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

WRIT PETITION NO. 480 OF 2018

Ramesh Ganpat Jadhav & Anr.	...	Petitioners
vs.		
Apex Grievance Redressal Committee and Ors.	...	Respondents

WITH
WRIT PETITION NO. 897 OF 2018

K. Devi Housing	...	Petitioners
vs.		
Apex Grievance Redressal Committee and Ors.	...	Respondents

WITH
WRIT PETITION NO. 1605 OF 2018

Ramesh Ganpat Jadhav & Ors. .	...	Petitioners
vs.		
Apex Grievance Redressal Committee and Ors.	...	Respondents

Mr. D. D. Madon, Senior Advocate i/b. Sutapa Saha for the petitioner in WP/480/2018.

Mr. Mayuresh Khandeparkar i/b. Mr. Vishwajeet S. Kapse for the Petitioner in WP/897/2018.

Mr. Akshay Patil i/b. Mr. Jayesh R. Vyas for the Petitioner in WP/1605/2018.

Mr. G. W. Mattos, AGP for respondent no. 1 in WP/480/2018 and WP/897/2018.

Mr. S. U. Kamdar, Senior Advocate a/w. Mr. Chirag Balsara a/w. Ameer H. Tatli for Respondent nos. 4, 5, 5(A), 5(B), 5(C) and 5(D).

Mr. Karan Bhosle i/b. Mr. Yuvraj Patil for Respondent No. 3 in WP/480/2018, Respondent No. 4 in WP/897/2018.

Mr. Vijay Patil i/b. Mr. Anup Patil for Respondent No. 2.

CORAM : A.K. MENON, J.

DATE : 23rd OCTOBER, 2018

P. C.

1. By this common order the aforesaid writ petitions are disposed at the stage of admission by consent of parties. Rule in Writ Petition No. 480 and 1605 of 2018. Rule made returnable forthwith.
2. Writ Petition No. 480 of 2018 is filed by two member/promoters and Committee Member of one Kadeshwaridevi SRA Co-operative Housing Society (proposed) formerly known as Ganesh Krupa SRA CHS (proposed). Proposed respondent are the Chief Executive Officers of Apex Grievance Redressal Committee, Slum Rehabilitation Authority, Chief Promoter of of the said Society and legal representative of erstwhile property. Others are representative of developers claiming right to develop the property of two slum colonies known as Jaffar Buva and Jaffar Baba Slum Colony. They are also stated to be members of the Kadeshwaridevi SRA Co-operative Housing Society (proposed) ("the Society").
3. In Writ Petition no. 480 of 2018 the petitioners challenge impugned orders dated 26th February, 2016 passed by the respondent no. 2 – Chief Executive Officer, Slum Rehabilitation Authority ("CEO, SRA") and the order dated 9th November, 2017 in an appeal filed by the two petitioners in this petition before the Apex Grievance Redressal Committee ("AGRC"). In Writ Petition No. 1605 of 2018, in addition to petitioner in Writ Petition 480 of 2018

there are four other petitioners and they challenge orders dated 20th February, 2018 and 8th May, 2018. The order of 20th February, 2018 is passed by SRA directing action against the petitioners under section 33A of the Maharashtra Slum Areas (Improvement Clearance & Redevelopment) Act ("The Slum Act") in respect of the Jaffar Buva and Jaffar Baba CHS (proposed) and the order / Minutes of decision dated 19th March, 2018 and 8th May, 2018 is passed by the AGRC against order dated 20th February, 2018 which inter alia directs the petitioners in the Writ Petition to execute agreement with the respondent no. 2 within a period of two weeks and directing disbursal of amounts deposited in a bank in accordance with circular no. 153 of the SRA and consequently handover peaceful possession of the structures in their occupation. Writ Petition 897 of 2018 is filed by a rival developer challenging the very orders forming subject matter of challenge in Writ Petition no. 480 of 2018.

4. Arguments were advanced by the Counsel in all these matters. On behalf of the petitioners in Writ Petition no. 480 of 2018, Mr. Madon led the arguments. He submitted that there is a fundamental flaw in the order impugned before the AGRC. He submitted that the proceeding before the CEO, SRA and the AGRC had proceeded on the basis that the proprietor of respondent no. 5 was one Mr. Balwant Doshi. However at all material times the proprietor was son of Mr. Balwant Doshi named Mitul Balwant Doshi who had expired on 23rd October, 2015.
5. He submitted that the Letter of Intent ("LOI") had been issued in the name of

Hare Krishna Developers a proprietary concern of late Mitul Doshi. Upon his demise the proposal came to an end, as a result of which further proceedings could not have been adopted by the proprietary concern M/s. Hare Krishna Developers. He submitted that the AGRC had failed to take note of this basic fact and had erroneously come to the conclusion that Balwant Doshi was the proprietor of Hare Krishna Developers because he had approached the slum dwellers in the year 1996. He submitted that Mitul Doshi was at all times the sole proprietor of Hare Krishna Developers till his demise and the said Balwant Doshi was at all material times sole proprietor of one Hare Krishna Builders. He had then acted in the name of Hare Krishna Developers and had converted the proprietary concern to a partnership firm and inducted partners. He submitted that the AGRC proceeded on the erroneous basis that alleged conversion was legitimate since the sole proprietor of Hare Krishna Developers was at all times Mr. Balwant Doshi. In the instant case the proprietary concern of Balwant Doshi was not Hare Krishna Developers but Hare Krishna Builders.

6. Mr. Madon further submitted that the order of the AGRC suffered from inherent flaws. Apart from the obvious error in concluding that Hare Krishna Developers was a proprietary concern of Balwant Doshi, he invited my attention to observation in paragraph 10 of the order passed by the AGRC recording that M/s. Hare Krishna Developers had paid substantial sums of money and the last of such installments was stated to have been paid on 23rd October, 2017. He submitted that it is surprising the AGRC has recorded in

the order that Rs.2,11,38,125/- was paid on 23rd October, 2017 when the matter was heard on 16th September, 2017 and was closed for orders. He submitted that it is not the case of any of the parties that a further hearing had taken place after 16th September, 2017. All that had happened was that the parties had been granted leave to file written submission and accordingly written submissions were filed between 29th September, 2017 and **3rd October, 2017**. Thus payment of the last installment of Rs. 2,11,38,125/- was not mentioned in the written submissions but mysteriously it find mention in the impugned order. This was highlighted as one of the reasons why the impugned order is suspect and cannot be sustained since payments made after the matter was closed have been considered by the Authority as one of the factors to hold against the petitioners.

7. Apropos the order passed on 26th February, 2016, Mr. Madon submitted that the order is bereft of any reasons and the order does not take into consideration the fact that termination of the appointment of Hare Krishna Developers was valid and no reasons are given why the decision to terminate the said Hare Krishna. Developers has terminated.
8. According to Mr. Madon the AGRC had also gone wrong in having observed that the societies had appointed "Balwant Doshi proprietor of Hare Krishna Developers" and had executed development agreement dated 20th March 1996. Inviting my attention to the compilation of documents filed on behalf of the petitioners, Mr. Madon pointed out the Annexure II was issued in respect of 225 slum dwellers along with the forwarding letter dated 12th

May, 1998. This document is also relied upon by Mr. Kamdar who appears for respondent no. 1. This communication enclosed a site plan and list of Hutment dwellers along with certificate under Section 33(10). It is addressed by the Additional Collector (ENC) & Controller of Slums, Mumbai & M.S.D. to the Chief Engineer, Slum Rehabilitation Authority along with a copy marked to one Shri Balwant Doshi. The annexure which certifies that an area of 4910.49 sq.mts is a slum colony on Municipal land is seen to be signed by the Additional Collector (Encroachments) and is also signed on behalf of Hare Krishna Developers by one Mitul Doshi as proprietor. Mr. Madon also invited my attention to the list of hutment dwellers and identified from and out of list of 225 person persons at Sr. No. 5 .Turambhekar Archana Ashok, Sr. No. 9 Laxman Mukesh, Sr. No. 25 Sunanda D. Pashte, Sr.No. 44 Pille Raju H. Sr. No. 57 : Vishwakarma Premchand who were part of the project and Petitioners. Mr. Kamdar meanwhile submitted that only the persons at Sr. Nos. 150 and 210 had filed this petition that too at the instance of a rival developer when there was no substance in the challenge.

9. Mr. Madon submitted that after the demise of Mitul Doshi Hare Krishna Developers could no longer act. He invited my attention to the deed of partnership dated 22nd October, 2015 copy of which is annexed to the petition wherein Mr. Balwant Doshi is shown as one of the partners. He submitted that where the partners of one Hare Krishna Developers is seen to be newly formed partnership for “perfectly vesting rights, title and interest of the said property” in the partnership firm Hare Krishna Developers. The

firm appears to be constituted on 27th October, 2015. He therefore submitted that the order dated 26th February, 2016 passed by the SRA has lost over sight of these facts.

10. The suo moto proceeding it is submitted was initiated only after the society held a meeting and new developer came to be appointed and while considering arguments the CEO, SRA has recorded that respondent no. 1 – Hare Krishna Developers had submitted Slum Rehabilitation scheme. The High Court had meanwhile passed an order in WP/1152/2002 directing the SRA not to sanction any rehabilitation scheme in respect of open spaces which are reserved for garden, park, recreation, etc. without permission of the Court and that order was to be enforced. It was submitted that the suo moto proceeding should have been dropped.

11. On behalf of the Chief promoter it was submitted that there was a long delay of 12 years after issuance of Annexure II and there were four years available for obtaining the LOI prior to order of the High Court, during which no steps had been taken. Therefore for 17 years the slum dwellers had co-operated with respondent no.1 and nothing had been done and for that reason representatives had met on 29th September, 2018 in the presence of Slum Rehabilitation Authority and unanimously resolved to terminate appointment of Hare Krishna Developers and appoint K. Devi Housing. 83 Slum dwellers were apparently present and had passed a resolution unanimously appointing new developer and therefore the Chief promoter of the society sought approval of the appointment of new developer.

12. On behalf of respondent no. 3- the new developer, no submissions were made except that they are now entitled to develop the property. After considering the various submissions including of the resolution of the general body and report of the Joint Registrar, SRA in respect of General Body Meeting the Joint Registrar has stated that biometric attendance was not recorded, resolutions were passed by show of hands and it was difficult to ascertain how many members had supported the resolution and therefore Joint Registrar suggested that a fresh general body meeting be held. The order passed on 26th February, 2016 merely refers that general body resolution could not be acted upon "as the same suffers from several irregularities". No other reasons are given. The irregularities are not been listed but I have proceeded on that basis that irregularities contemplated are as follows :

- (i) The Biometric Attendance is not recorded.
- (ii) In General Body Meeting there were partners of Respondent no. 4 as well as Politicians present on dias.
- (iii) The Resolutions are passed by show-of-hands and it is difficult to ascertain as to how many members have supported the Resolution.

13. These aspects could have been verified since a video recording of the meeting was apparently available. However what has been lost sight of is the fact that the Joint Registrar also expressed his opinion that a fresh general body meeting should be conducted at the same time. While ignoring this,

CEO SRA has proceeded to process the proposal of Hare Krishna Developers pending with the Engineering department while submitting slum dwellers to take appropriate decision as per rules and regulations and policies. There was no direction to hold a fresh general body meeting although the same was recommended especially in the light of the fact that no specific number of members who supported their resolution could be ascertained. The most natural course of action would therefore have been to direct a fresh meeting to be held so that a majority view could have been ascertained. Mr. Madon then submitted that being aggrieved by the said order the Members, promoters and Committee Members filed Application No. 31 of 2016 against Slum Rehabilitation Authority, Mitul Doshi and K. Devi Housing challenging the order of 26th February, 2017 whereby the proposal of Hare Krishna Developers was directed to be processed. Mr. Madon submitted at the hearing of Appeal No. 3 of 2017 these aspects were urged. He invited my attention to paragraph 5(a) and 5(b) of the impugned order dated 9th November, 2017 passed by the AGRC which are as below :

(a) There is gross delay/laches on the part of M/s. Hare Krishna Developers to implement present S.R. Scheme and therefore SRA ought to have removed M/s. Hare Krishna Developer and ought to have permitted Respondent No. 3 Kadeshwaridevi SRA CHS (P) to implement subject S R Scheme through their New Developer M/s. K. Devi Housing.

(b) It is the further case of Appellant that in the year 1996, Shri Balwant P. Doshi Proprietor of M/s. Hare Krishna Developer approached Slum Dwellers and represented that he has vast experience in carrying out development and as such he will be able to implement the slum Scheme

and Rehabilitation all the Eligible Slum Dwellers within a period of 3 years.

Mr. Madon submitted that authority had recorded that the petitioners had urged that there were gross delays and laches on behalf of the developers and they had appointed a new developers. In the year 1996, Balwant Doshi “proprietor” of Hare Krishna developers had approached the Slum dwellers representing that he had vast experience and thereafter the slum dwellers of Jaffar Buva and Jaffar Baba Societies appointed Balwant Doshi proprietor of “Hare Krishna Developers” and executed Development agreement with “Hare Krishna Developers”. He submitted that these are all incorrect recordings. In fact Balwant Doshi was never the proprietor of Hare Krishna developers and therefore the entire premise on which the matter has proceeded is incorrect.

14. Mr. Madon further submitted that the impugned order records that after issuance of certificate Annexure II on 12th May, 1998 in respect of 225 slum dwellers 167 were held eligible. Out of 167 eligible dwellers 125 had given consent for redevelopment. In the next paragraph it records that Jaffar Baba Society appointed one Mitul Balwant Doshi on 7th October, 1998 of Hare Krishna Developers to act as constituted attorney of Jaffar Buva Society and on 26th November, 1998 Jaffar Baba Society appointed Mitul Doshi of Hare Krishna Developers as constituted attorney and thereafter a proposal was submitted by Hare. Krishna Developers on 13th October, 1998.

15. Mr. Madon submitted that the proprietor was Mitul Doshi and not Balwant Doshi. The authority has failed to take this into consideration. However he invited my attention to the fact that in paragraph 5(l) and (m) the authority recorded delays

caused in the project and the fact that show cause notices had been issued subsequently to all parties resulting in the order dated 26th February, 2016 being passed by the CEO, SRA and the proposal of Hare Krishna Developers being directed to be processed. In paragraph 5(n) the society had urged that the CEO, SRA had failed to take into consideration that Mitul Doshi had expired and therefore the proprietary concern came to an end automatically, despite which Balwant Doshi “converted” the alleged proprietorship into a partnership in the name of M/s Hare Krishna Developer a partnership firm which came to existence only on 27th October, 2015. It was urged before the AGRC that the earlier concern was not in existence and there was no way that Balwant Doshi could have converted the proprietary concern of late Mitul Doshi into a partnership concern. This aspect has been ignored. The AGRC has failed to take notice of this glaring inconsistency leading to a perverse conclusion.

16. Although it was submitted that in a slum scheme it is the personal confidence and trust placed on the proprietor Mitul Doshi, this aspect was not considered, and after listing these submissions the AGRC recorded that the CEO, SRA while considering the letter of intent dated 11th April, 2016 has intimated his opinion there on which reads as follows :

“Letter of intent to be issued as per HPC order and in accordance with it.”

17. In paragraph 8 of the order the AGRC records that the records produced before it shows that the CEO, SRA had after hearing parties, passed order dated 26th February, 2016 holding that more than 70% members of the society had given

consent in terms for “Balwant Doshi of Hare Krishna Developers” for redevelopment. This ignores the fact that both societies had empowered Mitul Doshi as constituted attorney. The individual Mitul Doshi was thus appointed constituted attorney. Upon expiry of Mitul Doshi the grant came to an end and so did the proposal of development by Mitul Doshi in his capacity as sole proprietor of Hare Krishna Developers. It was further contended that the contention of the petitioners committee members of the society had inordinately delayed implementation of the scheme could not be attributed to Hare Krishna Developers being prevented by the orders passed by the High Court in WP/1152/2002 because no work has been carried out for four years prior to the order. I may also mention that the rival developers are petitioners in Writ Petition No. 897 of 2018 represented by Mr. Khandeparkar and Mr. Kapse who have also made their submissions in support of the petitioners in Writ Petition 480 of 2018. Likewise Mr. Patil for the petitioner in Writ petition no.1605 of 2018 also supported the challenge in petition no.480 of 2018.

18. On behalf of the respondents, the petition has been opposed by Mr. Kamdar who contended on behalf of respondent no. 4 that the entire case of the petitioner is not believable. He submitted that Balwant Doshi was at all times involved in the project and right from its inception. He invited my attention to the copy of the general body meeting held on 8th June, 2018 at which meeting Jaffar Buva and Jaffar Baba Colonies had approved the conversion of Hare Krishna Developers to a partnership firm. He relied upon minutes of the meeting of the society as also extract of the minutes in which it is shown that 101 members had attended the

meeting. Their names are registered in Annexure II. Meeting was held on 24th June, 2018. He relied upon the item no. 13 of the agenda of the meeting in respect of his contention viz. appointment of Balwant Doshi and the fact that the meeting had considered the conversion of the partnership firm Hare Krishna Developers to a limited liability partnership and after considering the subject none of the members present in voting had expressed any dissent or objection and therefore the conversion was approved.

19. Mr. Kamdar submitted that Mr. Balwant Doshi had initiated the proposal in 1996 as seen from the documents filed along with additional compilation of documents on behalf of respondent no. 4, 5, 5A to 5D. He submitted that the challenge had no merit because Mr. Balwant Doshi was the person who was at all times involved. Mr. Mitul Doshi's name was only introduced for sake of convenience. He also invited my attention to the document dated 8th February, 1998 at item no. 4 being application for issuance of Annexure II which was filed in the name of Balwant Doshi signed for Hare Krishna Developers by Balwant Doshi. These are all documents retrieved from the records of MHADA and SRA under the Right to Information Act In the course of hearing I called upon Mr. Patil appearing for MHADA to produce copy of the original file which he submitted was in the custody of the Additional Collector(Encroachments). The original file was later produced on 11th October, 2018 and a few originals were verified.

20. Mr. Kamdar further submitted that not only the application for Annexure II but even subsequent documents were filed by Balwant Doshi. For instance indemnity bond dated 5th February 1998 had been signed by Balwant Doshi as

proprietor of Hare Krishna Developers. However this document was not filed and not served upon the petitioners and was not relied upon at the hearing before the authorities. I have therefore not placed reliance on this document. Although Mr. Kamdar submitted that there were other documents executed by Balwant Doshi reference to such documents was objected to by Mr. Madon and Mr Khandeparkar because they were not produced before the authorities. These are all aspects which ought to have been gone into by the AGRC. Suffice to say that there is no explanation forthcoming from the respondents as to how the entitlement of the proprietary concern of late Mitul Doshi vested in a partnership firm of the same name.

21. Furthermore it is not the case of Mr. Kamdar's clients before the AGRC that it was only case of incorrect description of who the sole proprietor was and which concern was contemplated at the time of grant of the LOI. What is particularly striking are the contents of the Supplementary Development Agreement dated 17th July, 2018 said to be executed Kadeshwari Co-operative Housing society (proposed) and Hare Krishna Developers in its avatar as a partnership firm. The said supplementary agreement is signed by the Chief Promoter and by other 12 promoters. Surprisingly this includes reference to late Mr.Mitul Doshi as recorded in recital B C D and E. The said recitals are extracted below for ease of references :

*"B. Pursuant to the General Body Resolutions dated 17th March, 1996 Jaffar Buva Slum Colony Co-operative Housing Society (Proposed) and Jaffar Baba Kadeshwari Co-operative Housing Society (Proposed) executed Development Agreement dated 20th March 1996 and 20th March 1996 and two Irrevocable General Power of Attorney dated 7th October, 1998 and 26th November, 1998 **both in favour of Shri***

Mitul B. Doshi, Proprietor of M/s. Hare Krishna Developers.

C. *Shri Mitul B. Doshi died on 23rd October 2015.*

D. *The erstwhile firm M/s. Hare Krishna Builder have secured Annexure II on 12th May, 1998, wherein M/s. Hare Krishna Builder is supported with the consent of 75% Eligible Slum Dwellers.*

E. *Shri Balwant P. Doshi a sole proprietor of M/s. Hare Krishna Builders, converted a Sole proprietary Firm into a Partnership known as "M/s. Hare Krishna Developer" being the Developer herein. " (Emphasis supplied)*

22. The Supplementary deed clearly sets out the chain of events subsequent to the general body resolution dated 1996 and how powers of attorney were executed in favour of Mitul Doshi on 23rd October, 2015 and that Hare Krishna Builder a proprietary concern of Balwant Doshi had acquired Annexure II on 12th May, 1998. This recital is clearly incorrect as we have seen from the documents produced the Annexure II was issued on 12th May, 1998 in favour of Mr. Balwant Doshi and not in name of the firm. The recital goes on record that Hare Krishna Builders secured Annexure II and that Hare Krishna Builders is supported by 75% of eligible slum dwellers. Balwant Doshi is said to be proprietor of Hare Krishna Builders which was converted from sole proprietorship firm to partnership firm known as Hare Krishna Developers.

23. In my view considering the fact that powers of attorney granted to Mitul Doshi were rendered non-est upon his demise, there is no explanation as to how Balwant Doshi could be described as proprietor of Hare Krishna Developers. Furthermore the said supplementary deed agreement also records the approval of

conversion of proprietorship firm to partnership firm known as Hare Krishna Developers. This does not flow as a natural consequence post the demise of Mitul Doshi. These are aspects which ought to have been considered and decided with cogent reasons. The impugned order has, to say the least, glossed over this crucial aspect of the questionable transformation of a sole proprietary concern of late Mitul Doshi to one of Mr. Balwant Doshi and its conversion to a partnership firm while recording at the same time the fact that development agreements were entered into in March 1996 between the society and Hare Krishna Developers. The Order of the CEO SRA also fails to take into account the report of the Joint Registrar recommending the calling of a fresh meeting in view of deficiencies note by him. The reason why such a meeting was not called is also not considered. As a result of the above the impugned order of the AGRC cannot be sustained being perverse. Consequently the orders dated 20th February 2018 and 8th May 2018 impugned in Writ Petition no.1605 of 2018 cannot be sustained.

24. I therefore pass the following order :

- (i) In Writ Petition No. 480 of 2018 the impugned order dated 9th November 2017 is hereby set aside.
- (ii) In Writ Petition No. 1605 of 2018 the impugned order dated 20th February 2018 and 8th May, 2018 are hereby set aside.
- (iii) The matters are remanded for fresh hearing before the authorities. All contentions are kept open. The Apex Grievance Redressal Committee will consider the effect of the report of the Joint Registrar referred to in the order

dated 26th February 2016 passed by CEO, SRA and give its findings in the light of the directions of the Joint registrar.

(iv) Rule made absolute in the above terms.

(v) In view of the above, no orders are called for in Writ petition no.897 of 2018. Writ Petition No.897 of 2018 is also disposed.

(vi) No costs.

(A.K. MENON, J.)