

6) Then, attention is invited to the document annexed to the Petition at pages 242 and 243 of the paper book to submit that once there has been no communication from the Government, then, the SRA should not have proceeded to consider the application for grant of Letter of Intent and to grant it. That action is also illegal. Mr. Raghuwanshi then submits that if the project is indeed to be undertaken and for a Co-operative Housing Society, then, it must be evident that the Society has had a duly convened meeting, passed a Resolution accepting the terms and conditions of the Developer and appointing that

Developer and approving appointment of an Architect in the project. In the present case, the Resolution itself shows that M/s. Maniyar Realtors and Indrajeet Deshmukh were sought to be appointed as Developer and Architect to replace the original Developer, Joseph A. Pattathu. However, several documents, which are annexed to the Petition would show that the Letter of Intent is issued in the name of the said Mr. Joseph A. Pattathu or in the name of some other person. It is not clear as to who is developing the land, inasmuch as at some places the name of M/s. Maniyar Realtors appears, whereas, at some places name of Hari Om Construction appears and the present board displayed at the property mentions the name of one Sharad Shelar as Developer. In these circumstances and when the SRA as also the HPC refused to take into consideration these serious objections, then, their orders are vitiated in law and the Petition must succeed.

7) Both, the SRA and the Developer pointed out that there is no merit in the Petition. It is a single Applicant/Petitioner and though held to be eligible, is stalling and preventing the development. He is creating an obstruction for no reason. Once the structure of the Petitioner is demolished and the Petitioner is eligible for permanent alternate accommodation, then, there is no warrant for a single objection to be taken into consideration. It is pointed out that through

the legal proceedings the Petitioner is trying to stall the project but at the instance of a rival developer. However, the objections raised have no substance.

8) It is submitted that the Petition be dismissed because certain issues, which are concluded, cannot be reopened at the instance of the Petitioner.

9) We have noted the rival contentions and with the assistance of Mr. Raghuwanshi, we have perused the Petition and relevant Annexures, to which our attention has been invited. We do not find that a reading of the letter at page 241 of the paper book would enable us to uphold the argument of Mr. Raghuwanshi. The Collector, Mumbai Suburban purports to inform the SRA that if any Slum Rehabilitation project is to be undertaken and implemented on Government land, then, there has to be a proposal. That proposal must be scrutinized and verified by the office of the Collector. Thereafter, the Collector's office would address a clear report to the Government. When such report is forwarded, thereafter, the government's order or sanction to implement the scheme can be taken to have been granted. However, in the present case, the Collector's office has not forwarded any such report. Yet, the Collector states that it is his office which must forward the report. Therefore, enabling him to forward the report, it is necessary to

scrutinize and verify the proposal of SRA. Therefore, he seeks, from the SRA and the Competent Authority, the Annexure – II and the map. He seeks four copies of the same. He also seeks the opinion and views of the Municipal Corporation of Greater Mumbai with regard to any reservation on the land. He also seeks 7/12 extracts.

10) In the peculiar facts of this case, we do not think that the Collector has conveyed any refusal. The Collector could not have conveyed it, inasmuch as the decision has to be taken by the State Government. The Collector has only to forward his report containing the views and comments so as to enable the Government to take a decision. It is for enabling him to scrutinize and verify the proposal of the SRA that he seeks copies of the relevant documents. We do not see how such a communication can be termed as refusal by the government to grant NOC. If in terms of this communication the further steps have been taken, then, we do not see why the action prior to this communication can be said to be invalid and illegal *ab-initio*. This is not a case where the Slum Rehabilitation Scheme could not have been undertaken and implemented on a land belonging to the Government. The procedural formalities were required to be completed, but mere inclusion of such land or amalgamation of a portion of the land belonging to the Government with an existing scheme under the auspices of the Co-operative Housing Society of slum dwellers could

have definitely been implemented. For that purpose, all the steps have already been taken. In such circumstances, we do not find that there is any merit in the first contention of Mr. Raghuwanshi.

11) As far as other two contentions are concerned, it is clear that the SRA granted the Letter of Intent in favour of M/s. Maniyar Realtors. The said M/s. Maniyar Realtors had chosen two Architects for the project. Mr. Joseph A. Pattathu was the one representing M/s. Maniyar Realtors earlier, as an Architect. Later on, it appears that Mr. Indrajeet Deshmukh represented the said Developer as an Architect. Even the board displayed the name of M/s. Maniyar Realtors/Developers and under the caption Vastu Visharad/Vastu Creations, the name of one Sharad Shelar appeared. We do not know how Mr. Sharad Shelar is associated with the project. But by that itself, we do not think that the Letter of Intent in favour of M/s. Maniyar Realtors stands vitiated.

12) The Slum Rehabilitation Authority, in a detailed affidavit, pointed out as to how the application of the Developer for grant of sanction has been entertained. While it is true that the Architect of the project is Mr. Indrajeet Deshmukh, as is clear from the Letter of Intent, copy of which is at page 281 of the paper book, the Developer is stated to be Mr. Joseph A. Pattathu of M/s. Maniyar Realtors. Hence,

throughout his name has been appearing on record. It is that name which is also referred in the affidavit. In the affidavit, it has been pointed out that the Sanjay Nagar Co-operative Housing Society executed development agreement, Power of Attorney, individual as well as common consents in favour of the Developer M/s. Maniyar Realtors and on the basis of the same, M/s. Maniyar Realtors submitted the Slum Rehabilitation Scheme to the SRA on 26th December, 2000. Prior to that, in para 6, it is stated as to how they appointed the Developer.

13) We are also of the opinion that once the intimation of approval has been issued on 16th August, 2012 for construction of ground plus 11 upper floors for accommodating 128 original slum dwellers and plinth commencement certificate is issued, then, the HPC is not in error in dismissing the application. We have not found any non application of mind or non consideration of relevant and germane material by the HPC. The HPC, in its detailed order, has concluded from para 4 onwards that the Slum Rehabilitation Scheme on the subject plot is neither invalid nor can it be termed as illegal. Once the objections of the Petitioner have been dealt with, then, this is not a fit case for interference in Writ Jurisdiction. The Petition is devoid of merits and it is dismissed. No order as to costs.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)