

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1825 OF 2015

Tukaram S. Nikam and Ors.

...Petitioners

Versus

M/s. Aristo Realtors Infrastructure

Pvt. Ltd. And Ors.

...Respondents

.....

Mr. Y.S. Jahagirdar, Sr. Advocate with Mr. Vineet Naik, Senior Advocate with Mr. S.B. Khurjekar I/b. Mr. Sukand R. Kulkarni for the Petitioner.

Mr. P.K. Dhakephalkar, senior Advocate with Mr. Kirit J. Hakani with Ms Niyati Hakani for the Respondent Nos.1 and 2.

Mr. Sachin H. Kankal, AGP for the Respondent Nos.3 and 7.

Mr. Saurabh S. Karade I/b. Mr. Vijay D. Patil for the Respondent No.4.

Mr. Vijay A. Thorat, Senior Advocate with Mr. Chetan Kapadia, Mr. Samit Shukla and Ms Raveena Dhawan I/b. M/s. Shukla and Associates for the Respondent No.5.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON : 31st JANUARY, 2019

JUDGMENT PRONOUNCED ON: 3rd MAY, 2019

JUDGMENT:-

Rule. Rule is made returnable forthwith. By consent of the parties, matter is heard finally at the stage of admission.

2. The Petitioners herein have invoked the writ jurisdiction of this Court to assail the order dated 11/7/2014 passed by the learned Minister for Co-operation, Government of Maharashtra in Appeal No.904 of 2013 under Section 152 Of the Maharashtra Co-operative

Societies Act, 1960 (MCS Act).

3. The Petitioners claim to be the eligible slum dwellers and promoters/members of Kulsavai Shejar Samiti Sahakari Griha Nirman Sanstha (proposed) (for short 'Kulsavani Society'). The Respondent No.1 is Ex-Chief Promoter of the Respondent No.5-Shree Mauli Bandar Pakhadi SRA Sahakari Grihanirman Sanstha Maryadit Society. The Respondent No.2 is the Developer appointed by the Respondent No.5 Society to carry out project of redevelopment of SRA scheme.

4. The Respondent No.5 society was registered on 17/3/2007 by the Assistant Registrar, Co-operative Societies, Kandivali. The Petitioners filed an application No.20 of 2012 under section 21A of the MCS Act for de-registration of the Respondent No.5 society. The Petitioners had alleged that the Annexure II, documents, the registration proposal etc were forged and fabricated. The petitioners claimed that there was no scrutiny of the registration proposal and that the Respondent No. 5 Mauli Society was registered on misrepresentation.

5. The Additional Joint Registrar of the Co-operative Societies

by order dated 3/12/2013 allowed the application and consequently de-registered the Respondent No.5- Mauli Society. Aggrieved by this order the Respondent No.1 (since deceased) and the Respondent No.2 filed an appeal before the learned Minister, Co-operation, State of Maharashtra. The learned Minister, by the impugned order allowed the appeal and set aside the order of de-registration.

6. Mr. Jahagirdar, the learned senior counsel for the Petitioner submits that though the learned Minister has accepted that there was misrepresentation, he has condoned the same by holding that the registering authority is empowered to call for the documents and /or issue directions to comply with the mandatory requirements of the registration. He submits that the learned Minister had no powers to condone the misrepresentation. Relying upon the decision of the Division Bench of this Court in *Atesham Ahmed Khan and Ors. Vs. M/s. Lakdawala Developers Pvt. Ltd. and Ors 2011 (3) All MR 1*, he submits that the proposal must be complete in all respects and the proposed Co-operative Society cannot be allowed to progressively make up a deficiency.

7. Per Contra Mr. Thorat and Mr. Dhakepalkar, the learned

senior counsel representing the respondents have submitted that more than 70% slum dwellers had consented for slum rehabilitation. The authorities under the SRA Act had considered the proposal submitted by the respondent no.5 - Mauli Society and issued Annexure II and the LOI after due verification and scrutiny. The learned counsel for the Respondents contend that the application for registration was submitted in proper format along with all the requisite documents subsequent to issuance of the Annexure II and the LOI. They contend that the Petitioners, who have otherwise no locus standee to challenge the registration, had filed the application for de-registration after having failed to get the scheme cancelled. The learned counsel for the Respondents have submitted that the application, which was filed after considerable delay lacks bonafide.

8. I have considered the submissions of the learned Counsel for the respective parties, and gone through the annexures as well as the affidavits of the respective parties.

9. At the outset it may be mentioned that in ***Atesham Ahmed Khan*** (supra), the Division Bench of this Court has reiterated that:-

10.....when a proposal is submitted by a proposed Co-operative Housing Society of slum dwellers the application is

initially accepted and verified. The applicant is then required to pay the scrutiny fees upon which a scrutiny is conducted. Draft Annexure II containing a list of slum dwellers is thereafter forwarded by the Slum Rehabilitation Authority to the Competent Authority for verifying the names of eligible slum dwellers. In the case of public lands which are of the ownership of the State Government, the Additional Collector (Encroachment and Removal), who is the Competent Authority, has to verify draft Annexure-II containing names of slum dwellers who are eligible to participate in the Slum Rehabilitation Scheme and to certify it. At the stage when an application is submitted before the Slum Rehabilitation Authority, the application, as it stands, must indicate that the applicant fulfills the requirement of the requisite consent of 70% of the slum dwellers. The claim of the applicant is thereupon subject to scrutiny. But before the question of scrutiny arises, the application must on its face indicate that it fulfills the requirement of 70% consents. Hence, we find merit in the contention which has been urged on behalf of the Petitioners in these proceedings that an application which on its face does not fulfill the requirement of DCR 33(10), must be rejected. The applicant cannot be allowed to progressively make up a deficiency in an application which does not ex facie fulfill the conditions on the date when it is submitted.

10. It is thus well settled that the proposal submitted by the proposed society has to be complete in all respects and the validity of the proposal must be determined only on the basis of the material produced along with the proposal. In the instant case, the records indicate that the slum dwellers had formed a proposed society viz. Shri Mauli Bhandar Pakhadi SRA Co-operative Housing Society for the purpose of implementation of slum rehabilitation scheme through the

developers. The said society (hereinafter referred to as 'Mauli Society') had submitted a proposal alongwith all the necessary documents to the CEO, SRA through its Architect for implementation of the slum rehabilitation scheme. The SRA verified the said proposal and accepted the scrutiny fees paid by the Respondent No.5-Mauli Society. The Deputy Collector, SRA referred the draft Annexure-II to MHADA for verification and approval. Upon receipt of the scrutinee fees the officers of MHADA visited the site and after scrutiny found that more than 70% slum dwellers had given their consent and therefore issued Annexure-II on 8th December, 2005 in favour of the proposed Mauli society.

11. The records indicate that Rev. Fr. Joseph P. Pereira had filed a petition (Writ Petition 2676 of 2006) before this Court challenging the Annexure II issued in favour of the proposed Mauli Society. A statement was made by the counsel for the Respondent Nos.8 and 9 in the said petition that the SRA scheme would be implemented only in respect of land under CTS No.128 A /5, 128 A/6, 128 A/10 and 128 A/11, more particularly delineated in orange colour in the plan. In view of the said statement, MHADA issued corrigendum to Annexure II on 10/10/2006. The SRA thereafter scrutinised and

approved the proposal and issued the letter of intent dated 5th February, 2007 in favour of Universal Development Corporation, now known as Aristo Realtors (Respondent No.2). In terms of clause 4 of the LOI, the Respondent No.5 Society made an application dated 3/3/2007 to the Assistant Registrar, C.S. for registration of the Respondent No.5 society as a co-operative housing society. The Respondent No.5 Society was registered on 17th March, 2007 under registration certificate No.MUM /SRA/HSG/TC/11289/2007.

12. The Petitioners vide application dated 24th May, 2012 applied for de-registration of the society on several grounds enumerated in para 7 (A) to 7 (O) of the application under Section 21 A of MCS Act. A perusal of these grounds indicate that the challenge raised by the Petitioners is in fact to the genuineness of the proposal, Annexure II and the validity of the LOI.

13. In this regard it is relevant to note that in the year 2005 the Petitioners as promoters of Kulsavini Society (Proposed) had made various complaints to SRA alleging that the Slum Rehabilitation Proposal was implemented without the consent of their members. The Petitioners as promoters of the Kulsavini Society had proposed to

implement their own scheme and had sought bifurcation of the same. The Kulsavini Society had also filed a Civil Suit being No.5382 of 2005 with prayers to allow it to redevelop the portion of the land admeasuring 29000 sq. meters and further to restrain the competent authorities from allowing the Respondent No.5-Mauli Society to redevelop the said land. The Kulsavini Society had also filed a Writ Petition No. 2693 of 2006 assailing the Annexure-II certified by MHADA.

14. It is pertinent to note that the request of the Kulsavini society for bifurcation of the scheme has been rejected. The civil court had also declined to grant any interim relief and subsequently the civil suit filed by the Petitioners had been dismissed for want of non prosecution. The Writ Petition No. 2693 of 2006 has been disposed of by this Court by order dated 10/10/2007 with directions to MHADA to hear the said society and to pass the appropriate orders. Pursuant to which, by order dated 22nd February, 2008 MHADA has rejected the claim of Kulsavini Society. The said society had challenged the said order in Writ Petition No.1784 of 2008, which was disposed of with direction to make an appropriate application before HPC. Pursuant to the said order the Kulsavini society preferred an appeal before HPC.

The said appeal has been dismissed with observation that the intent of the said Kulsavini society was to stall the scheme rather than to address the specific grievance of the slum dwellers. Despite the said order the said proposed society continued making several complaints. Acting upon one of such complaints the Deputy Chief Engineer of SRA by order dated 24th February, 2011 cancelled the LOI dated 5th February, 2007. In an appeal filed by the Respondent No.5 -Mauli Society, the HPC set aside the said order and remanded the matter to the SRA. The Petitioners once again challenged the order of HPC in Writ Petition No.693 of 2011. The said writ petition has been dismissed by this Court. Subsequently, after hearing all the concerned parties, the CEO of SRA has set aside the order of the cancellation of LOI and rejected the complaint made by Kulsavini Society.

15. The records thus reveal that the concerned authorities have after undertaking the entire process of survey, verification, re-verification, scrutiny etc. have issued the Annexure-II and LOI. The SRA and HPC has negated /rejected all the objections raised by the Petitioners and others regarding validity of Annexure-II, LOI and implementation of the scheme and have confirmed the LOI issued in favour of the Respondent No.5-Mauli Society. Having failed at every

stage, the Petitioners filed an application for de-registration of the Respondent No.5 -Mauli Society under the garb of misrepresentation. The said application is nothing but an attempt to cancel the permissions/ sanctions and stall the scheme. Suffice it to say that the SRA and HPC having adjudicated the issue, it was not open to the authorities exercising powers under the Maharashtra Co-operative Societies Act, 1960 to reconsider the validity of the Annexure -II, LOI and /or the implementation of the scheme by the Respondent No.5-Mauli Society.

16. Be that as it may, the concerned authorities have issued Annexure II after verifying that the Respondent No.5 - Mauli Society had consent of 70% of eligible slum dwellers. The statutory authority has processed, verified and approved the Slum Rehabilitation Scheme and issued LOI on 5th February, 2007. In compliance with clause 4 of LOI, the Respondent No.5- Mauli Society submitted an application for registration along with a forwarding letter, a perusal of which indicates that all the requisite documents were annexed to the said application. Hence, the mere fact that some of the documents were not available on record after a lapse of over six years would not per se constitute misrepresentation.

17. The impugned order does not indicate that the learned Minister has accepted that there was misrepresentation on the part of the Respondent No.5 -Mauli Society. On the contrary, the learned Minister has held that the forwarding letter dated 13/2/2007 indicates that the Chief Promoter had submitted the application along with Annexure II, Form A and other requisite documents. The learned Minister has also observed that LOI was granted and the scheme was approved by the SRA since 70 % of slum dwellers had given their consent. The learned Minister has taken note of the fact that the application was filed after considerable delay and the fact that some of the documents are missing from the registration file does not lead to an inference that these documents were not submitted at the time of registration. A plain perusal of the impugned order indicates that the learned Minister has not condoned the misrepresentation but has rendered a categorical finding that the application submitted by the Respondent No.5-Mauli Society was complete in all respects and that there was no misrepresentation. The finding recorded by the learned Minister that there was no misrepresentation is borne from the records. Hence, a stray observation that the authorities could have called for documents is irrelevant and insignificant and is not a ground for

interference.

18. The Petitioner No.1 who is claiming to be an eligible slum dweller is a beneficiary in SRA Scheme undertaken by another housing society and the other three Petitioners are not eligible slum dwellers and are not the members of the Respondent No.5-Mauli Society. Hence, these petitioners have no interest in implementation of the scheme and/or locus to challenge the registration of the Respondent No.5-Mauli Society. It is pertinent to note that the commencement certificates for rehab buildings were issued in the year 2007. Around 300 slum dwellers have vacated their hutments and the said hutments have been demolished. The developer has paid premium to SRA and has been paying transit rent to slum dwellers. The slum dwellers are still languishing in transit accommodation as the Petitioners, who have no interest in implementation of the scheme have been successful in delaying/ stalling implementation of the scheme on one pretext or the other. The conduct of the Petitioners highlights malafides and lack of good faith and the same is detrimental to the interest of slum dwellers.

19. Under the circumstances and in view of discussion supra, in my considered view no case has been made out for invoking powers

under Article 227 of the Constitution of India. The writ petition is accordingly dismissed. Rule discharged.

(SMT. ANUJA PRABHUDESSAI, J.)