

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

WRIT PETITION (L) NO.926 OF 2019

Veekaylal Investment Co. Pvt. Ltd.	...	Petitioner
Versus		
State of Maharashtra		
And Others	...	Respondents

**ALONG WITH
WRIT PETITION (L) NO.984 OF 2019**

Durgamata SRA CHS Society (Proposed)	...	Petitioner
Versus		
State of Maharashtra		
And Others	...	Respondents

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Mr. Prasad Dhakephalkar, Senior Advocate a/w Mr. Cherag Balsara I/b Mr. Rajeev R. Sharma for the Petitioner in Writ Petition (L) No.926 of 2019 and for Respondent No.7 in Writ Petition (L) No.984 of 2019.

Mr. M.A. Sayed, AGP for Respondent Nos.1 and 5 in Writ Petition (L) No.926 of 2019.

Mr. Rajiv J. Mane, AGP for Respondent Nos.1 and 5 in Writ Petition (L) No.984 of 2019.

Mr. Milind More for Respondent No.2, 3 and 4 in both petitions.

Mr. Vineet Naik, Senior Advocate a/w Mr. Suraj Iyer and Mr. Rickin Dang I/b Ganesh & Co. for Respondent No.6 in both petitions.

Mr. P.S. Dani, Senior Advocate a/w Mr. Yogesh Patil and Ms. Ami Tapiawala I/b Mr. Vishal Kava for Respondent No.7 in Writ Petition No.926 of 2019 and for the Petitioner in Writ Petition (L) No.984 of 2019.

Mr. Simil Purohit a/w Mr. Nitesh Ranavat and Ms. Disha Shetty I/b Wadia Ghandy & Co. for Respondent No.8 in both petitions.

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CORAM : S.C. GUPTE, J.

DATE : 22 APRIL 2019

(Oral Judgement)

. Heard learned Counsel for the parties.

2 These two petitions, namely, one filed by Veekaylal Investment Co. Pvt. Ltd. (hereinafter referred to as the “Applicant”) and other by Durgamata Society (proposed) (hereinafter referred to as “Durgamata”), challenge an order passed by Apex Grievance Redressal Committee (“AGRC”) on 16 February 2019. By the impugned order, AGRC upheld the order passed by the Chief Executive Officer, Slum Rehabilitation Authority (“CEO, SRA”) on 28 October 2013 under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“Slum Act”). By this order, CEO/SRA had allowed the application of Siddhivinayak SRA CHS (proposed) (hereinafter referred to as “Siddhivinayak”) under Section 13(2) of the Slum Act for removal of the Applicant as the developer of the subject SRA scheme.

3 The Applicant claims to be the owner of the land bearing Survey No.101/6, CTS No.3080/1 to 3, 3081/1, 3082, 3082/1 to 4, 3083, 3083/1 to 8, 3084, 3084/1 to 3, 3085, 3085/1, Village Dahisar, Taluka Borivali, Mumbai, as an auction purchaser. The land has been declared as a slum area. The Applicant had submitted its proposal for implementation of Slum Rehabilitation scheme on the subject land. No steps were, however, taken in the matter till Siddhiviyanak's above referred to application under Section 13(2) of the Slum Act for removal of the Applicant, apart from

submitting a draft of Annexure II to the Collector, Mumbai. Till date Annexure II has not been issued by the Competent Authority. Since the SR scheme did not make any progress under the Applicant, Siddhivinayak passed a general body resolution of 14 March 2010 in the presence of a representative of SRA and cancelled the appointment of the Applicant. Siddhivinayak instead appointed M/s Sai Developers and M/s Om Sham Realtors as their new developers for the SR scheme. Even these new developers did not carry out any work at site. Siddhivinayak, therefore, by their general body resolution dated 16 June 2012, passed in the presence of an authorised representative of SRA, cancelled the appointment of these new developers and instead appointed M/s Ekta Falsa Realty LLP (Respondent No.8 herein) for implementation of the SR scheme. On the application of Siddhivinayak under Section 13(2) of the Slum Act, CEO/SRA, by his order dated 28 October 2013, ordered removal of the Applicant as the developer of the project and recorded the SR scheme submitted by it, giving an opportunity to Siddhivinayak to submit a fresh proposal of SR Scheme as per the prevailing rules and regulations. This order was carried in appeal before AGRC by the Applicant. By the impugned order dated 16 February 2019, AGRC dismissed the Applicant's appeal and upheld the order of CEO/SRA under Section 13(2) of the Slum Act. These orders are challenged in the present petitions.

4 Mr. Dhakhephalkar, learned Senior Counsel appearing for the Petitioner (referred to in this order as 'Applicant'), principally, makes two submissions. In the first place, it is submitted that AGRC, by its order dated 20 October 2018, had appointed Assistant Registrar, Co-operative Societies/SRA to make a report on the status of the two societies, i.e.

Siddhivinayak and Durgamata. So also, the Executive Engineer/SRA was directed to make a report with respect to the status of the two proposals (i.e. proposals of Siddhivinayak and Durgamata) with regard to the subject plot of land. Learned Counsel submits that copies of these reports were not furnished to the Applicant and there was no hearing on these reports before the impugned order was passed by AGRC. Learned Counsel submits that AGRC has based its impugned order on these two reports. Learned Counsel, in the premises, submits that there has been a fundamental failure of principles of natural justice. Learned Counsel, secondly, submits that the most relevant aspect which the Assistant Registrar, Co-operative Societies and Executive Engineer, SRA were directed to report on was the support enjoyed by the two societies, that is to say, Siddhivinayak and Durgamata, of the slum dwellers occupying the subject plot. Learned Counsel submits that none of the reports reflects on this central issue. Learned Counsel submits that the impugned order of AGRC also, accordingly, disregards this vital aspect.

5 The central issue before CEO/SRA, when he passed his order under Section 13(2), was whether the SR scheme submitted by the Applicant as far back as in the year 1996 and recorded in the year 2001 for non-performance and thereafter, once again submitted on behalf of the Applicant in the year 2005, was not implemented till Siddhivinayak made its application for removal of the Applicant under Section 13(2) of the Slum Act. It was principally noted by CEO/SRA that till date no progress had been made at the site and there was an inordinate delay on the part of the Applicant; the Applicant had failed to implement the subject SR scheme for the past seventeen years, all along which, the occupants of the subject

land were awaiting proper housing. What CEO/SRA was to consider, in the premises, was whether the Applicant was justified in passing the general body resolution dated 16 June 2012 terminating the appointment of the Applicant as their developer. The justification of the Applicant for its non-performance was non-co-operation of the society, i.e. Siddhivinayak. The CEO/SRA did not accept this justification, since, according to him, it was the duty and responsibility of a developer to co-ordinate with the co-operative housing society and its member slum dwellers for implementing the SR scheme properly and in a time bound manner. Accordingly, the CEO/SRA held that the Applicant had miserably failed to implement the scheme in time. The CEO/SRA was of the view that it was the duty of his office to review the schemes, follow-up on their progress, monitor and see that developers are properly implementing the schemes and completing them as early as possible. Looking into the entire fact situation, the CEO/SRA was of the view that the Applicant had failed to implement the SR scheme in time and had caused inordinate delay, making it just and proper to take action under Section 13(2) of the Slum Act. This conclusion was affirmed by AGRC in appeal. The AGRC, in its impugned order, noted that the Applicant had earlier submitted an SR scheme in the year 1996; this scheme was recorded in the year 2001 for non-performance on its part; thereafter, once again, after a gap of about four years, the Applicant was re-appointed in the year 2005 by Siddhivinayak; thereafter, on 4 November 2005, the Applicant had re-submitted the SR proposal for redevelopment of the suit land; but even thereafter, the Applicant had failed miserably in implementing the subject SR scheme. AGRC was accordingly of the view that the Applicant had thus exhausted his preferential right to develop the subject plot of land as its owner. AGRC

noted that the subject plot of land had been acquired by the State Government under Section 14(1) of Slum Act vide notification dated 16 March 2017; the plot now vested in the State. The acquisition by the State was the subject matter of challenge in a writ petition filed by the Applicant herein; there was no stay or *status quo* in that challenge. In the face of these facts, AGRC did not find fault with the order of CEO/SRA and upheld the same, dismissing the Applicant's challenge to the order.

6 There is nothing wrong either with the procedure employed by the authorities below for assessing the merits of the application or the decision itself. The decision is clearly supported by evidence. Neither of the authorities below has taken into account any irrelevant or non-germane material or fact or disregarded any relevant or germane material or fact.

7 So far as the two reports of the authorities, which were called for by AGRC, are concerned, it is to be noted that these reports merely reflect on the facts of the case as they stand in the records of SRA. There is nothing in the reports *per se* which can be challenged as a matter of fact by the Applicant herein. AGRC cannot be said to have simply relied on these reports for arriving at its conclusion in the impugned order. It has, in all fairness, applied its mind to the controversy before it and has come to a pre-eminent possible view based on the material placed before it. The order, accordingly, does not deserve to be interfered with in the writ jurisdiction of this Court.

8 There is, accordingly, no merit in the writ petitions. The petitions are dismissed.

9 It is, however, clarified that the controversy as regards the legitimate status of the two societies, that is to say, Siddhivinayak on one hand and Durgamata on the other, to represent the slum dwellers, the discussion in the impugned order of AGRC shall be restricted to the controversy in the appeal including intervention application of Durgamata. If Durgamata has any legitimate grievance on the capacity of Siddhivinayak to represent the slum dwellers occupying the subject plot, they are free to adopt such proceedings as they may deem fit. All rights and contentions of the parties on merits in that behalf are kept open.

(S.C. GUPTE, J.)