

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

WRIT PETITION (Lodging) No.94 of 2018

Prakash Harishchandra More .. Petitioner
vs
State of Maharashtra & ors .. Respondents

with WRIT PETITION (Lodging) No.98 of 2018

Abhigna Enterprises .. Petitioner
vs
State of Maharashtra & ors .. Respondents

Mr.Darius Khambata,Senior Advocate with
Mr.P.K.Dhakephalkar Sr.Advocate with Mr.S.G.Surana
I.b Mr.Madhur S.Surana for Petitioner in W.P.(L) No.94/2018

Mr.V.A.Thorat Senior Advocate with Mr.Rohan Cama
I/b Mr.C.N.Gole for Petitioner in W.P.(L) No.98/2018
Mr.Manish Upadhye, AGP for Respondent no.1-State in both
Petitions

Mr.Milind Sathe Sr.Advocate with Mr.Abhijeet Desai
I/b M/s Desai Legal for Respondent nos.2 & 3 -SRA in both Petitions

Mr.Chirag Balsara I/b Ms.Richa Singh for Respondent no.7
in both Petitions

Mr.Virag Tulzapurkar Senior Advocate with Ms.Sowmya
Srikrishna I.b Ms.Richa Singh for Respondent no.8 in both
Petitions

Mr.Vijay Patil for Respondent no.9 in both petitions

Coram : S.C.GUPTE, J
Date : 15th MARCH, 2018

P.C

1. These petitions challenge an order passed by respondent no.3-C.E.O. of Slum Rehabilitation Authority (S.R.A.) on 22nd February 2018. By the impugned order, the C.E.O. directed the Assistant Registrar of Co-operative Societies/S.R.A. to call a General Body Meeting of Borivili Avirahi SRA Co-operative Housing Society (Proposed), a society of slum dwellers (hereinafter referred to as “the Society”), who is one of the Petitioners in the two petitions herein, to elect the Chief Promoter and Managing Committee and thereafter, to pass a fresh General Body Resolution in the presence of a representative of S.R.A. for appointment of a developer of their choice. The Society was permitted to consider the present developer M/s Abhigna Enterprises (Petitioner in the companion Petition, namely, Writ Petition (Lodging) No. 98 of 2018) as one of the candidates for such appointment. The Society was also permitted to submit a fresh scheme as per rules and regulations and norms of

SRA.

2. Disputes between the parties arise out of a scheme of Slum Rehabilitation submitted by the Petitioners (i.e. the Society and Abhigna Developers) in the year 2006 to S.R.A. This scheme was under Regulation No.33 (10) of the Development Control Regulations. It is the case of the Petitioners that in pursuance of resolutions passed by the Society in May, 2006, on 15th July 2006 a Development Agreement was entered into between the society and the Developer-M/s Abhigna Enterprises. In pursuance of this Development Agreement, the Petitioners applied to MHADA for a Letter of Intent ("LOI"). It is the Petitioners' case that between the years 2006 and 2017, various follow-up steps were taken by MHADA and the Petitioners and finally on 17th June 2017 S.R.A. called for payment of a large sum of about Rs.19.27 crores by way of land premium from the Petitioners. It is submitted that on 22nd June, 2006, a sum of about Rs.2.89 crores was paid towards the first instalment of the land premium. It is submitted that thereafter, on

28th June 2017 some disgruntled slum-dwellers, who claimed to be members of a rival society, lodged a complaint with the Chief Minister of the State and on the same day, without hearing the Petitioners, and behind their back, a direction was issued by the C.E.O. of S.R.A. not to issue LOI to the Petitioners till a fresh General Body Resolution passed in the presence of Assistant Registrar of Co-operative Societies/S.R.A was filed along with common consent of slum-dwellers.

3. Being aggrieved by the order of 28th June 2017, the Society filed an application before the Apex Grievance Redressal Committee (“Grievance Committee”) under section 35 (1) (a) of the Slum Act. Simultaneously, another application was moved by M/s Abhigna Enterprises, the Developer before the Grievance Committee. The Grievance Committee, by its order dated 8th December 2017, held that the C.E.O. of S.R.A. was justified in passing the order and directed the C.E.O. of S.R.A. to bring the matter of complaint pending before him to its logical conclusion

without being influenced by his earlier order dated 28th June 2017. At that stage, the present petitions were moved before this Court. By an order dated 12th January 2018, this Court directed the C.E.O. of S.R.A. to conclude the hearing (as required by the Grievance Committee) on or before a particular date and make his final order thereon. The Court further directed that in the meantime, no elections to the Society should be conducted.

4. The matter thereafter proceeded before the C.E.O. of S.R.A. and finally, by his order dated 22nd February 2018, which is also impugned in the present petitions by way of amendment, the C.E.O. directed calling of a General Body Meeting of the Society to elect its promoter and managing committee and thereafter take a fresh General Body Resolution with a view to appoint a developer of their choice.

5. The impugned order of the C.E.O. of S.R.A. is challenged by the Petitioners chiefly on the ground of the propriety of the

inquiry and the findings rendered therein. It is submitted by Mr. Khambatta and Mr.Thorat learned senior counsel appearing for the two Petitioners before the Court, that the way the matter progressed before the C.E.O.of S.R.A. and the impugned order came to be passed indicates that there was no fair play, insofar as the Petitioners are concerned. It is submitted that the C.E.O. not only considered matters, which were extraneous to the complaint on which the parties were heard, but considered them at the back of the Petitioners. It is submitted that the original complaint of 28th June 2017 talked about termination of the original developer, namely, M/s Abhigna Enterprises, “since they have not done any progress”. The complainant claimed that the application for LOI submitted by M/s Abhigna Enterprises to the C.E.O.of S.R.A. should be cancelled and stringent action taken against them; that M/s Abhigna Enterprises were trying to get LOI issued on the basis of documents submitted as far back as in the year 2006; that the developer had misused the names and photographs and was spreading information amongst the local slum- dwellers that there was sanction granted to

its proposal. The complainant, in the premises, requested that LOI not be issued and permission not be granted to M/s Abhigna Enterprises. The complaint is said to be made on behalf of one Abhedya SRA Co-operative society (Proposed), a co-operative society of about 938 slum dwellers occupying property admeasuring about 30,258.80 sq.meters. (It appears that this proposed society is a society of slum-dwellers which include not only the members of the original petitioner-society but also of occupants some adjoining lands.). Learned counsel submit that on this complaint, the C.E.O. of S.R.A. considered various aspects such as (i) whether or not there was a proper meeting held in May 2006 for formation of the Society and for appointment of M/s Abhigna Enterprises as a developer ? (ii) whether consents of slum-dwellers were genuine or forged ? (iii) whether these consents amounted to joint consent of 70% of slum-dwellers and (iv) whether the original proposal submitted by the Society to M/s Abhigna Enterprises in the year 2006 was closed or was live ? It is submitted that all these matters were extraneous to the original complaint, which was inquired into by the C.E.O.

Further, it is submitted that the affidavits referred to in the impugned order, namely 63 affidavits of persons who claim to be slum-dweller/members of the Society, who stated on oath that their signatures were false and forged, were not shown to the Petitioners and they were not allowed to deal with these affidavits.

5. Besides the various controversies, which are dealt with in the impugned order of the C.E.O. of S.R.A., the significant question, which needs to be considered in the present case, is whether, on the basis of a slum rehabilitation scheme under DCR 33 (10) submitted in the year 2006, the Petitioners can require S.R.A. to issue LOI in the year 2017. It is not disputed that as far back as on 19th June 2008 there was a communication addressed by S.R.A. to M/s Abhigna Enterprises, calling for payment of premium at the rate of 25% of the Ready Reckoner Value in respect of the rehabilitation scheme proposed to be undertaken on the land owned by MHADA. M/s Abhigna Enterprises were requested to communicate within eight days their willingness to pay the premium amount, failing

which the proposal would be closed and recorded without any further correspondence and the C.E.O. would be at liberty to accept any new proposal of rehabilitation as per Government policy. It appears that not only was there no communication of willingness on the part of M/s Abhigna Enterprises to pay the premium but, practically no step appears to have been taken thereafter to revive or process the proposal till the present application for LOI moved before S.R.A. in June, 2017. That was nearly 9 years of S.R.A. calling for payment of premium and 11 years after the submission of the original proposal to S.R.A. In June 2017, the Petitioners appear to have suddenly approached the C.E.O. of S.R.A. with their application for issuance of LOI. There is no apparent reason why this should have taken place in June 2017, and why not earlier or, for that matter, later. It is submitted orally before the Court that all this while there was some controversy as to the authority, namely, whether it would be SRA or MHADA, who should be issuing Annexure-2, declaring the names of eligible slum-dwellers and in the meanwhile, there was a change of policy and premium was now

required to be paid only after Annexure-2 was issued. But then Annexure-2 was admittedly not issued even by June 2017. Why then was the application for LOI suddenly made in June 2017 and part of the premium was paid within a few days thereafter ? There is hardly any explanation. The only significant events in June 2017 were the passing of a resolution on 17th June 2017 by the new society of slum-dwellers, namely, the rival Society of Abhedya SRA CHS (Proposed) appointing a rival developer, M/s Inclined Realty Pvt.Ltd-Respondent no.7 herein, and the imminent retirement of the then C.E.O. by the end of June 2017. Completely out of sink with the way S.R.A. is known to function, within just a couple of days of the developer moving the S.R.A.for LOI a full-fledged detailed report is prepared by Officers of S.R.A. setting out the various steps purportedly taken in the matter between the year 2006 and till date; a sanction is issued for issuance of the LOI and the developer is informed on 17 June 2017 to pay the instalment of 15% of the premium amount as per Government Notification; and the first instalment of about Rs.2,89 crores is even paid on 22nd June 2017. Even a cursory look

at the report submitted by the Officers of S.R.A. and the order passed by the C.E.O. purportedly approving the scheme and calling for payment of premium, would indicate that during the long years that followed the original communication of SRA of 19 June 2008, there was hardly any progress in the matter. The proposal appears to have been suddenly re-activated in June 2017 when the slum-dwellers were in the process of organising themselves in a different group and appointing a rival developer and in a quick succession, not only was SRA approval obtained to the original proposal of 2006 but, a substantial part of the premium is said to have been paid to SRA towards the redevelopment proposal.

6. The issue as to whether the proposal submitted in the year 2006 and on which payment of premium was called for in June 2008, can be reactivated in this fashion or was it to be treated or declared as closed, was very much part of the inquiry before the C.E.O. of S.R.A. wherein the impugned order came to be passed. The Grievance Committee order, which preceded the hearing before the

C.E.O. of S.R.A., clearly referred to this matter. The parties, did any way have a general issue before the C.E.O. on this aspect of the matter, namely, whether LOI ought to be issued in 2017 on a proposal made in 2006 and if after hearing the parties, the C.E.O. came to the conclusion that in the peculiar facts and circumstances of the case and considering the material on record, the proposal originally submitted by M/s Abhigna Enterprises in the year 2006 should be declared as closed, the same cannot be said to be perverse conclusion.

7. There is no reason either of propriety (of the inquiry) or validity (of the conclusion arrived at therein), which could vitiate the impugned order. There is absolutely nothing in the facts of the case which should warrant interference of the writ court in a matter such as this. No doubt, the C.E.O. does refer in his impugned order to the other aspects of the matter such as the factum and validity of the meeting of slum-dwellers for electing the Chief Promoter and appointing M/s Abhigna Enterprises as a developer and the consent

of slum-dwellers purportedly recorded in the matter of the proposal which are not part of the original complaint made to the CEO. But then a complaint by slum-dwellers cannot be treated like a formal pleading in a Court of law. Besides, these are not matters which are completely foreign to the inquiry into whether or not LOI should be issued to the developer for implementing the rehabilitation scheme. These matters were even discussed before the Grievance Committee and were present to the minds of the parties when the CEO inquired into the complaint. But, even if one were to disregard these matters and proceed simply on the footing that the developer had not taken any step till June 2017 in prosecuting and bringing to fruition the original proposal of 2006, the impugned order of the C.E.O. is certainly justified and calls for no interference.

8. It is an admitted position that the Chief Promoter and Committee of the Society were appointed sometime in the year 2006. After 2006, there has not been a single general body meeting of the Society either to elect the Chief Promoter or its Managing

Committee. This in the face of the fact that these appointments are usually for one year and even under the declared State policy, new appointments have to be made annually.

9. In the face of the facts that (a) the Chief Promoter and Committee were appointed and developer chosen and proposal submitted to SRA as far back as in 2006, (b) no significant steps were taken in the matter thereafter till June 2017 (c) there was to say the least, doubt as to the validity of the consents submitted in 2006 and (d) there was no fresh assessment by the Society of the proposal since 2006; the decision of the CEO that the Society must hold a fresh general body meeting and first elect its Chief Promoter and thereafter pass a fresh resolution for choosing a developer, cannot be faulted as perverse or warranting interference under Articles 226 of 227 of the Constitution of India. Besides, it is not as if the original developer, M/s Abhigna Enterprises, is excluded from the process. Even he can throw his hat in the ring and the occupants may well accept him. He may, of course, have to muster the requisite

majority. This is after all a democratic process and it must have a full play. There is no reason why this Court must intervene and scuttle that process.

10. Considering the overall facts of the case, and various attending circumstances concerning the original proposal and its journey through the years, the directions passed by the C.E.O. of S.R.A. in his impugned order cannot be faulted on any valid ground.

11. Accordingly, there is no merit in the petitions. The petitions are dismissed. No order as to costs.

12. At the request of learned counsel for the Petitioners, the interim stay of the impugned order, granted on 12th January 2018 and continued till this date, is continued further for a period of four weeks from today.

(S.C.GUPTE, J)

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