

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

WRIT PETITION (L) NO.3258 OF 2019

Bandra Ahinsa Nagar Co-operative
Housing Society Ltd.

And Others

... Petitioners

Versus

Chief Executive Office (CEO)
Slum Rehabilitation Authority
And Others

... Respondents

.....

Mr. Mayur Khandeparkar i/b Mr. Arun Panickar for the Petitioners.

Mr. Amol Jagtap i/b Abhijeet Desai for Respondent No.1-SRA.

Mr. V.P. Sawant a/w Mr. P.M. Jadhav for Respondent No.2.

Mr. Cherag Balsara a/w Mr. Nirav Shah and Mr. Aakash Kothari i/b
Little & Co. for Respondent No.3.

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CORAM : S.C. GUPTE, J.

DATE : 4 FEBRUARY 2020

(Oral Judgement)

. Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by Apex Grievance Redressal Committee (“AGRC”) in an application challenging an order passed by the Chief Executive Officer (CEO), Slum Rehabilitation Authority, under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“Act”). The impugned order was passed by AGRC on a remand made to it by this

court by its order dated 15 April 2019.

3 The grievance of the Petitioners herein, who are the society of slum-dwellers and its office-bearers, is that the subject land forming part of the slum rehabilitation project has not been developed within the time specified under the conditions of LoI as well as of approval of plans.

4 Petitioner No.1-society was registered on 8 June 1992. After its registration, vide lease deed dated 23 November 1992, MHADA granted leasehold rights in respect of the subject property in favour of Petitioner No.1. On 10 April 1994, the Petitioners passed a resolution for development of the subject property under Regulation 33(10) of the Development Control Regulations, 1991. In pursuance of the resolution, on or about 11 April 1994 a development agreement was executed between Petitioner No.1 and Respondent No.3-developer stipulating terms and conditions for implementation of the slum scheme on the subject property. On the slum scheme submitted by Petitioner No.1 to Respondent No.3, in accordance with Regulation 33(10), on 14 January 1998, the Competent Authority issued certified Annexure II in favour of Petitioner No.1 for implementation of the scheme. The Slum Rehabilitation Authority (“SRA”) thereafter proceeded to issue LoI on 30 July 2002 in favour of Respondent No.3 for implementation of the slum scheme on the subject property. On 27 December 2010, a revised LoI was issued by SRA. In pursuance of the revised LoI, SRA proceeded to approve building plans of the rehab

building forming part of the project on 12 March 2012. On 2 November 2012, SRA issued a commencement certificate till the plinth level. It is the grievance of Petitioners, first before CEO-SRA and later before AGRC, that from the date of commencement certificate till the filing of the application before CEO-SRA, and even till date, not a brick has been laid in the project. It is submitted that in *situ* alternative accommodation has also not been arranged by Respondent no.3-developer. It is submitted that considering the fact that the original resolution for redevelopment of the property and the development agreement made in pursuance thereof were as of April 1994. It is submitted that Petitioner No.1-society and its promoters have lost confidence in the concerned developer. It is submitted that the society, in the present case, is not merely a society of slum-dwellers occupying the property, but also a lessee in its own rights under MHADA, who is entitled to develop the property on its own.

5 In its impugned order, AGRC has taken into account the circumstances of the case, particularly, after commencement certificate was issued in favour of Petitioner No.1 and Respondent No.3 by SRA. AGRC has particularly noted that almost immediately after the commencement certificate was issued, by a letter dated 12 December 2012 (commencement certificate was issued on 2 November 2012), new promoters of the society on behalf of 73 slum-dwellers wrote to CEO SRA for cancellation of the LoI as well as revised LoI purportedly on the ground that they were obtained on the basis of fraudulent documents. Interested slum-dwellers, thereafter, applied to High

Power of Committee (HPC) by way of an application, being Application No.343 of 2013, requesting for revocation of the LoI and the revised LoI on the ground of illegalities committed by the earlier promoters of Plaintiff No.1 society and the developer, i.e. Respondent No.3. The application came up for hearing in September 2015. HPC disposed of the application *inter alia* observing that a new managing committee of Petitioner No.1 had been elected in the meanwhile and that any representation to be made to CEO or any forum such as HPC, on behalf of the society, had to be made by such new committee. On that basis, Application No.343 of 2013 was disposed of. Thereafter a fresh application was made to HPC. A general body meeting of the slum-dwellers of the subject SRA scheme was held on 4 October 2015, when a resolution was passed for re-development of the subject property under Regulation 33(5) of DCR 1991, instead of originally proposed Regulation No.33(10), and an application was thereafter made by Petitioner No.1 to Vice President, MHADA for redevelopment of the property under Regulation 33(5). It was followed by a general body meeting of Petitioner No.1 society on 21 August 2017, where the society, by resolution, terminated the appointment of Respondent No.3 for implementing the SR Scheme under Regulation 33(10). So far as the society's proposal for redevelopment of the property under Regulation 33(5) is concerned, Vice President and CEO, MHADA, vide his letter dated 30 May 2017, noted that since the plot in question was reserved as playground as per development plan of the year 1991 as also as per development plan of the year 2034 and there were no guidelines to undertake a

scheme under Regulation 33(5) for a plot reserved for a playground, it was not possible to implement any scheme under Regulation 33(5) in respect of the subject plot. The matter was thereafter carried before this court in a writ petition by the aggrieved slum-dwellers. In the meanwhile, the pending application of the society, under Section 13(2) of the Act, was rejected by CEO-SRA, by his order dated 16 June 2017, on the ground that redevelopment of the subject property under Regulation 33(5) was not tenable; Respondent No.3- developer was directed to complete the project within a period of three years. This order was challenged by the slum-dwellers before AGRC, who, by its order dated 28 September 2017, refused to interfere with the order of CEO-SRA under Section 13(2). The matter was then carried by the slum-dwellers before this court in a writ petition, being Writ Petition (L) No.3559 of 2018. The petition involved two questions: firstly, whether the proposed development by the slum-dwellers' society under Regulation 33(5) was tenable and secondly, whether Respondent No.3 developer was guilty of any delay in implementing the SRA project under the LoI issued to him. This court, in its order dated 16 April 2019, partly quashed and set aside the order of AGRC and remanded the matter to AGRC for a fresh hearing in accordance with law. It was further made clear that such hearing should pertain only to the limited issue of delay in Respondent No.3 implementing the SRA project. On all other issues, the impugned order of AGRC was to be treated as final. On remand, AGRC has passed the impugned order. Hence, this challenge. That is where the matter stands as of date.

5 The above narration makes it clear that ever since issuance of the commencement certificate for rehab portion of the SRA project, interested slum-dwellers had been agitating the matter before various authorities under the Act on a host of issues. Their grievances have been, firstly, on the footing that the original LoI was issued fraudulently; it was next contended that slum-dwellers ought to be permitted to redevelop the building under Regulation 33(5) as apposed to Regulation 33(10), under which LoI was originally issued. After all these challenges were repelled by the authorities and the orders were sustained by this court, slum-dwellers cannot now turn back and say that, all this while, since the project was not implemented by Respondent No.3-developer, the permission should be revoked under Section 13(2) of the Act. The conclusion of AGRC that it was the Petitioner society and the interested slum-dwellers, who were responsible for this delay, and not Respondent No.3-developer, cannot be termed as a perverse conclusion. It is supported by some evidence on record, as we have noted above; it has broadly taken into account all relevant and germane materials and circumstances; and it cannot be said that any irrelevant or non-germane material or circumstance is considered by AGRC for arriving at its conclusion. The order, in other words, passes muster under the judicial scrutiny expected of this court under Articles 226 or 227 of the Constitution of India.

6 Accordingly, there is no merit in the writ petition. The Petition is dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed by
Rajesh V. Chittewan
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