

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

**WRIT PETITION LODGING NO.1695 OF 2017**

M/s. Nirman Realtors and Developers Ltd.  
(formerly known as M/s. Nirman  
Construction) A company reconstituted  
and converted into Limited Company, duly  
incorporated under the provisions of  
Companies Act, 1956.  
Having its office at 501/502 Peninsula  
Near Jeevan Sudha Building C.D.  
Barfiwala Juhu Lane, Juhu (W) Mumbai  
400 069.

...Petitioner

Versus

1) Slum Rehabilitation Authority  
An Authority constituted under the  
provisions of Maharashtra Slum Area (I.C.  
& R) Act, 1956,  
Having its office at Administrative  
Building, Prof. A.K. Marg, Bandra (East),  
Mumbai 400 051.

...Respondents

2. The Chief Executive Officer,  
Slum Rehabilitation Authority  
Having his office at Administrative  
Building, Prof. A.K. Marg, Bandra (E)  
Mumbai 400 051.

3. Mrs. Mamta Pathak  
Claiming to be Treasurer of Shree Azad  
Co-op. Housing Society (proposed)  
Having its office at 738/B/1/A,  
Pathanwadi, Malad (East), Mumbai 400  
092.

4. Shree Azad SRA Co-op. Housing  
Society LTd.,  
A Co-operative Housing Society, Duly

registered under the provisions of M.C.  
Act, having its office at CTS  
No.738/B/1/A,  
Pathanwadi, Malad (East), Mumbai 400  
092.

5. The High Power Committee  
A Committee constituted by Govt. of  
Maharashtra,  
Having its office at Administrative  
Building, Prof. A.K. Marg, Bandra (East),  
Mumbai 400 051.

**WITH  
CHAMBER SUMMONS LODGING NO.246 OF 2017  
IN  
WRIT PETITION LODGING NO.1695 OF 2017**

Supreme Construction Company  
A partnership firm registered under the  
Provisions of the Indian Partnership Act,  
1932 having its office at A-801, Leo  
Kohinoor Apartment, 24th Road, Khar  
(west),  
Mumbai-400 052.

Applicant

In the matter between  
M/s. Nirman Realtors and Developers Ltd.  
(formerly known as M/s. Nirman  
Construction) A company reconstituted  
and converted into Limited Company, duly  
incorporated under the provisions of  
Companies Act, 1956.  
Having its office at 501/502 Peninsula  
Near Jeevan Sudha Building C.D.  
Barfiwala Juhu Lane, Juhu (W) Mumbai  
400 069.

...Petitioner

Versus

Slum Rehabilitation Authority & Ors.

...Respondents

...

Mr. Pravin Samdhani, Senior Advocate with Mr. Madhur S. Surana

i/b. Mr. Madhur S. Surana for the Petitioner.  
Mr. D.H. Mehta with Mr. A.V. Narula i/b. M/s. Jhangiani Narula and Associates for the Respondent No.4.  
Mr. S.U. Kamdar, Senior Advocate with Mr. Chirag Balsara i/b. Mr. Arun Panickar for the Respondent No.3.  
Mr. Abhijeet Kulkarni for the Respondent No.1.  
Mr. Vijay Patil for the Respondent No.5.  
Mr. Milind Sathe, Senior Advocate with Mr. Chirag Balsara, Mr. S.R. Mamamia i/b. M/s. Chirag Shah & Co. for the Applicant in CHSWL/246/2017.

**CORAM : ANOOP V. MOHTA &**

**SMT. ANUJA PRABHUDESSAI, JJ.**

**JUDGMENT RESERVED ON : 12<sup>th</sup> July, 2017.**

**JUDGMENT PRONOUNCED ON: 27<sup>th</sup> September, 2017.**

**JUDGMENT (Per SMT. ANUJA PRABHUDESSAI, J.):**

Rule. Rule is made returnable forthwith. By consent of the parties, the Petition is taken up for final hearing.

2. The Petitioner herein has impugned the order dated 2<sup>nd</sup> June, 2017 whereby the Respondent No.5- High Power Committee set aside the order dated 29<sup>th</sup> March, 2017 passed by the Respondent No. 2 and consequently allowed the application filed by the Respondent No.3 under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (hereinafter referred to as 'the Slum Act') for removal of the Petitioner as Developers.

3. Mr. Samdhani, the learned senior counsel for the Petitioner has contended that the Respondent No.3 had filed application for removal of the Petitioner as a Developer claiming to be an elected committee member of the Respondent No.4-society. The learned counsel submits that the tenure of the Managing Committee, which was elected on 16.8.2012 was till 13.8.2017. He submits that the Society had not held any General Body Meeting for terminating the agreement or removing the Petitioner as a Developer. The learned senior counsel for the Petitioner submits that the application under Section 13(2) of the Slum Act can be made only when more than 70% of the eligible slum dwellers resolve to terminate the development agreement and make an application for change of Developer. He therefore claims that the Respondent No.3, as an individual member, had no locus to file the application before under Section 13(2) of the Slum Act. He contends that the High Power Committee has circumvented the said objection by holding that it is the bounden duty of the Slum Rehabilitation Authority to ensure that the Slum Rehabilitation Scheme is implemented speedily and it has powers to issue suo moto notice to change the Developer. The learned senior counsel for the Petitioner submits that the findings are contrary to the

law laid down by this Court in *Lokhandwala Infrastructure Pvt. Ltd. & Anr. vs. State of Maharashtra and Ors. 2011 (3) Mh. L.J. 469.*

4. The learned senior counsel for the Petitioner further submitted that the Respondent Nos.1 and 2 had recorded categorical findings that there were genuine difficulties in implementing the Scheme. The High Power Committee has removed the Petitioner as a Developer on the ground of delay, without considering the findings recorded by the Respondent No.2.

5. The learned senior counsel for the Petitioner has further submitted that the findings recorded by the High Power Committee that the Developer had failed to pay rent in lieu of the transit accommodation are not borne out of records. He has submitted that the High Power Committee has also failed to consider the fact that the challenge to the order of SRA by the proposed Society was not maintainable. He submits that the Respondent No.4-Society being the registered Society had filed an intervention application before the Respondent No. 2 in 13(2) proceedings and had supported the continuation of the Petitioner as a Developer. The learned senior counsel for the Petitioner therefore contends that the High Power

Committee was therefore not justified in entertaining the application filed by the proposed Society and in interfering with the order of the Respondent Nos.2.

6. Mr. S.U. Kamdar, the learned senior counsel for the Respondent No.3- Mamta Pathak submitted that the election of the Respondent No.4-Society was held by the Election Officer on 28<sup>th</sup> August, 2016 under the provisions of Maharashtra Cooperative Societies Act and that the Respondent No.3 alongwith 9 others have been appointed as Managing Committee Members of the Respondent No.4 Society. He has submitted that though the erstwhile members have filed a writ petition challenging the elections and having failed to get any interim relief, the Petitioner cannot challenge the locus of the newly elected Committee.

7. The learned senior counsel for the Respondent No.3 further contends that in the instant case there was inordinate delay in implementing the scheme. The fact that the Petitioner has entered into several joint venture agreements without the knowledge and consent of the SRA clearly indicates that the Petitioner had no financial capacity to implement the said Scheme. He further contends that the

Petitioner has also failed to pay the rent to the eligible slum dwellers. It was under these circumstances that the Respondent No.3 had filed an application for removal of the Petitioner-Developer. The learned Senior counsel for the Respondent No.3 submits that the Slum Rehabilitation Authority, which is an independent Authority has ample powers to implement, supervise and monitor the development Scheme. He contends that the SRA should have taken note of the fact that there was inordinate delay in implementing the scheme. The slum dwellers are languishing in transit accommodations and have not been able to enjoy the benefit of the scheme. Under such circumstances the SRA could not have abdicated its duties by dropping the proceedings under Section 13(2) of the Slum Act on the ground that the application filed during the tenure of the previous committee was not tenable. He has relied upon the decisions of this Court in *Omkar Realtors and Developers Pvt. Ltd. Vs. Slum Rehabilitation Authority and Ors.* 2011(5) Bom. C.R. 379 and judgment dated 7.2.2013 in *M/s. Ravi Ashish Land Developers Ltd. Vs. Prakash Kamble in Appeal from Order No.1019 of 2000.*

8. Mr. D.H. Mehta representing the erstwhile members of the Respondent No.4-Society has supported the order of Slum

Rehabilitation Authority. He has submitted that the tenure of the Committee was till 13.8.2017. He submits that the elected members of the society had not filed any application for removal of the Developer and that the Respondent No.3, who was not a member of the Managing Committee had no locus to file such application.

9. We have perused the records and considered the submissions advanced by the learned counsels for the respective parties. It would be necessary to make a brief reference to the facts of the case in order to understand the controversy involved in this Petition.

10. On 10<sup>th</sup> September, 1990 the Competent Authority in exercise of Powers under Section 4 of the Slum Act declared the property bearing CTS/738/B1A/1 situated at Pathanwadi, Pathanwadi, Malad (East), Mumbai 400 092, as slum. The slum dwellers residing in the said property formed a Co-operative Housing Society in the name and Style of Shree Azhad SRA Co-operative Housing Society, the Respondent No.4 hereinabove. The members of the said society passed a resolution on 2.12.2005 to redevelop the said property under the provisions of the Slum Act and DCR 33(10) and appointed the



Petitioner as a Developer. The Respondent No.4-Society thereafter executed development agreement and a power of attorney both dated 2<sup>nd</sup> December, 2005 in favour of the Petitioner for development and speedy implementation of slum scheme. In view of the said documents and consent given by more than 75% occupants, the Petitioner submitted a proposal to the Respondent Nos.1 and 2 for processing and approval of slum scheme.

11. The Competent Authority after verifying the documents of each occupant issued certified Annexure-II certifying that there were 192 occupants out of which 147 were eligible. The Respondent Nos.1 and 2 processed and approved the Slum Rehabilitation Scheme and issued letter of intent on 10.8.2009. After going through the proposal submitted by the Petitioner, the Respondent Nos.1 and 2 approved the building plan of composite building on certain terms and conditions. The Petitioner having complied with the conditions of LOI and IOA of the composite building, the Respondent Nos.1 and 2 issued commencement certificate on 9.12.2012. On 28.12.2011 SRA issued a revised letter of intent in favour of the Petitioner and the Respondent No.4 -Society for the implementation of the Slum Scheme.

12. On 16.9.2016 the Respondent No.3, claiming to be the Treasurer of the newly elected committee made an application dated 16<sup>th</sup> September, 2016 before the Respondent Nos.1 and 2 for removal of the Petitioner as Developer. By notice dated 14.12.2016 under Section 13 (2) of the Slum Act, the Respondent No.1 called upon the Petitioner to show cause as to why action should not be taken against him in view of the inordinate delay in implementing the Rehabilitation Scheme. On the very next day i.e. 15.12.2016 the Respondent No.1 extended Commencement Certificate of composite building upto 16th (part) upper floors and issued commencement certificate for sale building upto plinth level. The Respondent No.3 challenged the grant of extended commencement certificate before the Respondent No.5 by filing application No.9 of 2017. During the pendency of the said application, the Respondent No.1 issued stop work notice in view of commencement of the proceedings under Section 13(2) of the Slum Act.

13. By judgment and order dated 10.3.2017 in Writ Petition (L) No. 421 of 2017, filed by the Petitioner challenging the stop work notice, this Court directed the Respondent Nos.1 and 2 to take final decision on the application under Section 13(2) of the Slum Act. On

29.3.2017 the Respondent No. 2 rejected the said application under Section 13(2) of the Slum Act filed by the Respondent No.3 for change of the Developer on the ground that the application was not maintainable at the behest of the Respondent No.3. The Respondent No.2 held that the delay in implementing the scheme was mainly due to the resistance by the slum dwellers to vacate the premises/land and delay in issuance of the Fire Fighting NOC. The Respondent No.2 therefore, dropped Section13(2) proceedings and the Respondent No. 2 directed the Petitioner to complete the rehab portion within one year.

14. The proposed Committee challenged the said order before the High Power Committee by filing application No.51 of 2017 and 9 of 2017. Both these applications were signed and verified by the Respondent No.3. The Respondent No.5-High Power Committee while considering the locus of the Respondent No.3 in filing the application observed that *"Shree Azad CHS may not be registered society however Smt. Mamta Pathak is an eligible slum dweller and the member of the newly elected committee. However, it is bounden duty of SRA to ensure that the slum rehabilitation scheme should be implemented speedily and also have power to issue suo motu notice for change of Developer in the event of delay in implementing SR scheme under Section 13(2) of the*

*Slum Act"*.

15. It is pertinent to note that the Respondent No.4-Society was registered as a registered co-operative society of slum dwellers on 1.12.2009 and was therefore eligible to represent the slum dwellers, who are the members of Slum Dwellers Society. It is also pertinent to note that pursuant to the directions of the Assistant Registrar, Co-operative Society, the Respondent No.4 held elections of Committee Members of Managing Committee. The tenure of the elected Committee Members was for a period from 14.8.2012 to 13.8.2017. It appears that fresh elections were held even before the expiry of the tenure of the elected Committee Members and the Petition challenging validity of the elections is pending before this Court; hence we do not wish to delve into the said controversy.

16. Be that as it may, the records reveal that pursuant to the complaint lodged by the Respondent No.4, the concerned Department of the Respondent No.1 had verified the records and it was revealed that the fact that the tenure of the earlier committee would come to an end on 26<sup>th</sup> May, 2017 was concealed. Hence, the Respondent No.1, by letter 9.1.2017, informed the Respondent No.4-Society that the new

Managing Committee Members of Respondent No.4 -Society would take charge only after 25.5.2017. It is thus evident that as on the date of the filing of the application under Section 13(2) of the Slum Act the new Committee had not taken charge of the Respondent No.4-Society. The application filed by the Respondent No. 3 was not on behalf of the Respondent No.4-Society but was filed by her in her individual capacity.

17. At this stage, it would be advantageous to refer to judgment in *Avdhesh Vashishtha Tiwari Vs. Chief Executive Officer [2006 (4) Mh.L.J. 282]* wherein the Division Bench of this Court has observed that :-

*"Thus, the right of a hutment dweller who is in possession of a hutment on an area to which the Scheme is made applicable is for a tenement admeasuring 225 sq.ft. in exchange of the hut irrespective of the area of the hut. Thus, an individual hutment dweller gets this limited right apart from right to seek protection from eviction under Section 3Z(1) of the Slum Act. However, there is nothing in the scheme of D.C. Regulation 33(10) that an individual slum dweller gets a right to decide which Society or which*

*developer should implement the scheme."*

18. In ***Lokhandwala Infrastructure (supra)*** the Division Bench of this Court while considering the scope of DCR 33(10) as well as section 13 (2) of the Slum Act has held as under:

*"15. Now undoubtedly, a developer who has been appointed by a co-operative society is required to fulfill the mandate of DCR 33(10) by securing the implementation of the scheme. Where a developer fails to implement the scheme, that would not preclude the society which represents the interests of hutment dwellers from proceeding to terminate the contract with the developer. The act of termination may, as in the present case, give rise to a private dispute to which a remedy may be available in accordance with the rights which the contractual arrangement creates between the parties. But, where the society seeks to appoint a new developer, it would be necessary that a proper verification and scrutiny is made of the authenticity of the proposal and of the grounds on which the society seeks to enter into a new contractual arrangement. Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 inter alia contemplates that where the Slum Rehabilitation Authority is satisfied that the land has not been developed within the time, if any,*

*specified under such conditions as have been prescribed, the authority may determine to develop the land by entrusting it to any agency recognized by it for the purpose. It was urged on behalf of the co-operative society that Section 13(2) operates where a letter of intent is issued to the developer and would have no application where as in the present case a letter of intent was yet to be issued. We are not prepared to accept the submission which has been urged on behalf of the society that a proposed society of slum dwellers is entitled without any scrutiny or regulation of its activities by the statutory authorities to enter into and terminate development agreements at its own whim and fancy without any application of mind by the authorities concerned. To accept such a submission would only lead to a situation of chaos in the implementation of Slum Rehabilitation Schemes. Members of the managing committees of the societies which are still proposed societies would then be at liberty to pursue their own private ends and to switch loyalties between rival builders on considerations of exigency. Once the proposal has been submitted to the authority under DRC 33(10), the authorities are entitled to scrutinize whether a proposal involving the change of a developer is in the interest of the slum dwellers; whether the developer would fulfill the needs and requirements of the scheme and has the necessary capacity to do so and whether the new developer has the consents of 70% of the*

*slum dwellers. There is absolutely no merit in the submission that while the initial proposal needs to have the consents of 70% of the slum dwellers, a proposal for a change or substitution of a developer need not possess the requisite majority. The acceptance of such a submission would only defeat the object and purpose of the provisions made in DCR 33(10) and Appendix IV and would result in rendering the schemes subject to misuse. Such an interpretation cannot be accepted. We are clearly of the view that the dispute between a society and the developer does not lie purely in the realm of a private contractual dispute. The dispute has an important bearing on the proper implementation of the Slum Rehabilitation Scheme. The dispute has consequences which go beyond the private interests of the society and the developer. The scheme involves other stake-holders in the process including the land owning public bodies and the slum dwellers whose interests are sought to be protected by the scheme”*

19. In the instant case, in view of the Resolution passed and consent given by more than 70% slum dwellers, the Respondent No.4 which is a registered Society had entered into a development agreement with the Petitioner and submitted a proposal to the Respondent Nos.1 and 2 for approval of the redevelopment scheme. The Respondent No.4 Society had not filed any application under



Section 13(2) of the Slum Act for removal of the Petitioner as a Developer. Though a reference has been made to resolutions dated 21.2.2016 and 28.2.2016 taken by Shree Azhad CHS (P), it is not in dispute that the application under Section 13(2) of the Slum Act was not filed as a follow up of the decision taken in a General Body Meeting called by the Respondent No.4-Society. This is evident from the fact that the Respondent No.4-Society had intervened in Section 13(2) proceedings before CEO-SRA as well as in the proceedings before the High Power Committee and had opposed the change of Developer.

20. Undisputedly, the application under Section 13(2) of the Slum Act was filed by the Respondent No.3 in her individual capacity as a slum dweller. It is well settled that an individual slum dweller or the proposed society of the slum dwellers cannot seek removal of the developer, who was appointed by the registered society after obtaining consent of 70% of the slum dwellers. This being the case the application under Section 13(2) of the Slum Act filed by an individual slum dweller was not maintainable.

21. There is no dispute that a Developer who has been

appointed by a Cooperative Society is under obligation to fulfill the mandate of DCR 33(10). When the Developer develops the land in contravention of plan or contravenes any restrictions or conditions or does not implement the scheme within the time, Section 13(2) of the Slum Act confers powers on the Competent Authority to remove the errant Developers and replace by any other competent agency.

22. In the instant case the Competent Authority was not oblivious of its powers as it is evident from the fact that the Competent Authority had not dismissed the application under Section 13(2) solely on the ground of maintainability. A perusal of the order of the SRA reveals that the Competent Authority was conscious of the fact that there is inordinate delay in execution of SRA scheme. The Competent Authority has taken note of the fact that considerable time had to be spent in evicting the slum dwellers, who are reluctant to vacate the premises/ land, which was the subject matter of the development. The Competent Authority also took note of the fact that though the Petitioner had applied for fire fighting NOC in the year 2010, same was issued only in December, 2016. It was under these circumstances that the Respondent No.2 held that the delay in completing the project was not attributable to the Petitioner. The Respondent No.2 took a

conscious decision not to remove the Petitioner as a Developer on the ground of delay in implementing the scheme. Nevertheless, considering the interest of the slum dwellers, the Competent Authority felt it expedient to direct the Petitioner to complete the rehab portion within a period of one year and to provide the constructed tenements to the eligible slum dwellers.

23. It is pertinent to note that the High Power Committee has ordered removal of the Petitioner as a Developer on the ground of delay, without considering the findings recorded by the Respondent Nos.1 and 2 on this aspect. Suffice it to state that it was incumbent upon the High Power Committee to consider the records and to decide whether the delay was attributable to the Petitioner and whether the findings recorded by the Respondent Nos.1 and 2 were erroneous. The Respondent No.5-High Power Committee has not undertaken any such exercise and has interfered with the findings recorded by the Respondent Nos.1 and 2 without assigning any reasons for such interference. The findings of the High Power Committee on the aspect of delay are vitiated by non-application of mind.

24. It is also to be noted that the High Power Committee has

observed that the Petitioner has failed to pay rent of transit accommodation to the eligible slum dwellers. Non-payment of rent was one of the grounds for removal of the Petitioner as a Developer. It is to be noted that the show cause notice issued to the Petitioner in Section 13(2) proceedings does not refer to removal on the ground of non-payment of rent. The decision to remove the Petitioner as Developer on the ground of non-payment of rent is beyond the allegations contained in the show cause notice and is therefore breach of principles of natural justice.

25. Be that as it may, the Petitioner in his reply to the said show cause notice had mentioned that he had paid rent to all the eligible slum dwellers. He had produced affidavit/declaration given by 147 slum dwellers stating that they had no complaint against the Petitioner as regards payment of rent. The Petitioner had also placed on record the statement of AXIS Bank to substantiate his contention that he had paid rent to all the eligible slum dwellers till November-2016. The High Power Committee has recorded the findings about non-payment of rent without considering these documents. The findings of the High Power Committee is therefore not borne out of records.

26. The findings of High Power Committee are vitiated by non-application of mind and are not based on material on record. Hence, this is a fit case to exercise the jurisdiction and powers under Article 226 of the Constitution of India. Under the circumstances and in view of discussion supra, the impugned order of High Power Committee, reversing the order of CEO-SRA dated 29.3.2017 and terminating the Petitioner's appointment as Developer and further directing liberty to the slum dweller Society to appoint new Developer of their choice, cannot be sustained.

27. At this stage, we would like to state that the Members of the Society have long been waiting for completion of the project. The Petitioner might have had genuine reasons for not completing the project. Nevertheless, now that the hurdles are cleared the Petitioner is duty bound to complete the project within the time limit prescribed by the CEO-SRA excluding the time spent in contesting the proceedings before the High Power Committee and time taken before this Court in challenging the order of HPC by filing this Petition. Needless to state that in the event, the Petitioner delays the project and/ or does not comply with the directions given by the Respondent Nos.1 and 2 by order dated 29<sup>th</sup> March, 2017, the Competent Authority is free to take

action in exercise of powers conferred under Section 13(2) of the Slum Act.

28. In the aforesaid facts and circumstances, the Petition is allowed. the impugned order dated 2<sup>nd</sup> June, 2017 of the High Power committee in application No.51 of 2017 is hereby set aside and quashed.

29. In view of the disposal of the Petition, the Chamber Summons (Lodging) No.246 of 2017 does not survive and hence, stands disposed of.

30. The learned senior counsel appearing for the Respondent No.3 seeks to stay this judgment which we have pronounced today. The slum dwellers are languishing in transit accommodation and waiting anxiously for completion of rehab portion and allotment of tenements. Considering the reasons already recorded and to avoid further delay in implementing the redevelopment scheme, we are not inclined to accept the oral submission to stay this Judgment. It is accordingly rejected.

**(ANUJA PRABHUDESSAI, J.)**

**(ANOOP V. MOHTA, J.)**