

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

WRIT PETITION (L) NO. 1408 OF 2018

Bharat Mahan Developers & Builders	...Petitioners
Vs.	
The Chief Executive Officer, SRA & Ors.	...Respondents

AND

WRIT PETITION (L) NO. 1403 OF 2018

Mumtaz A. Rehman Shaikh & Anr.	...Petitioners
Vs.	
The Chief Executive Officer, SRA & Ors.	...Respondents

Mr.Bhalchandra Govind Saraf for Petitioners in WPL 1403/2018.
Mr.V.A. Thorat I/b. P.R. Kadam for Petitioners in WPL 1408/2018.
Mr.Rishikesh Soni with Raveena Yadav, Dharti Pandya I/b. Ashok Purohit
& Co. for Respondent Nos.1 and 2.
Mr.Gaurang Jhaveri for Respondent No.4 in both petitions.
Mr.Anil Anturkar, Senior Advocate with Prathamesh Bhargude I/b. Vijay
Gaikwad for Respondent Nos.5 to 10 in both petitions.
Mr.H.B. Takke, AGP for State.

CORAM : S.C. GUPTE, J.

DATE : 4 MAY 2018

P.C. :

Heard learned Counsel for the parties. Rule, taken up for final hearing forthwith, by consent of Counsel.

2 These two petitions, filed under Articles 226 and 227 of the Constitution of India, seek to challenge the order dated 10 April 2018 passed by the Chief Executive Officer ('CEO') of Slum Redevelopment Authority ('SRA'). By the impugned order, the CEO cancelled the revised Letter of Intent (LOI) and consequent sanction of amended plans, and

revived an earlier LOI and unamended plans. This order was passed about one and half years after the revised LOI was issued, amended plans were sanctioned, the entire redeveloped building was fully constructed and even Occupation Certificate ('OC') was issued by SRA for the building.

3 It is the case of the Petitioners (Petitioners in Writ Petition (Lodging) No.1408/2018 being the developers of the slum rehabilitation project and Petitioners in Writ Petition (Lodging) No.1403/2018 being occupants and members of the co-operative society, who are put in possession of tenements in the redeveloped building) that by development agreement dated 25 September 1998, the developers agreed to develop the subject slum property. This agreement was confirmed by a duly registered deed of confirmation dated 19 July 2007. The redeveloped building was to accommodate 19 shops upon S.G. Barve Marg, Kurla (East), Mumbai and 128 residential premises. Initially an LOI was issued by SRA for the redevelopment on 23 May 2002. The LOI was revised between 2003 and 2010, the last of the revised LOIs being sanctioned on 15 October 2010. Based on this revised LOI, development plans were sanctioned on 12 October 2010. It is the case of the developers that since some of the occupants were refusing to accept shops originally proposed for them on S.G. Barve Marg due to deficiency in width, the new LOI was obtained and plans amended so as to make available shops of greater width on the adjoining pathway which had an opening on S.G. Barve Marg. In the meantime, since these occupants refused to vacate their respective shops, the developers applied to the Additional Collector for an action under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act"). Notices were issued to the occupants in pursuance of this application. The Deputy

Collector and Competent Authority passed orders of eviction under Sections 33 and 38. This order was challenged by the occupants before the Divisional Commissioner, Konkan Division. The appeals were dismissed by the Divisional Commissioner. The occupants thereafter approached this court by filing a writ petition, being Writ Petition No.798/2013, challenging the order of the Divisional Commissioner. In this petition, what was challenged was not only the order of the Divisional Commissioner but the scheme of SRA itself. It was the contention of the Petitioners that their case was governed by the Rent Act and the procedure under that Act should have been followed in their case. The writ petition came up for hearing before a Division Bench of this court when it was disposed of by giving liberty to the Petitioners to adopt proceedings either before the Small Causes Court at Mumbai or the High Power Committee, if they so desired. Continued resistance of shop dwellers to accept allotment of shops on the ground of inadequate width constrained the developers to provide shops on the other side of the building where there was a larger space available. The Developers claim to have negotiated the matter with adjoining societies in the interest of better allotment to shop dwellers and the revised scheme. The developers proposed a total number of 13 shops on the adjoining pathway having 12 meter opening on the S.G. Barve Marg. Thus, six shops were to be allotted to the shop dwellers on S.G. Barve Road and 13 would be accommodated in the adjoining internal pathway. The developers thereafter claim to have approached the society of occupants. The Office bearers of the society inspected the site and satisfied themselves about the suitability of the accommodation offered and thereafter consented to the amendment of the plans. The developers thereafter made an application to SRA for amendment in LOI as well as in the plans. The authority, after satisfying itself about the legality of the

course adopted by the developers, sanctioned the revised LOI and plans. The developers thereafter proceeded to construct the building along with the shops as proposed. The construction of the building with shops as proposed was thereafter completed and OC was issued by SRA on 6 December 2016. According to the amended plans and OC, there are 14 shops on S.G. Barve Marg, six of which are allotted to shop dwellers who accepted shops with lesser width and co-operated for the SRA scheme, four shops allotted to owner's nominees and four sold in the open market. All 14 shops on S.G. Barve Marg have accordingly been disposed of and possession thereof has been handed over to third parties. Thereafter, in pursuance of the OC, the developers claim to have offered possession of the shops to the resisting shop dwellers by sending communications dated 13 December 2016. The shop dwellers, however, failed to accept the possession offered. One of these shop dwellers, Anita Anant Patne, filed a writ petition in this court. This court was of the view that the petitioner, being a non-cooperative occupant, was not eligible to claim alternative accommodation as per her choice. The petitioner before the court thereafter accepted the allotment of the shop in the adjoining pathway. That was acknowledged by this court in its order passed whilst disposing of the writ petition. Another petition has been filed by Respondent Nos.5, 8, 9 and 10 herein before this court, being Writ Petition No.762/2017, claiming similar reliefs. Pending this petition, Respondent No.1 issued a notice dated 11 September 2017 demanding reply of the developers. This was on the complaint of occupants, who were party to the challenge before the court to eviction orders. Surprisingly, on this complaint, after hearing the developer's explanation, CEO of SRA passed the impugned order cancelling the revised LOI and amended plans and restoring the original LOI and unamended plans. This order is challenged separately by the developers

and the occupants/allottees, who are members of the co-operative society of occupants in occupation of tenements in the redeveloped building.

4 Mr.Thorat, learned Senior Counsel appearing for the Petitioner developers, submits that a planning permission for development granted or deemed to be granted under the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act') or any other law may be revoked or modified by the Planning Authority, after giving the person concerned an opportunity of being heard against such revocation or modification, as the case may be. There is a proviso to sub-section (1) of Section 51 which provides that where the development relates to carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed. Learned Counsel submits that in the present case, there is a failure to comply with both these aspects. It is submitted firstly that there was no opportunity of hearing to the Petitioner developers herein against revocation or modification of planning permission and secondly, the development operations have been fully completed and even OC has been issued by the planning authority and third party rights have been created. It is submitted that in the premises, the planning permission cannot be revoked.

5 Mr.Anturkar, learned Senior Counsel appearing for Respondent Nos.5 to 10, on the other hand, submits that by virtue of Section 47 of the Slum Act, since the suit area is admittedly declared to be slum area under the Slum Act, the provisions of MRTP Act including Section 51 thereof must be deemed to be not in force. It is submitted that the relevant provisions of the MRTP Act correspond to the provisions of the

Slum Act. Learned Counsel submits that cancellation or modification of planning permission in the present case accordingly does not satisfy either the main provision of sub-section (1) of the MRTP Act which provides for hearing to the person concerned or the proviso to sub-section (1) which prohibits cancellation or revocation of planning permission in the case of substantial progress or completion of development carried out concerning any building or other operations.

6 Section 47 of the Slum Act provides for cesser of corresponding laws and powers conferred thereunder temporarily, whilst the declaration of a slum area under the Slum Act remains in force. Where any area is declared to be a slum area under the Slum Act, then as from the date of the declaration, the provisions of any municipal or other law *“corresponding to the provisions of this Act for slum improvement in relation to the slum area in force immediately before the said date”* shall, save as otherwise provided in the Slum Act, cease to be in force in the slum area so long as the declaration remains in force. So also, where any area is declared to be a slum area and any building or buildings is or are ordered to be demolished under the Slum Act, then as from the date of such order, the provisions of any municipal or other law *“corresponding to the provisions of this Act for slum clearance or redevelopment and demolition of buildings in force immediately before the said date”* shall not, save as otherwise provided in the Slum Act, apply in relation to such building or buildings, but so long as the building or buildings, as the case may be, is or are redeveloped. It is not that by virtue of Section 47, the relevant provisions concerning planning permission including its revocation or modification cease to operate in respect of any area declared to be a slum area under the Slum Act. The Slum Act makes special provision for a slum

rehabilitation scheme, protected occupiers, their relocation or rehabilitation including in situ rehabilitation, housing scheme for protected occupiers in slum areas, slum improvement, slum clearance and redevelopment, acquisition of land and protection of occupiers in slum areas from eviction and distress warrants, etc. It does not provide for the planning requirements or the planning permission in respect of any redevelopment generally in the slum areas declared as such under Section 4 of the Slum Act. Insofar as these provisions are concerned, even in slum areas, the provisions of the MRTP Act do apply save and except in respect of those matters which are otherwise provided for in the Slum Act. It is clear even from the apparent tenor of the provision of Section 47 that so long as the declaration concerning any slum area under the Slum Act remains in force, only those provisions of municipal or other law which correspond to the provisions of the Slum Act and which relate to slum improvement in relation to the slum area, cease to be in force. The particular planning permission, namely, sanction of plans and permission to construct in accordance with the plans, is issued not under the Slum Act but under the relevant provisions of the MRTP Act read with the Development Control Regulations for the City of Mumbai. This planning permission cannot be cancelled without recourse to the provisions of Section 51 of the MRTP Act. The impugned order of the CEO of SRA to the extent it cancels sanctioned amended plans is thus clearly without jurisdiction and *ultra vires* under the MRTP Act. The CEO of SRA has no authority, in the premises, to cancel any part of the planning permission including sanction of plans.

7 Insofar as cancellation of LOI is concerned, though the LOI is governed squarely by the provisions of the Slum Act, after the sanction of

the LOI and after several steps are taken in pursuance of the LOI including sanction of building plans and execution of those plans by constructing a building and obtaining OC after completion of the same, such cancellation is clearly unauthorised and beyond the jurisdiction of the CEO of SRA. Learned counsel for Respondent Nos.5 to 10 submits that revocation of the LOI and building permission is under Section 3A read with Section 8 of the Slum Act. Learned Counsel relies on the judgment of the Supreme Court in the case of **Susme Builders Pvt.Ltd. vs. Chief Executive Officer, Slum Rehabilitation Authority**¹. Relying on this judgment, it is submitted that in terms of clauses (c) and (d) of sub-section (3) of Section 3A of the Slum Act, SRA not only has the power but is duty bound to get the slum rehabilitation scheme implemented and to do all other acts and things as may be necessary for achieving the object of rehabilitation of the slum dwellers. In **Susme Builders'** case, the court was faced with a situation where, after issuance of LOI, the developers had not constructed any building for over 25 years and the court was considering the action taken by SRA, in the premises, to remove the developers for the unjustified delay. In order to implement the slum rehabilitation scheme, it was necessary, in the facts of that case, for SRA to remove the developers. The Supreme Court, in the premises, held that even if it were to be assumed that SRA did not have the requisite power (i.e. power to remove the developer) under Section 13(2) of the Slum Act, since it was SRA which issued the letter of intent, in the first place, in favour of the developer, it must necessarily have the power to cancel the same. Such power is not only to be exercised, but SRA is duty bound to do so “to get the slum rehabilitation implemented” and “to do all other acts and things as may be necessary for achieving the object of rehabilitation of slum”. The ratio of this judgment is cited by

1 (2018) 2 SCC 230

learned Counsel in support of the proposition that even after the LOI is fully implemented by the developer and the slum rehabilitation scheme has been executed, SRA still has the power to remove the developer, and that to “get the slum rehabilitation scheme implemented.” This is nothing but a contradiction in terms. It is not SRA's case that the developer has acted here in breach of the LOI or the sanctioned plans. The developer has in fact implemented and executed the work sanctioned by the LOI in accordance with the sanctioned plans. The developer, in other words, has implemented the slum rehabilitation scheme. After the scheme is so implemented, SRA cannot, acting under Section 3A of the Slum Act, remove the developer “to get the slum rehabilitation scheme implemented”. Even if one were to assume that SRA has such power, yet it must be shown that there is a case for exercising that power. No such case is found here. Learned Counsel for Respondent Nos.5 to 10 submits that the LOI was obtained and slum rehabilitation scheme was implemented by the developers in the present case by practising a fraud. The CEO of SRA has not found any such fraud. On the other hand, the so called misleading statements of the Petitioner developer in the present case, which have been cited by Counsel as ingredients of the alleged fraud, have been accepted by the CEO of SRA as a *bonafide* mistake. If it is *bonafide*, there is no lack of good faith and by definition, it cannot be termed as a fraudulent act. There is thus no substance in the submission that the LOI or the sanction of plans or the implementation of the scheme in any way suffer from, or vitiated by, fraud.

8 The so called facts and figures taken into account by CEO of SRA for the rehab shop area or resale of shop area are not borne out by the record. Learned Counsel could not show from the plans produced before the court or otherwise that the areas taken into account are correct.

9 For all these reasons, the impugned order of CEO of SRA cannot be sustained. The petition is allowed by making rule absolute and quashing and setting aside the impugned order of the CRO of SRA dated 10 April 2018. No order as to costs.

(S.C. GUPTE, J.)