

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12156 OF 2019****Hanuman Nagar (Jogeshwari) SRA CHS (Prop.))**

Through its Chairman – Anant Madhukar Naik,)

Having its address at CTS No. 231 (pt.), 268 & 268 (1))

of village Mogra, Hanuman Nagar, Natwar Nagar)

Road No. 5, P.P. Dias Compound, Jogeshwari (East),)

Mumbai – 400 060)

... Petitioner**Versus****1.M/s. Kanchi Builders & Developers,)**

Having its office at A, 202, Gogift, Adarsh Vihar)

Complex, Off. Marve, Malad (West),)

Mumbai – 400 064)

2.Slum Rehabilitation Authority,)

Administrative Building, Prof. Anant Kanekar Marg,)

Bandra (East), Mumbai – 400 051)

3. The Apex Grievance Redressal Committee,)

Government of Maharashtra,)

Old Custom House, Mumbai.)

... Respondents**ALONG WITH****INTERIM APPLICATION (L) NO.96210 OF 2020**

Mr.D.Nalawade i/b. Mr. Anil Mishra for the Petitioner.

Mr.Jayesh Bhatt for Respondent No. 1.

Mr.Anoop Patil for Respondent No. 2

Mr.P.K.Dhakephalkar, Sr. Adv. a/w. Mr. J.G.Aradwad (Reddy) for Respondent No. 3.

**CORAM : S.J.KATHAWALLA, &
R.I.CHAGLA, JJ.**

**RESERVED ON : 15TH DECEMBER, 2020
PRONOUNCED ON : 29TH APRIL, 2021
(THOUGH VIDEO CONFERENCING)**

ORAL JUDGMENT (PER S.J. KATHAWALLA, J.) :

1. The Petitioner Hanuman Nagar (Jogeshwari) SRA CHS [Proposed] **(the ‘Petitioner Society’)** is a Society formed by the slum dwellers residing on the plot of land bearing CTS No. 231 (part), 268 and 268(1) of Village Mogra, Hanuman Nagar, Jogeshwari (East), Mumbai – 400 060, admeasuring 2764.70 Sq. Mtrs. **(the ‘Subject Plot’)**.

2. By the above Writ Petition, the Petitioner Society has impugned the Order dated 27th September, 2018, passed by the Apex Grievance Redressal Committee **(‘AGRC’)** setting aside the Order passed by the CEO – SRA dated 23rd November, 2017, terminating the appointment of the Respondent No. 1 – M/s Kanchi Builders and Developers **(‘Developers’)** as Developers of the subject Slum Rehabilitation Scheme **(‘S. R. Scheme’)** and allowing the Petitioner Society to appoint a new developer in accordance with the Rules, Regulations and Policy of the Slum Rehabilitation Authority **(‘SRA’)**.

3. According to the Petitioner Society, most of its members (slum dwellers) who were residing on the Subject Plot are poor workers, working as daily wage earners and domestic workers (housemaids). In the year 2006 majority of the members of the Petitioner Society appointed the Developers who are also the owners of the Subject

Plot, as Developers for the S. R. Scheme, pursuant to which the Developers submitted to the SRA a proposal on 22nd July, 2006 for redevelopment of the Subject Plot under Regulation 33 (10) of the Development Control Regulations for Greater Mumbai, 1991 (**‘DCR’**). On 8th December, 2006 certified Annexure II was issued, wherein 124 slum dwellers were held to be eligible. 80 slum dwellers handed over their huts to the Developers in the year 2010. However, the Developers obtained the Letter of Intent (**‘LOI’**) only on 1st June, 2010 and the revised LOI on 15th September, 2011. The Developers obtained an Amended Intimation of Disapproval (**‘IOD’**) for a composite Building No. 1 (**‘Composite Building’**) only on 16th September, 2011 and obtained the plinth Commencement Certificate (**‘CC’**) for the Composite Building only on 7th June, 2014.

4. The Developers had agreed to complete the construction of the Composite Building within 24 months from the date of receipt of the CC. As stated earlier though the CC was received on 7th June, 2014, the Developers except for constructing the plinth of the Composite Building in the year 2014-15, not only failed to carry out any further construction, but also failed to regularly pay the agreed monthly compensation in lieu of temporary alternate accommodation to the members of the Petitioner Society, thereby putting the poor and the helpless members of the Petitioner Society who were waiting for a roof over their heads since the year 2006 and the 80 members who have handed over the possession of their respective huts to the Developers since the year 2010, into grave difficulty and inconvenience.

5. According to the Petitioner Society, they were therefore compelled to make a representation dated 12th August, 2016 before the SRA, setting out the harassment faced by them at the hands of the Developers. The Assistant Registrar C.S. (Eastern & Western Suburbs) / SRA heard the parties and gave directions to pay rent compensation to the eligible slum dwellers as per Circular No. 153 of the SRA and after payment of the rent due to the eligible slum dwellers, submit a self-declaration and to inform the SRA. Since the Developers violated the said direction and failed to clear the dues of the slum dwellers and were also responsible in causing inordinate delay in implementing the S. R. Scheme, the Petitioner Society in its General Body Meeting held on 18th December, 2016 terminated the appointment of the Developers of the subject S.R. Scheme and by their Letter / Application dated 12th April, 2017, requested the SRA to terminate the appointment of the Developers and to appoint new developers in their place.

6. On 30th April, 2017, a General Body Meeting of the Petitioner Society was once again held in the presence of the Co-operative Officers of the SRA. Out of 91 slum dwellers present at the Meeting, 85 slum dwellers decided to terminate the appointment of the Developers of the S. R. Scheme.

7. A Show Cause Notice dated 19th May, 2017, was also issued to the Developers calling upon them to explain as to why action under Section 13 (2) of the Maharashtra Slum Areas Act (I.C. & R.) Act, 1971 ('the Slum Act') should not be initiated.

8. The CEO – SRA gave a hearing to the Petitioner Society as well as to the Developers. The Developers gave several excuses including blaming the Petitioner Society for the delay in completing the rehabilitation project. The CEO – SRA after appreciating the grave inconvenience caused to the Petitioner Society by the approach / attitude of the Developers, by his reasoned Order dated 23rd November, 2017, after holding that it is not disputed that the Scheme has been lingering for about 11 years and the Developers are not serious about implementation of the Scheme, terminated the appointment of the Respondent No. – 1 as Developers of the subject S. R. Scheme and granted liberty to the Petitioner Society to appoint a new developer in accordance with the Rules, Regulations and Policy of the SRA for implementation of the S. R. Scheme.

9. It is submitted by the Petitioner Society that the AGRC without appreciating the pathetic plight of the members of the Petitioner Society, for which the Developers are solely responsible, or without verifying the financial status of the Developers, or without making any provision to ensure compliance of its Order, by its impugned Order dated 27th September, 2018, proceeded to set aside the Order of the CEO - SRA dated 23rd November, 2017, and granted 2 months' time to the Developers, i.e. upto 27th November, 2018, to clear the arrears towards interim rent / compensation and 2 years' time i.e. upto 27th November, 2020, to obtain necessary permission from the SRA / other authorities and complete the construction work of the Composite Building as per the sanctioned plans and rehabilitate the slum dwellers.

10. The Petitioner Society has at the outset also pointed out that though they are aggrieved by the Order passed by the AGRC setting aside the Order of the CEO – SRA dated 23rd November, 2017, and granting further time to the Developers to deposit the arrears towards interim rent / compensation i.e. upto 27th November, 2018 and to obtain necessary permissions and complete the construction of the Composite Building by 27th November, 2020, the Developers not only delayed the payment of arrears, but immediately from January 2019 failed to pay and have till date not paid a single Rupee towards transit accommodation to the members of the Petitioner Society, which has resulted in arrears mounting upto Rs. 2,89,75,500/- (Two Crores Eighty-Nine Lakhs Seventy-Five thousand only) as on 30th September, 2020. In addition, thereto the Developers have till date not complied with any of the other specific directions given by the AGRC to obtain permissions and construct the Composite Building within 2 years from the date of the impugned Order of the AGRC dated 27th September, 2018, but till the date of hearing of the above Writ Petition have not even bothered to **apply** for the necessary permissions as directed by the AGRC on 27th September, 2018. Consequently, the plinth which was constructed in the year 2014-15 is also damaged and destroyed and the photographs taken on 23rd August, 2020 and 9th December, 2020 of the Subject Plot on which the Developers were required to construct the Composite Building before 27th November, 2020 as directed by the AGRC, portrays the completely neglected condition of the Subject Plot as under :







11. The facts in the matter are now set out in brief hereunder :

11.1 The slum dwellers residing on the Subject Plot, in the year 2006 formed the Petitioner Society i.e. Hanuman Nagar (Jogeshwari) SRA CHS (Prop.).

11.2. Since the Developers are also the Owners of the Subject Plot, in the year 2006 the majority members of the Petitioner Society appointed them as Developers for the S.R. Scheme. In view thereof, the Developers submitted to the SRA a proposal on 22nd July, 2006 for redevelopment of the Subject Plot under Regulation 33 (10) of the DCR.

11.3. Thereafter, the Additional Collector (E & R) / Western Suburb & Competent Authority issued certified Annexure-II on 8th December, 2006 for total 141 slum dwellers, out of which 124 slum dwellers are held eligible. 80 slum dwellers handed over their huts to the Developers in the year 2010, on a promise by the Developers to pay monthly compensation / rent towards temporary alternate accommodation. The members of the Petitioner Society based on the said promise arranged for temporary alternate accommodation until the new building was constructed on the Subject Plot and they were rehabilitated therein.

11.4. The Developers obtained the LOI on 1st June, 2010 and revised LOI on 15th September, 2011. Again, the amended IOD for the Composite Building was obtained only on 16th September, 2011 and the plinth CC only on 7th June, 2014.

11.5. In the year 2014 - 15 the Developers carried out construction upto plinth level and though they were required to rehabilitate the members of the Petitioner

Society within 24 months from the date of the CC, i.e. by 7th June, 2016, the construction remained at plinth level till date. The Developers also defaulted in making payment of the transit accommodation rent as agreed, thereby creating serious problems for the members of the Petitioner Society / the slum dwellers, who in turn defaulted in paying the license fees to their respective licensors for using the licensed premises as transit accommodation, and consequently were served with eviction notices by the respective licensors.

11.6. The members of the Petitioner Society filed representation dated 12th August, 2016 before the SRA setting out the aforestated facts.

11.7. The Assistant Registrar C.S. (Eastern & Western Suburbs) / SRA heard the parties and directed the Developers to pay rent / compensation to the eligible slum dwellers as per Circular No. 153 of the SRA and after payment of the rent due to the eligible slum dwellers, submit self-declaration and inform the SRA.

11.8. Since the Developers violated the said direction and failed to clear the dues of the slum dwellers and thereby caused inordinate delay in implementing the S. R. Scheme, the Petitioner Society in its General Body Meeting held on 18th December, 2016, terminated the appointment of the Developers and by their Letter / Application dated 12th April, 2017, requested the SRA to terminate the appointment of Respondent No. 1 as Developers and to appoint new developer/s in their place.

11.9. On 30th April, 2017, a General Body Meeting of the Petitioner Society was once again held in the presence of the Officers of the SRA. Out of 91 slum

dwellers present at the Meeting 85 slum dwellers decided to terminate the appointment of the Developers of the S. R. Scheme.

11.10. A Show Cause Notice dated 19th May, 2017 was also issued to the Developers calling upon them to explain as to why action under Section 13 (2) of the Maharashtra Slum Areas Act (I.C. & R.) Act, 1971 (the Slum Act) should not be initiated.

11.11. The CEO – SRA gave a hearing to the Petitioner Society as well as to the Developers. The Petitioner Society pointed out to the CEO - SRA the aforesaid facts and consequent suffering of its members and requested that the appointment of the Developers be terminated and a new developer be appointed.

11.12. The Developers submitted before the CEO – SRA that the delay was caused since it took one and half years to declare the Subject Plot as slum; the old committee of the slum dwellers blackmailed the Developers for about two years after obtaining the LOI; the building of the SRA had caught fire because of which more than eighteen months were wasted; the new managing committee was elected and they demanded five crores for supporting the Developers; the Developers have paid Rs. 8 to 10 Crores to the slum dwellers and obtained the plinth CC from SRA; the construction of Metro work, restricted the height of the rehab building from 16 floors to 11 floors.

11.13. The Developers submitted before the CEO – SRA that they will clear the arrears of transit rent within 45 days.

11.14. The CEO – SRA after hearing the Learned Advocates appearing for the parties, by his Order dated 23rd November, 2017 held that the Scheme has been lingering for about 11 years, and it will have to be concluded that the Developers are not serious about the implementation of the Scheme. As regards the offer of the Developers to clear the arrears within 45 days, the CEO - SRA rejected the same on the ground that the same cannot be accepted at the last moment and the same is just a plea taken by the Developers for condonation of default in payment of rent till the date of hearing. The CEO – SRA thereafter recorded that the appointment of the Developers of the subject S. R. Scheme is terminated with effect from 4th October, 2017; the Petitioner Society is at liberty to appoint a new developer of their choice in accordance with Rules, Regulations and Policy of SRA for implementation of S.R. Scheme and submit the proposal for acceptance to the SRA; the Engineering Department of SRA was directed to appoint Government Approved Valuer to value the expenses legally incurred by the Developers on site and inform the same to the Petitioner Society, and the newly appointed developer would have to reimburse the actual expenses legally incurred by the Developers for implementation of subject S.R. Scheme till the date of termination.

11.15. Being aggrieved by the Order of the CEO – SRA, the Developers filed Application (L) No. 107 of 2018, before the AGRC impugning the Order of the CEO - SRA dated 23rd November, 2017, interalia terminating their appointment as Developers.

11.16. The Advocate appearing for the Petitioner Society reiterated the above problems faced by its members, before the AGRC.

11.17. It was submitted on behalf of the Developers before the AGRC that the CEO - SRA had issued CC for rehab building on 7th June, 2014; 80 slum dwellers vacated their structures and in lieu of transit accommodation, the Developers are paying rent / compensation since the year 2011-12 till date; in view of the height restriction by Airport Authority and starting of Metro work, the Developers submitted a proposal to amend the building plans and reduced the height of building from 16 floors to 11 floors; certain slum dwellers at the instance and behest of another developer started objecting to the development only with a view to extort money from the Developers, and the old managing committee of the Petitioner Society blackmailed the Developers and demanded huge amount and on some occasions the Developers paid the same and thereafter refused to pay the same and therefore the old managing committee members of the Petitioner Society started obstructing the redevelopment. It was submitted that even though the Developers are ready and willing to develop their own property, the Developers are not able to carry out construction. SRA and CEO - SRA cannot invoke the provisions of Section 13 (2) of the Maharashtra Slum Areas Act (I.C. & R.) Act, 1971 against the Developers on the ground of non-payment of rent / compensation to the slum dwellers and the Developers be allowed to deposit all arrears of rent within two months upon the Developers being reinstated.

11.18. In response to the above, the Learned Advocate representing the

Petitioner Society before the AGRC denied and disputed the above allegations / contentions advanced on behalf of the Developers and by pointing out the aforesaid facts, explained to the AGRC how its members were suffering since the last several years. It was pointed out that though the CEO - SRA passed an Order dated 23rd November, 2017 terminating the appointment of the Developers and pursuant thereto the Joint Registrar Co-operative Societies - SRA scheduled the General Body Meeting of the Petitioner Society on 9th May, 2018 to appoint a new developer to implement the S.R. Scheme and notice to that effect was also served on the members of the Petitioner Society, the Developers waited till the happening of all these events and after a period of five months from the date of passing of the Order by the CEO - SRA approached the AGRC, which itself shows that the Developers are not interested in pursuing the development activity, but by adopting dilatory tactics are only wanting to cause hindrance in the implementation of the S.R. Scheme for their own commercial interest, which is detrimental to the interest of the slum dwellers.

11.19. The AGRC by its impugned Order dated 27th September, 2018, proceeded to set aside the Order passed by the CEO - SRA dated 23rd November, 2017 on the ground that the Developers being the owners have the first option / choice to redevelop the Subject Plot owned by them and that the Developers have already taken steps to redevelop the Subject Plot in the year 2006 and have already constructed the plinth of the Composite Building as per the permission granted by SRA; if the new developer is required to be appointed as per the Order of CEO - SRA, the new

developer is required to obtain consent / no objection from the present Developers, being the owners of the Subject Plot, failing which, acquisition proceedings qua the Subject Plot under Section 14(1) of the Maharashtra Slum Areas (I.C.&R) Act, 1971, will have to be initiated by the CEO - SRA, which will cause further delay in the development of the Subject Plot in occupation of the Petitioner Society. The AGRC in its impugned Order also referred to the decision of this Court in the case of *Awdesh Tiwari & Ors. vs. Chief Executive Officer, Slum Rehabilitation Authority and others*,¹ wherein it is held that, “*there is nothing in the Scheme of D.C. Regulation 33 (10) that an individual slum dweller get a right to decide which Society or which Developer should implement the Scheme.*” The AGRC thereafter proceeded to set aside the Order of the CEO - SRA dated 23rd November, 2017, and directed the Developers to deposit with the SRA, arrears of rent in lieu of transit accommodation of eligible slum dwellers within a period of two months from 27th September, 2018 and further directed the Developers “*in larger interest of slum dwellers and to enable speedier implementation of subject S.R. Scheme*”, to obtain all necessary permissions from the SRA / other authorities and complete the construction work of the Composite Building as per the sanctioned plan and to rehabilitate the eligible slum dwellers of the S.R. Scheme within a period of two years from 27th September, 2018.

11.20. Being aggrieved by the above Order of the AGRC dated 27th September, 2018, the Petitioner Society filed the above Writ Petition on 17th July, 2019, wherein

1 2006 SCC OnLine Bom 481

they have prayed that the Order dated 27th September, 2018 passed by the AGRC be quashed and set aside on the grounds set out in the Writ Petition.

11.21. The Order of the AGRC is accepted by the Developers and is not challenged before any Court, including this Court.

12. The Learned Advocate appearing for the Petitioner Society reiterated the above facts and submitted before us that despite the aforestated miserable plight of its members brought about by the Developers through inordinate delay in the implementation of the Scheme since the year 2006 and not carrying out any construction beyond the plinth since the year 2014 – 15 and also not making payment of the agreed rent / compensation in lieu of the temporary transit accommodation being made known to the AGRC, the AGRC proceeded to set aside the Order passed by the CEO – SRA dated 23rd November, 2017, terminating the appointment of the Developers as Developers of the S.R. Scheme, on the ground that: (i) the Developers being owners have the first option / choice to redevelop the Subject Plot owned by them, (ii) that the Developers have already taken steps to redevelop the Subject Plot in the year 2006, (iii) the Developers have already constructed the plinth for the Composite Building as per the permission granted by the SRA. It is submitted on behalf of the Petitioner Society that the AGRC completely ignored the fact that the Developers were infact given the first choice / chance to redevelop the Subject Plot and about 80 slum dwellers allowed the Developers to demolish their huts and take possession of the Subject Plot as far back as in the year 2010. It is submitted that

though the Developers obtained the CC in the year 2014, except for constructing the plinth in the year 2014-15, the Developers have thereafter not carried out any further construction. However, the AGRC without mentioning anything about the default on the part of the Developers in not carrying out any further construction after completing the construction of the plinth in the year 2014-15, has in support of its Order impugned herein, only recorded that the Developers have already constructed the plinth as per the permission granted by the SRA. It is further submitted that the AGRC ought not to have set aside the Order passed by the CEO - SRA on the ground that if the Order of the CEO - SRA is upheld the same will cause a further delay in the development of the Subject Plot of land in occupation of the Petitioner Society. It is submitted that the AGRC did not appreciate that if the Order passed by the CEO - SRA is set aside on the basis of fear that the same may cause further delay in the development of the Subject Plot, and in the event of the Developers not complying with the unconditional and unmonitored Order of the AGRC granting them two months' time to pay the arrears of rent and further two years' time to obtain necessary permissions to complete the construction and rehabilitate the members of the Petitioner Society, the same will cause indefinite delay in the development of the Subject Plot and unimaginable loss, injury and prejudice to the members of the Petitioner Society. The Petitioner Society further submitted that the decision of the Division Bench of this Court in the case of *Awdesh Tiwari and Ors.* (supra) is of no assistance to the Developers since the Order passed by the CEO -SRA is after taking

into consideration the facts and circumstances of the present case, which are in no way similar to the facts and circumstance in the case of Awdesh Tiwari, and that in the present case an individual slum dweller is not claiming any right to decide which Society or which Developer should implement the Scheme and the Petitioner Society has moved the SRA to change the present Developers and appoint a new developer to implement the Scheme only because the present Developers as set out hereinabove, have miserably failed to implement the Scheme. The Learned Advocate for the Petitioner Society has also pointed out that the Developers have not only delayed the payment of arrears but immediately from 2019 failed to pay and have till date not paid a single Rupee towards transit accommodation to the members of the Petitioner Society which has resulted in arrears mounting upto Rs. 2,89,75,500/- as on 30th September, 2020. The Developers have also failed to comply with the directions to obtain necessary permissions from the SRA / other authorities and to put the members of the Petitioner Society in possession of the rehab building on or before 27th September, 2020. In view thereof, the plinth constructed in the year 2014-15 is also completely damaged / destroyed, as can be seen from the photographs taken on 13th August, 2020 and 9th December, 2020 and reproduced in paragraph 6 hereinabove. It is therefore submitted that the Order passed by the AGRC dated 27th September, 2018 deserves to be forthwith quashed and set aside.

13. The Developers have filed their Affidavit dated 11th December, 2020, before us, wherein they have stated that since the area of the alternate accommodation

required to be provided to the members of the Petitioner Society has been revised from 269 sq.ft. to 300 sq.ft. they will have to submit revised plans and get them sanctioned. They have further submitted that since they are the owners of the Subject Plot, they are entitled to the first option to be appointed as Developers and that the Petitioner Society are concerned only with their limited right for alternate accommodation and rent. The Developers have admitted that they have not paid rent and are unable to pay the arrears of rent even as on date (which as per the table submitted by the Petitioner Society aggregates to Rs. 2,89,75,500/- as on 30th September, 2020), due to slow-down in the realty market in the year 2019 and thereafter due to the Pandemic. The Developers have submitted that they will deposit an amount of Rs. 10 Lakhs in this Court within a period of two weeks and Rs. 20 Lakhs thereafter. The Developers states that they will finalize the necessary steps in carrying out the necessary procedures and calculations, as also the Schedule for payment of rent, extension of time, revision of plan, etc. They will coordinate with the Petitioner Society and their Advocate to try and workout a concrete workable Schedule for completion of the Project and will come to this Court with the Consent Terms.

14. The Petitioner Society has rejected the offer of the Developers and have submitted that not only the members of the Petitioner Society have been misled / cheated by the Developers over the years, but the concerned authorities too have been repeatedly misled by the Developers thereby bringing the members of the Petitioner

Society almost on the streets. It is submitted that therefore the Petitioner Society / its members cannot allow the Developers to mislead and cheat them anymore.

15. The Learned Advocate appearing for the Developers thereupon reiterated what is stated in paragraph 5 of the Affidavit of the Developers dated 11th December, 2021 namely, that the Developers are in the hands of this Court and considering the interest of everyone, particularly the Petitioner Society and the Developers, this Court be pleased to pass such orders as it may deem fit in the interest of justice and wellbeing of all. In view thereof, this Court has proceeded to hear the matter finally at the stage of admission.

16. Mr. Prasad Dhakephalkar, Senior Advocate appearing for the AGRC submitted before us that the only reason why the AGRC proceeded to set aside the Order of the CEO – SRA terminating the appointment of the Developers, as Developers of the Slum Rehabilitation Scheme on the Subject Plot, is because if a new developer is to be appointed as ordered by the CEO – SRA, the entire procedure will have to be freshly initiated, which may not be in the interest of the slum dwellers / members of the Petitioner Society. When this Court questioned Mr. Dhakephalkar how an unconditional blanket extension was granted by the AGRC to the Developers without verifying whether they are equipped to complete the construction (more so, when they had admittedly failed to pay the agreed rent / compensation to the members of the Petitioner Society) and without taking any undertaking to complete the project within a specified period and stipulating the consequences of default and

without asking the Developers to file progress reports with the SRA at regular intervals, Mr. Dhakephalkar agreed that the Order of the AGRC is lacking in this respect and the Court may direct the AGRC to introduce such effective measures in its orders passed in future. This Court also pointed out to Mr. Dhakephalkar that in view of the required care not being taken by the AGRC to ensure that its Orders are implemented / complied with by the Developers, the Developers have in the present case not moved an inch to comply with the directions of the AGRC, and it is the members of the Petitioner Society who have suffered interalia due to such an ineffective Order.

17. We have perused the Writ Petition alongwith its Annexures, the affidavit filed by the Developers, the submissions advanced by the Learned Advocates for the Parties and the documents relied upon by them in support of their submissions i.e. the photographs reproduced hereinabove and the statement showing arrears of transit rent payable by the Developers to the members of the Petitioner Society as on 30th September, 2020.

18. The relevant provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**‘the Slum Act’**) and Regulation 33 (10) of the Development Control Regulations for Greater Mumbai, 1991 (**DCR**) pertaining to the Scheme of rehabilitation of slum dwellers, have been clearly explained by the Division Bench of this Court in the case of *Awdesh Tiwari vs. Chief Executive Officer, Slum Rehabilitation Authority and others* (supra), paragraphs 12 to 15 being

relevant, are reproduced hereunder :

“12. Now the question before us is the manner in which the scheme under Regulation 33(10) should be implemented. The entire case will have to be examined in the perspective of rights of the slum dwellers. Section 3-Y(1) of the Slum Act provides that the State Government or any officer generally or specially authorised by it is required to issue a photopass to the actual occupier of the dwelling structure in slum which is in existence on or prior to 1st January, 1995. Section 3-X(c) provides that “Protected occupier” means an occupier of dwelling structure who holds a photopass. Sub-section (1) of section 3-Z provides that save as provided in sub section (2) of section 3-Z no protected occupier shall be evicted from a dwelling structure. Sub-section (2) provides that the State Government in larger public interest can evict protected occupier from his dwelling structure subject to condition of relocating and rehabilitating the protected occupier in accordance with the scheme or schemes prepared by the State Government in this behalf. Section 3-X(a) defines a “dwelling structure” to mean a structure used as a dwelling or otherwise and includes an out-house, shed, hut or other enclosure or structure, whether of bricks, masonry, wood, mud, metal or any other material whatsoever. Thus, occupants of the structures in slum area become protected occupiers provided as on 1st January, 1995 they are in occupation of a dwelling structure.

13. Regulation 33(10) of D.C. Regulations provides for a scheme for rehabilitation of slum dwellers. Under such rehabilitation scheme, there is a provision for providing a tenement in exchange of a dwelling structure whose inhabitants' names and structures appear in the electoral roll prepared with reference to 1st January, 1995. Clause (i) of Appendix IV of D.C. Regulation lays down that hutment dwellers in the slum or on pavement who are eligible in accordance with the provisions of D.C. Regulation 33(10) shall be entitled in exchange for their structure a residential tenement free of cost having carpet area of 225 sq.ft. including balcony, bath and water closet, but excluding common free of costs. Thus, the right of a hutment dweller who is in possession of a hutment on an area to which the Scheme is made applicable is for a tenement admeasuring 225 sq.ft. in exchange of the hut irrespective of the area of the hut. Thus, an individual hutment dweller gets this limited right apart from right to seek protection from eviction under section 3-Z(1) of the Slum Act. However, there is nothing in the scheme of D.C. Regulation 33(10) that an individual slum dweller gets a right to decide which Society or which developer should implement the scheme.

14. Appendix IV of Regulation 33(10) provides that the land on which rehabilitation component is constructed will be leased to co-operative housing society of the slum dwellers on thirty years lease. Clause 2.1 of Appendix IV provides that the proposal for each slum rehabilitation project shall be submitted to Slum Rehabilitation Authority along with all necessary documents, no-objection certificates, and the plans as may be decided by the. Slum Rehabilitation Authority from time to time. The SRA has issued Guidelines for implementation of SRA scheme. Clause 2 of the procedure incorporated in the said guidelines provides that 70% or more of the eligible slum dwellers in a slum or on pavement in a viable stretch at one place have to show their willingness to join Slum Rehabilitation Scheme and come together to form a proposed cooperative housing society. Clause 3 of the guidelines further provides that the chief promoter, office bearers and the members of the proposed society should collect the documents such as 7/12 extract and the Property Registration card of the plot on which the slum is situated. After collecting necessary documents, they should then get the plot surveyed/measured and prepare map of the plot showing slum structures thereon. While undertaking the survey, they should collect the information of the proposed members/slum-dwellers and fill up the self prepared Annexure-II prescribed by SRA. Annexure-II contains details of structures occupied by the slum-dwellers, their number and type of structures such as residential, industrial, commercial, amenity structures etc. and the list of eligible and ineligible occupants. The guidelines record that earlier procedure was that the promoter/co-operative housing society should first approach competent authority for obtaining certification of Annexure-II before they can put an application for grant of scheme to the SRA. However, it is recorded that such procedure is discontinued and now the procedure provides that Annexure-II format is required to be filled up by the promoter/co-operative housing society for submitting the same along with proposal for sanction to SRA.

15. Competent Authorities for certifying Annexure II have been notified. In case of the lands vesting in the State Governments Revenue Officers such as Additional Collector, Deputy Collector have been nominated. In case of lands vesting in the Municipal Corporation, the Municipal Officers have been nominated. The guidelines further contemplate that after obtaining name reservation of the proposed society, step should be taken to search a competent developer who will act as promoter of the scheme. The scheme provides that instead of appointing a developer, the society itself or a NGO can implement rehabilitation scheme as a promoter. After appointing a promoter, agreements are required to be executed by and between the promoters and the members. Thereafter, the promoter has to appoint an architect

in consultation with the proposed co-operative housing society. The Architect is entrusted with the work of preparation of plans. The procedure contemplates that all required documents such as building plan, layout plan, property register plan along with Annexure-I, self prepared Annexure-II and Annexure-III should be submitted to the SRA by the architect along with application for sanction of Slum Rehabilitation Scheme. Annexure-I gives details of ownership of land, details of plot area, existing hutments, extent and type of reservations, amenities, FSI available etc. The prescribed format shows that Annexure-I is to be signed by architect and owner/chief promoter of the Society. Annexure-II is to be signed by the chief promoter of the Society/owner/developer/NGO. Annexure-III is related to financial capability of the developer to execute SRA scheme which is required to be signed by the developer and architect. Clause No. 11 of Part IV of the Guidelines on the Procedure prescribes that after a pre-scrutiny by designated engineer of SRA with a view to ensure completeness of the proposal so far as documents are concerned, proposals are accepted and computer file number is allotted to the scheme on payment of scrutiny fees. Upon the acceptance of the proposal, the scrutiny of Annexure-I, Annexure-II and Annexure-III starts simultaneously and after scrutiny of the Annexures by different authorities, a letter of intent is issued. From the procedure prescribed, it is clear that a comprehensive application containing plans and other requisite documents, Annexure-I, Annexure-II and Annexure-III shall be submitted by the architect to the SRA and after ensuring that all documents are filed with the proposal a computer number is given to the file and only thereafter scrutiny of all the three Annexures starts simultaneously.”

19. As stated hereinabove, the slum dwellers residing on the Subject Plot formed the proposed Society sometime in the year 2006. Since the Respondent No. 1 - Developers are also the owners of the Subject Plot, the Petitioner Society, in the year 2006 passed a resolution at its Annual General Meeting appointing Respondent No. 1 - Developers, as Developers for the S. R. Scheme. Pursuant thereto, the Developers on 22nd July, 2006 submitted to the SRA, a proposal for redevelopment of the Subject Plot under Regulation 33 (10) of the DCR. On 8th December, 2006 the Competent

Authority issued certified Annexure - II for total 141 slum dwellers out of which 124 slum dwellers were held eligible.

20. The Developers obtained, the **LOI** only on 1st June, **2010**. In view thereof, 80 slum dwellers handed over their respective huts to the Developers in the year **2010** in reciprocation of a promise by the Developers to construct a Composite Building within 24 months from the date of the receipt of the plinth CC and to rehabilitate the members of the Petitioner Society and also in the meantime provide compensation / rent in lieu of temporary alternate accommodation to the eligible members. On the strength of the said promise the members of the Petitioner Society arranged for temporary alternate accommodation and agreed to pay the license fee to the licensors who had agreed to license their premises to the said members.

21. The Developers obtained the revised **LOI** on 15th September, 2011, the **amended IOD** on 16th September, **2011** and the **CC** for the Composite Building only on 7th June, **2014**.

22. In the year 2014 – 15 the Developers carried out construction upto plinth level and though they were required to construct the Composite Building and rehabilitate the members of the Petitioner Society on or before 6th June, 2016, the construction remained at plinth level for all times and the members were left completely high and dry, i.e. without their own roof over their heads. The Developers also defaulted in making payments of the transit accommodation which had accumulated substantially, putting the poor members of the Petitioner Society (the

slum dwellers) into grave difficulty and inconvenience, as they had on the strength of the promise made by the Developers to make the monthly transit accommodation payment, taken temporary accommodation on license, and subsequently received eviction notice for defaulting in payment of the license fee. In other words, the Developers by their irresponsible and insensitive conduct almost brought the members of the Petitioner Society on the streets.

23. Pursuant to the representation dated 12th August, 2016 filed by the members of the Petitioner Society before the SRA setting out the aforesaid facts, the Assistant Registrar C.S. (Eastern & Western Suburbs) SRA, heard the Parties and directed the Developers to pay rent / compensation to the eligible slum dwellers as per the Circular No. 153 of the SRA.

24. The Developers failed to comply with the above directions. The Developers are also responsible in causing inordinate delay in implementing the S. R. Scheme. Such conduct of the Developers therefore compelled the Petitioner Society to take a decision in its General Body Meeting held on 18th December, 2016 to terminate the appointment of the Developers and to appoint a new developer in their place and by their Letter / Application dated 12th April, 2017, requested the SRA to terminate the appointment of the Developers and to appoint the new developer/s in their place.

25. On 30th April, 2017, a General Body Meeting of the Petitioner Society was once again held in the presence of the Officers of the SRA. Out of 91 slum

dwellers present at the meeting 85 slum dwellers decided to terminate the appointment of the Developers of the S. R. Scheme.

26. A Show Cause Notice dated 19th May, 2017 was also issued to the Developers calling upon them to explain as to why action under Section 13 (2) of the Maharashtra Slum Areas Act (I.C. & R.) Act, 1971 (**the Slum Act**) should not be initiated.

27. The CEO -SRA gave a hearing to the Petitioner Society as well as the Developers and held that the Scheme is lingering for about 11 years and that the Developers are not serious about implementation of the Scheme. At this stage the Developers made an offer to clear the arrears, not immediately but within 45 days, which was correctly rejected by the CEO -SRA, who apparently, saw through the game of the Developers to stall, for the time being, an adverse Order being passed against them. It is obvious that the Developers by committing breach of the promises made to the members of the Petitioner Society left them completely in the lurch, and as stated hereinabove brought them almost on the streets. The reasons given for the delay, including the allegations made against the members of the Petitioner Society, were devoid of particulars and therefore the CEO -SRA ignoring the same, passed his reasoned Order, the operational portion of which is reproduced hereunder :

- “1. The appointment of the Respondent i.e. M/s Kanchi Builders and Developers as Developers of the subject S.R. Scheme on plot of land bearing C.T.S. No. 231(pt), 268 and 268(1) of Village Mogra Hanuman Nagar, Jogeshwari (East), Mumbai - 400 060 for Hanuman Nagar, (Jogeshwari) SRA CHS (Prop.) is terminated w.e.f. 04.10.2017.
2. The Applicant is at liberty to appoint new Developer of their choice in

accordance with rules, regulation and policy of SRA for implementation of S.R. Scheme and submit the proposal for acceptance to the SRA .

3. The Engineering Department of SRA to appoint Government Approved Valuer to value the expenses legally incurred by the Respondent Developer on site, within a period of two months from today, and inform the same to the Applicant Society.

4. The newly appointed Developer should reimburse the actual expenses legally incurred by the Respondent developer for implementation of the subject S.R. Scheme till date of his termination.

5. No Order as to the Costs.”

28. Being aggrieved by the Order of the CEO- SRA dated 23rd November, 2017, interalia terminating the appointment of the Developers, the Developers filed an application before the AGRC, being Application (L) No. 107 of 2018 impugning the Order passed by the CEO – SRA.

29. The AGRC by its Order dated 27th September, 2018, has set aside the Order of the CEO -SRA dated 23rd November, 2017 and directed the Developers to pay the arrears of the compensation in lieu of temporary transit accommodation to the members of the Petitioner Society within a period of two months, i.e. on or before 27th November, 2018 and further directed, *“in larger interest of slum dwellers and to enable speedier implementation of subject S. R. Scheme”* to obtain all necessary permissions from the SRA / other authorities and complete the construction work of the Composite Building as per the sanctioned plan and to rehabilitate the eligible slum dwellers within a period of two years from 27th September, 2018 i.e. on or before 27th September, 2020. It is this Order which is impugned before us.

30. After going through the impugned Order passed by the AGRC, we have noted that despite the aforestated miserable plight of the members of the Petitioner

Society being brought about by the Developers, by causing inordinate delay in implementing the S. R. Scheme since the year 2006, by not carrying out any construction beyond the plinth since the year 2014-15 and also not making payments of the agreed rent / compensation in lieu of the temporary transit accommodation, the AGRC proceeded to pass the impugned Order on the grounds that the Developers being owners of the Subject Plot have the first option / choice to redevelop the Subject Plot owned by them; that the Developers have already taken steps to redevelop the Subject Plot in the year 2006 and the Developers have already constructed the plinth for the composite building as per the permission granted by the SRA.

31. It is an admitted fact that the Developers being the owners of the Subject Plot are already given the first option / choice to redevelop the Subject Plot owned by them. In fact, the Petitioner Society passed a resolution in the year 2006 appointing them as the Developers for the Slum Rehabilitation Scheme and the Developers thereupon submitted to the SRA a proposal dated 22nd July, 2006 for redevelopment of the Subject Plot under Regulation 33(10) of the DCR. The Developers obtained an LOI only on 1st June, 2010. Thereupon, 80 of the 124 eligible members immediately handed over their huts to the Developers, i.e. in the year 2010 itself, to facilitate the construction of the new building upon demolition of the said huts. It is also true that though the redevelopment process began in the year 2006, the Developers obtained the CC only on 7th June, 2014. In any event though the Developers were required and had agreed to complete the construction of the Composite Building and to rehabilitate

the eligible members of the Petitioner Society in the new building on or before 7th June 2016, i.e. within a period of two years from the receipt of the CC, it is an admitted fact that the Developers carried out construction upto the plinth by 2014-15, but thereafter miserably failed to carry out any further construction. The AGRC has passed the impugned Order without taking into account the aforestated facts. It is also pertinent to note that the reasons given by the Developers before the AGRC explaining the delay in completing the construction, are totally vague and devoid of any particulars and therefore, except for setting out the same in the impugned Order, the AGRC has not even attempted to comment upon and / or deal with the same.

32. The AGRC has in support of its Order dated 27th September, 2018, also recorded that if the Order of the CEO - SRA is upheld the same will cause a further delay in the development of the Subject Plot in occupation of the Petitioner Society. However, the AGRC failed to realize that a blanket Order passed by it, granting two years time to the Developers to complete the construction of the Composite Building and to put the members of the Petitioner Society in occupation of the same, **without** verifying whether the Developers are financially and otherwise equipped to complete the construction and **without** providing any safeguards to ensure compliance of the Order, in the form of directions to the Developers to intimate to the SRA, from time to time the progress of the construction, if breached will result in wasting two years granted vide its impugned Order, thereby causing further delay, unimaginable prejudice and hardship to the members of the Petitioner Society.

33. The AGRC has in its impugned Order also referred to the decision of this Court in Awdesh Tiwari & Ors. (supra) wherein it is held that, “*there is nothing in the Scheme of D.C. Regulation 33 (10) that an individual slum dweller get a right to decide which Society or which Developer should implement the Scheme.*” As correctly submitted by the Advocate for the Petitioner Society the said Judgement renders no assistance to the Developers in the present case. In the present case an individual slum dweller is not claiming any right to decide as to which Society, or which Developer should implement the Scheme. In fact, in the present case only since the Developers as set out hereinabove, have miserably failed to implement the Scheme, the Petitioner Society is compelled to seek change of developers. The decision of Awdesh Tiwari & Ors. (supra) does not hold that even if a Developer fails to implement the Scheme to the satisfaction of the SRA and lets down the members of the slum society, as in the present case, the members of the Society cannot approach the SRA to change the Developer/s. In fact, we would like to make it clear that in the circumstances, as in the present case, the SRA and / or the members of the slum society are certainly not expected to be helpless spectators / victims of the unfair and unjust behavior on the part of the Developer/s, but have every right to change / seek change of the erring developer/s.

34. It is pertinent to note that in the case of ***Omkar Realtors & Developers Pvt. Ltd. vs. Slum Rehabilitation Authority & Ors.***², the Division Bench of this Court

² 2010 SCC Online Bom 1650

(Coram: Mohit S. Shah, C.J. and D. Y. Chandrachud (DR.) J. as they then were), have whilst dealing with an identical submission held as under :

“17. It is true that as per the aforesaid judgment of this Court, the individual slum dweller may not have a right to decide which society or developer should implement the scheme, but when the society itself has lost confidence in the developer whose acts of omission and commission have already been taken into consideration by the Slum Rehabilitation Authority and the Slum Rehabilitation Authority found substance in the grievances of the society, it is not possible to say that the views of the entire co-operative society become irrelevant. The very fact that the scheme of the Slum Rehabilitation Authority provides that the developer should obtain consent of 70% of the members of the society goes to show that the developer should have confidence of the society. May be after the LOI is issued in favour of the developer, if for some extraneous reasons the society passes a resolution for removing the developer without any justification, the views of the society may not be acted upon by Slum Rehabilitation Authority.”

35. The impugned Order passed by the AGRC on the grounds set out therein is therefore totally incorrect and exhibits lack of application of mind. Though the AGRC has stated that the impugned Order is passed by them *“in larger interest of slum dwellers and to enable speedier implementation of subject SRA Scheme”* they are proved completely wrong, since as stated hereinabove the impugned Order which has been breached by the Developers in its entirety, and the period of two years granted, without the progress of work being monitored, has not only delayed the implementation of the Scheme by two years, but the Developers have by their brazen conduct of not making any payments since January 2019 towards transit accommodation to the members of the Petitioner Society which as on 30th September, 2020 has mounted to a whopping sum of Rs. 2,89,75,500/-, has almost brought the

members of the Petitioner Society on the streets, since they are unable to pay the license fee to their licensors.

36. The Learned Advocate appearing for the Developers has submitted that since the Developers are now required to provide permanent accommodation to each of the members of the Petitioner Society admeasuring 300 sq.ft., instead of the earlier requirement of providing an area of 269 sq.ft., he will now have to submit fresh plans seeking approval / sanction. The Developers as well as his Advocate are required to be reminded that the said requirement is in force with effect from 24th October, 2018. In any event, the Developers admit that till date, i.e. even now when the matter is being heard by the Court, they have not made any application seeking necessary permissions and nor have they submitted any plans seeking approval / sanction. Again, though the Developers have failed to pay the compensation in lieu of temporary alternate accommodation to the members of the Petitioner Society since the last two years aggregating to approximately Rs. 3 Crores, even at this stage the Developers have informed this Court that they are not in a position to clear a substantial part / portion of the arrears, but can only deposit Rs. 10 lakhs and that too after two weeks and Rs. 20 Lakhs two weeks thereafter. We are therefore convinced that the Developers do not have the requisite financial capacity even at this stage to pay to the members of the Petitioner Society their dues, which are pending since January 2019 and aggregates to much more than Rs. 3 Crores as on date. We are also convinced that the *modus operandi* adopted by the Developers is that it is only when they (Developers) are

compelled to appear before the Court / authorities and they realize that adverse Orders will be passed against them, that they agree to pay a fraction of the huge arrears to the members of the Petitioner Society, and thereby seek and obtain an extension of time to complete the project, only to once again let down the members by not making any payments towards transit accommodation and also not take any steps to redevelop the Subject Plot. This is more clearly established from the fact that despite the AGRC having passed the impugned Order on 27th September, 2018, the condition of the Subject Plot even on 23rd August, 2020 and 9th December, 2020, as can be seen from the photographs produced in paragraph 6 of this Order, wherein even the plinth which was admittedly constructed in the year 2014 – 15 is destroyed. The Learned Advocate appearing for the Petitioner Society has informed us that about 17 members after a long wait, and with the hope to see the light of the day when the new tenements would be allotted to them, have passed away. We cannot be a party to such misery faced by the members of the Petitioner Society at the hands of the Developers, who as stated by the AGRC have “taken steps for redevelopment” in the year 2006, and have till date left the Subject Plot in the condition shown in the photographs at paragraph 6 hereinabove. We therefore set aside the Order passed by the AGRC dated 27th September, 2018. The Writ Petition is accordingly disposed off.

37. Before parting with this Order, we would like to record that even in matters where the authorities like the CEO - SRA and / or AGRC are of the view that the time to complete the slum redevelopment projects should be granted to the

defaulting / erring developers, instead of granting unconditional / blanket extension/s of time to them, should first verify whether the concerned developer/s is / are financially and/or otherwise equipped to complete such projects within the extended time lines. In addition thereto, the authorities should also take a bar chart from the Developer/s showing how the work would progress during the extended period alongwith the necessary undertakings from the Developers with regard to completion of the project within such extended time line and also call for compliance reports from time to time from the concerned developer/s showing as to whether the work has progressed as per the bar chart submitted. Such vigilance and meaningful monitoring by the authorities like the CEO - SRA and / or AGRC alone will ensure that the orders passed by them do not merely remain paper orders incapable of providing the requisite relief to the slum dwellers.

(RIYAZ I. CHAGLA, J.)

(S.J.KATHAWALLA, J.)