

Gaikwad RD

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 5116 OF 2022
WITH
INTERIM APPLICATION (L) NO. 471 OF 2023
IN
WRIT PETITION NO. 5116 OF 2022**

Priya Construction Co	...Petitioner
<i>Versus</i>	
The Slum Rehabilitation Authority & Ors	...Respondents

**WITH
INTERIM APPLICATION (L) NO. 7405 OF 2023
IN
WRIT PETITION NO. 5116 OF 2022**

Moon Light Co-operative Housing Society (Proposed)	...Applicant
<i>In the matter between</i>	
Priya Construction Co	...Petitioner
<i>Versus</i>	
The Slum Rehabilitation Authority & Ors	...Respondents

**WITH
INTERIM APPLICATION (L) NO. 7406 OF 2023
IN
WRIT PETITION NO. 5116 OF 2022**

Shree Siddhivinayak CHS (Prop.) ...Applicant
In the matter between
Priya Construction Co ...Petitioner
Versus
The Slum Rehabilitation Authority & Ors ...Respondents

WITH
INTERIM APPLICATION (L) NO. 7837 OF 2023
IN
WRIT PETITION NO. 5116 OF 2022

Skyscraper Realty Pvt Ltd ...Applicant
In the matter between
Priya Construction Co ...Petitioner
Versus
The Slum Rehabilitation Authority & Ors ...Respondents

WITH
INTERIM APPLICATION (L) NO. 9570 OF 2023
IN
WRIT PETITION NO. 5116 OF 2022

Jiteshwar Co-operative Housing Society ...Applicant
(Proposed)
In the matter between
Priya Construction Co ...Petitioner
Versus
The Slum Rehabilitation Authority & Ors ...Respondents

Mr Ashish Kamat, Senior Advocate, *with Vaibhav Charalwar, Santosh Pathale & Chirag Thakkar, i/b Law Origin, for the Petitioner in WP/5116/2023 & for Applicant in IAL/471/2023.*

Mr Simil Purohit, with Darshit Rupda, i/b Kalpesh Joshi Associates, for the Applicant in IAL/7406/2023 in WP/5116/2023.

Mr Mayur Khandeparkar, with Nitesh Ranawat & Disha Shetty, i/b Wadia Ghandy & Co, for the Applicant in IAL/7837/2023.

Mr Rohaan Cama, with Anmol Bantalia, i/b Juris Counsellis, for the Intervenor in IAL/7405/2023.

Mr Zal Andhyarujina, Senior Advocate, with Shruti Sardesai & Raj Adhia, i/b TRD Associates, for the Applicant in IAL/9570/2023.

Mr Vineet Naik, Senior Advocate, with Jagdish G Aradwad (Reddy), for Respondents No.1 and 2-SRA in WP/5116/2023 & IAL/7405/2023.

Mr Rohaan Cama, with Malcolm Siganporia, Sandeep Dhangar, Paras S Gosar, i/b Jayesh R Vyas, for Respondent No.4 in WP/5116/2022.

Mr SB Gore, AGP, for the Respondent-State.

**CORAM G. S. Patel &
Neela Gokhale, JJ.**
DATED: 13th June 2023

PC:-

1. Serial Number No. 19 on our list today is not just one Writ Petition No. 5116 of 2022 (originally Writ Petition (L) No. 34602 of 2022), but a number of interim applications by various parties. The tabulation below shows the Interim Application and the names of the Applicant:

Sr. No.	Interim Application	Applicant
01	Interim Application (L) No. 471 of 2023	Priya Construction Co
02	Interim Application (L) No. 7405 of 2023	Moon Light Co-operative Housing Society (Proposed)
03	Interim Application (L) No. 7406 of 2023	Shree Siddhivinayak CHS (Prop.)

04	Interim Application (L) No. 7837 of 2023	Skyscraper Realty Pvt Ltd
05	Interim Application (L) No. 9570 of 2023	Jiteshwar Co-operative Housing Society (Proposed)

2. The Writ Petition itself was disposed of by an order of 1st December 2022. Then the Developer, Priya Construction, filed Interim Application (L) No. 471 of 2023. Prayer (a) of that Interim Application sought a restoration of the Writ Petition. Prayer (b) asked that a joint demarcation be carried out of the site in question. The reason for seeking restoration was Priya Construction's stand that the Division Bench order of 1st December 2022 was sought to be circumvented by conducting what Priya Construction says was a sham, bogus or farcical enquiry under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (the "**Slum Act**").

3. We took up Priya Construction's Interim Application (L) No. 471 of 2023 on 7th February 2023. At that time, before us was a self-proclaimed activist. We dealt with that and then we restored the Petition to file and recalled the order of disposal to the extent that it disposed of the Petition.

4. We also granted interim relief on Priya Construction's Interim Application (L) No. 471 of 2023 restraining Respondents Nos. 1 and 2, namely the Slum Rehabilitation Authority ("**SRA**") and its CEO from passing any order or direction in the ongoing proceeding under Section 13(2) of the Slum Act for cancellation of Priya Construction's Letter of Intent ("**LOI**") and its consequential removal as a Developer.

5. To summarize, Priya Construction was facing an ejectment as the Developer registered with SRA (i.e., holding an LOI in its name). We granted ad-interim relief in that regard. We then directed the joint demarcation of the site in question. The land with which we are concerned is a Slum Rehabilitation Scheme on plot CTS No. 1322/1 (part) of village Versova.

6. That demarcation has been done but it is now the subject matter of yet another Interim Application, this time by a Developer of an adjacent project, Skyscraper Realty Pvt Ltd, represented by Mr Khandeparkar before us.

7. The dispute between Skyscraper Realty and Priya Construction represented by Mr Kamat pertains to a roughly 'L' shaped strip of land. Page 81 of an additional Affidavit filed by Skyscraper shows the project that it has undertaken. That site is, and we are using Mr Khandeparkar's description not ours, roughly gun-shaped. Mr Khandeparkar claims that a narrow sliver of land along both limbs of the L-shape is part of Skyscraper's rehab project. Skyscraper's rehab project is prior in point of time to that of Priya Construction. The disputed portion has been included in the joint survey that was conducted pursuant to our orders on Priya Construction's Interim Application. The CEO of SRA has independently decided the priority between Skyscraper and Priya Construction to this disputed strip of land. That decision is in favour of Skyscraper. Priya Construction has filed an appeal before the Apex Grievance Redressal Committee ("AGRC"). Priya Construction asked for an urgent, priority listing and for interim

relief. Both were denied. Against that Priya Construction has filed a Writ Petition which is pending before a learned Single Judge of this Court. The anxiety that Mr Khandeparkar expresses is that Priya Construction will use the orders of this Court and the resultant survey to claim rights in and over that disputed piece of land including in the appeal before the AGRC. Mr Kamat on instructions immediately clarifies that Priya Construction will not claim any equities or rights in respect of or over the disputed land on the basis of any orders of this Court in the Writ Petition or in the Interim Application or on the basis of the survey that we ordered to be carried out. All contentions will be left open and will be addressed independently of our orders and after survey. Our only request is to the AGRC to decide that appeal at the earliest possible and preferably within four to six weeks from today.

8. We understand that an order of this kind will effectively dispose of Priya Construction's Writ Petition before the learned Single Judge. We leave it to the parties to obtain the necessary orders before the learned Single Judge.

9. Then there are other Interim Applications that we have noted in the table above. Jiteshwar CHSL is the principal co-operative society of those entitled to rehabilitation. But the project is large and there are other societies as well including Shree Siddhivinayak CHS, the Applicant in Interim Application (L) No. 4706 of 2023 and Moonlight CHSL in Interim Application (L) No. 7405 of 2023. Today, almost with one voice they say that they do not want Priya Construction to continue as the Developer. There are vast amounts

of unpaid arrears of transit rent. As Mr Andhyarujina for Jiteshwar CHSL puts it, not a brick has been laid on site. Mr Purohit for Shree Siddhivinayak CHS and Mr Cama for Moonlight CHSL join Mr Andhyarujina and say that there is a case to be made out for removal of Priya Construction under Section 13(2) of the Slum Act.

10. One of the submissions they make is that Priya Construction has probably divested itself of all rights in the project by entering into some form of arrangement with another entity, supposedly one Rajesh Landmark Projects Pvt Ltd. Rajesh Landmark is not a party before us. Mr Naik, learned Senior Counsel for SRA, clarifies that the only entity that SRA recognises and to which it has issued an LOI is Priya Construction and no one else.

11. Although the present controversy between Priya Construction and Skyscraper Realty may have been resolved, we believe that there are still many issues that warrant court supervision as between Priya Construction and the three Societies. We could easily dispose of the Petition today. But we do not see how this will serve our primary purpose or the interest of the Societies, and those are, and in similar cases always have been, our first priority. To make this perfectly plain, those entitled to rehabilitation must get their promised rehabilitation units and, in the meantime, must receive transit rent including payment of arrears. If this demands regular court monitoring and supervision, so be it. If we were simply to dispose of the matter, there would be no effective supervision of these very real concerns and we are not presently minded to allow the living conditions and futures of hundreds and

perhaps thousands of individuals to be subjected to ongoing uncertainty. Priya Construction must yet do much to establish or re-establish its credentials. We do not know today whether it has the financial means and capacity to complete the project; and by 'complete the project' we mean paying all amounts due to those entitled to transit rent. We have no idea of the project's proposed phases, , if any, the timelines and even the estimated date of completion. We also do not know what arrangements Priya Constructions has made with Rajesh Landmark or with anyone else. We also do not know if there are disputes already filed in Court between Priya Construction and Rajesh Landmark or any other person or entity.

12. Necessarily, if Mr Kamat for Priya Construction wants to address the Section 13(2) matter in a meaningful manner at all, he must first demonstrate *bona fides* before this Court. We require an Affidavit in a short time setting out the financial means of Priya Construction. We need details. Generalised statements saying that it will borrow or raise money from friends, philosophers, guides, and more avuncular entities will not do. Actual access to funds must be shown. We must have a proposal to pay all arrears and these have to be computed up to date. There must be a commitment to pay future transit rent on a timely schedule. Then there must be a detailed plan set out for completion of the rehab buildings. All transactions with third parties, including Rajesh Landmark, must be disclosed with all necessary documents. Priya Construction will not have an opportunity to file repeated affidavits. This is its last opportunity to make good on its assurances.

13. We have made it clear to all concerned that now that we have on a separate Interim Application made by Priya Construction restored the Writ Petition, we propose to keep the Writ Petition pending till Priya Construction does what it promises to do and is obliged to do within a time that we stipulate. As currently advised, we propose to continue this court monitoring at periodic intervals until all three Societies or all rehab buildings have received a full occupancy certificate. It is then and only then that we will consider releasing the matter because we are not in the least concerned with the free sale component and what happens in that regard.

14. There is another reason to keep the matter pending and that is the SRA itself. We are not doubting or questioning SRA because it is taking up the Section 13(2) proceeding. But typically, in our experience, every order under Section 13(2) of the Slum Act becomes the subject matter of yet another Writ Petition and the cycle starts all over again. In this, the interest of the slum dwellers is seldom given priority. They recede further and further into the background. The entire purpose and intent of an avowed welfare project is entirely defeated. We are having none of it. Even before Mr Kamat puts it on affidavit, and so that he may take instructions accordingly, and so that his clients may approach this with a certain amount of foreknowledge and circumspection, we make it clear that far from leaving it to SRA to consider an application under Section 13(2) of the Slum Act, if we find that Priya Construction is in breach of commitments and undertakings to Court which we propose to obtain from Priya Construction, we will ensure that the consequences of that failure are effectively the termination of the LOI. This is the only manner in which this project can proceed.

15. To put it in a nutshell, we do not accept that Priya Construction has rights in regard to the project without corresponding obligations. If it wants to pursue those rights and entitlements including the right to free sale units, it will fulfil every one of its obligations to the last letter. There will be no compromise on this as regards the rehab units at all.

16. Mr Kamat seeks some time to consider the position and put it on affidavit. The Societies also complain that the ad-interim relief granted in terms of prayer clause (c) has stopped the Section 13(2) proceeding. We are aware of that. But we believe that our observations made earlier today go a fair distance to addressing those concerns. We are now not continuing that ad-interim relief indefinitely but only until the next date. It is after we have seen the affidavit that is filed by Priya Construction that we will decide whether to ultimately release the matter if that Affidavit is unsatisfactory and there is no possibility of improvement or whether to continue, as we said with a court monitored and supervised programme until the occupancy certificate is received.

17. That Affidavit of Priya Construction is to be filed in the Jiteshwar Co-operative Housing Society's Interim Application. It is to be filed and served by 27th June 2023. We do not expect Rejoinders to this Affidavit but we will hear all concerned including SRA on 4th July 2023.

18. The previous orders will continue until 4th July 2023.

19. We have not directed that Priya Construction should be continued as the Developer. We have also not understood the submissions of any of the Societies to be that they have accepted Priya Construction as the continuing Developer in the project. All their contentions in regard to Section 13(2) proceedings are presently kept at large.

(Neela Gokhale, J)

(G. S. Patel, J)