

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2750 OF 2016**

F. E. Dinshaw Charties & Ors. ...Petitioners
V/S
State Of Maharashtra & Ors. ...Respondents

Mr. V. R. Dhond, Sr. Counsel a/w. Ms. Rujuta Patil i/b. Negandhi Shah & Himayatullah for the Petitioners
Mr. Amit Shastri, AGP for the Respondent No. 1-State
Mr. Milind Sathe, Sr. Adv. i/b. Bhusan Deshmukh & A. H. Mehta i/b. Akshar Laws for the Respondent No. 3
Mr. Pankaj Thatte for the Respondent Nos. 4(a) to 4(f)

**CORAM : A. A. SAYED &
ANUJA PRABHUDESSAI, JJ.
DATED : 13th March, 2020**

P.C.:

The Writ Petition is filed by the Petitioners seeking the following reliefs:

- (a) This Hon'ble Court be pleased to issue a writ of certiorari and any other appropriate writ and/or order and/or or direction, calling upon the Respondent Nos. 5 to produce the papers and proceedings pertaining pertaining to Application No. 357 of 2010 and after examining the legality and/or validity and/or propriety of impugned Judgment and order dated 30th December, 2014 passed by the Respondent No. 5 in Application No. 357 of 2010, the same be quashed and set-aside and the Petitioners' Application No. 357 of 2011 be allowed;*
- b. This Hon'ble Court be pleased to quash and set-aside the permissions issued by Respondent No. 2 in favour of Respondent No. 3 as well as all other approvals and/or sanctions granted by Respondent*

No. 2 in favour of Respondent No. 3 in respect of the said property;

- c.*
- d.*
- e.*

2. The substantive prayers before the HPC were as follows:

a. The Intimation of Approval No. SRA/ENG/531/PN/PL/AP dated 18th January, 2000 issued by the Executive Engineer (SRA) under Sub-regulation 2.3 of Appendix IV of the Development Control Regulation No. 33 (10) to Respondent No. 3 and the Commencement Certificate No. SRA/ENG/531/PN/PL/AP dated 18th June, 2000 issued by the Executive Engineer (SRA) to Respondent No. 3 be quashed, set aside and / or cancelled.

b. Respondent No. 1 be directed to issue fresh Letter of Intent and Commencement Certificate to the Applicants for development of the said property under the Slum Rehabilitation Scheme.

c. Pending the hearing and final disposal of the application, respondent no. 3 be stopped from building and / or carrying out works of demolition and / or works of construction and / or carrying out any other workds on the said property, pursuant to the said Intimation of Approval No. SRA/ENG/531/PN/PL/AP dated 18th January, 2000 issued by the Executive Engineer (SRA) under sub-regulation 2.3 of Appendix IV of the Development Control Regulation No. 33(1) to Respondent No. 3 and the Commencement Certificate No. SRA/ENG/531/PN/PL/AP dated 18th June 2000 issued by the Executive Engineer (SRA).

d. For such and further reliefs as this Hon. Committee may deem fit and proper in the nature and circumstances of the case to grant, be granted.

3. We have perused the impugned order dated 30th December, 2014 of the High Power Committee (HPC). Paragraph

No. 7 of the impugned order reads as follows:

"7. The HPC having considered all the aforesaid facts of the case and perused the records of SRA is of the considered view that the Respondent No. 3 i.e. Pramukh Enterprises had initially submitted the SRD Scheme and certified Annexure-II was also issued by the Addl. Collector (Enc.) on 08.11.1996. Thereafter wards, the SRD Scheme was converted into SRD Scheme on 19/03/1999 & the SRA issued LOI on 18.01.2000 and IOA is also issued for Rehab Building on 18.01.2000 and amended IOA issued on 08.08.2003 and further amended IOA issued on 03.12.2012. The work of Rehabilitation Buildings are fully completed and the plinth stage construction of Sale Building is completed. However, the further construction work of Sale Building has since been stopped as per the stop work notice issued by CEO/SRA on 29.07.2013.

The facts of the case indicate that the Applicants to be owner of the plot of land now under the SR Scheme and as per the Claim Agreement for Sale dated 29.03.1977 executed with Mr. N. Ramchandran intended to sell the property, but the Charity Commissioner by order dated 13.07.2001 refused the sale of the land now under the SR Scheme and in spite of the said status of their property, the Applicant kept silent and after the construction was completed of the Rehabilitation Building, the Applicant has approached this HPC by filing Application No. 357 of 2010.

The Respondent No. 3 i.e. M/s Pramukh Enterprises by Deed of Assignment dated 05.08.1998 has obtained the right of development from the said Mr. N. Ramchndran who had acquired certain rights in pursuance to the Agreement for Sale dated 19.03.1977 executed by the Applicants in favour of Mr. N. Ramchandra. Further the Applicants had filed S. C. Suit No. 1055 of 1984 against Respondent No. 2 i.e. Shri Bapu Budhiya Dodi before the City Civil Court, Mumbai where in Consent Term were filed

dated 20.11.1997. On perusal of the Consent Term this HPC is of the view that the Respondent No. 2 i.e. Shri Bapu Budhiya Dodi was in occupation & possession of the said property under the said SR Scheme & as such the Applicants by filing the Consent Terms had clearly agreed & conveyed the said property to the Respondent No. 2 i.e. Shri Bapu Budhiya Dodi.

The HPC is also of the view that the allegations being made by the Applicant that the said SR Scheme was approved by Respondent No. 1 CEO/SRA collusively with Respondent No. 3 i.e. M/s Pramukh Enterprises has not been substantiated by the Applicants. Further, this HPC is of the view that the Applicant for the reasons best known to them after the grant of all permissions by Respondent No. 1 i.e. CEO/SRA waited for more than 10 years period to file this Application No. 357 of 2010 by which time the Rehabilitation Building were almost completed and for which no satisfactory explanation could be given by the Applicant to the HPC.

The facts and circumstances of the Application No. 357 of 2010 are rather similar to the one decided recently by the Hon'ble High Court of Judicature at Bombay in W.P. No. 2373 of 2011 on 11th June, 2014 in which property rights were sought to be protected belatedly after all buildings permissions had been granted & construction works executed under the SR Scheme. The Hon'ble High Court of Judicature at Bombay in its orders of 11th June, 2014 stated that "Whether the Petitioners entitled to any reliefs or not would be decided in appropriate proceedings. It is however not possible now to set the clock back". Against this backdrop of facts and circumstances of the case there is no substance in this Application No. 357 of 2010 and as such it stand dismissed by this HPC."

(emphasis supplied)

4. It is not disputed before this Court that the Petitioners had approached the HPC after an inordinate delay and after the construction of rehabilitation building was completed. Even the present Petition is filed after about 2 years of the passing of the impugned order.

5. Having heard learned Counsel for the parties, in our view, the impugned order cannot be faulted. This is not a fit case to exercise the extra ordinary writ jurisdiction of this Court warranting interference with the impugned order.

6. The Writ Petition is dismissed. We make it clear that we have not entered into the merits of the matter or the issue of title of the Petitioners to the subject property.

(ANUJA PRABHUDESSAI, J.)

(A. A. SAYED, J.)