

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 19391 OF 2022
IN
WRIT PETITION NO. 11526 OF 2022
AND
WRIT PETITION NO. 11526 OF 2022

Shreya Developers	...Applicant
<i>In the matter between</i>	
SB Realty	...Petitioner
<i>Versus</i>	
State of Maharashtra & Ors	...Respondents

Mr Mayur Khandeparkar, i/b Shashank P Borade, for the Petitioner.
Mr MP Thakur, AGP, for the Respondent - State.
Mrs Geeta Shastri, with Amit Shastri, for the Respondent – SRA.
Mr Karl Tamboly, with Nimish Lotlikar i/b NP Lotlikar, for
Intervenor/Applicant in IA/1939/2022.
Mr Yash Jain, i/b P Ranjan, for Respondent Nos. 3 & 4 (old committee).
Mr Amogh Singh, with Santosh Pathak, Kailash Pathak i/b Law
Origin, for Respondent Nos. 3 & 4 (new committee).

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 27th October 2023

PC:-

1. The first aspect of this order has nothing to do with the merits. It is related to the Registry's handling of the case papers. What is brought before us is a shocking and completely unacceptable state of affairs. There were several hearings earlier. The last order in the Writ Petition and the Interim Application was on 20th January 2023.

2. On 17th October 2023, the matter was sought to be circulated for today. We granted circulation. There is a registry endorsement on record that says that the papers are under search. That is all that the report says. Ten days later, that noting continues. No papers are found. No explanation is offered. There is no status update as to what steps have been taken to find the record.

3. Even worse, there is no corresponding scanned digital copy of this file.

4. In other words, the entire record has gone missing from this Court in both physical and digital versions.

5. We have proceeded on the basis of copies given to us today by Advocates at the Bar and to which none object.

6. The Registry must, by Monday, 30th October 2023, find the papers and by the evening on 30th October 2023, ensure that a complete copy is digitized, indexed, and made available to us online. If this is not done, we may be constrained to adopt to institute a full-fledged inquiry.

7. We are concerned here with a Slum Rehabilitation Scheme on several CTS numbers. The area is 3189.08 sq mts, just under an acre. It is at village Kandivali, Taluka Borivali in the Mumbai Suburban district. SB Realty, a partnership firm, is the Writ Petitioner. The 3rd Respondent is the Prabhat Chawl SRA Co-Operative Housing Society (Proposed). The 4th Respondent is Jaibharat CHS (Proposed). The two societies have different membership.

8. The Interim Application is by Shreya Developers, a substituted developer, also a partnership firm..

9. The allegation is that no Letter of Intent (“**LoI**”) was ever issued to SB Realty. The two Societies had earlier nominated SB Realty as the Developer. They claim to have cancelled or terminated that appointment and substituted Shreya Developers. The project is undoubtedly delayed.

10. There was a communication by the Chief Executive Officer (“**CEO**”) of the Slum Rehabilitation Authority of 20th April 2022 that purported to cancel in bulk or *en masse* projects that was said to be delay or in default of compliances. This was one of them. That circular was challenged before us in *Nipun Thakkar v Chief Executive Officer, Slum Rehabilitation Authority & Anr.*¹ In that matter we issued Rule on 10th January 2023 and then made it absolute by quashing the circular and holding that in light of the Provisions of Section 13(2) of the Maharashtra Slum Areas (Improvement,

1 Writ Petition (L) No 14017 of 2022.

Clearance and Redevelopment) Act, 1971, every such case of default would have to be heard on a case to case basis and could not be dealt with in this generic fashion.

11. It seems that because of this order, although a notice has been served on SB Realty under Section 13(2), nothing further has happened in the matter.

12. There is an additional complication. In August 2022, the Assistant Registrar of Societies of the SRA appointed new committees of both cooperative societies. For some reason that we cannot understand, the old committees claim to be separately represented before us as if to suggest that a committee has some separate standing or separate locus in a Writ Petition. We are straightaway rejecting the right of the old committee members to either appear in Court or before the SRA.

13. We are not today addressing the causes of the alleged default, if any. We only note that the project has not progressed since 2011. There may be many reasons for this and there may be much to be said on either side either by the Developer or by the Societies.

14. For the present, we direct the CEO SRA to proceed with the Section 13(2) proceedings on an urgent and priority basis. He is required to hear SB Realty, the two Societies (represented by and only by the new committees), and also, at its option, Shreya Developers. We are not compelling Shreya Developers to appear before the SRA. We note that Shreya Developers claims that it has

now been selected or appointed by the two Societies. It is for Shreya Developers to decide whether it wishes to appear before the CEO SRA or not. If it desires to appear, no question of maintainability or locus is to be taken up and the CEO SRA will afford an equal opportunity to Shreya Developers as well.

15. In assessing the situation, the CEO SRA will undoubtedly have regard to the question of delay and completion of the project. The delay is actually far deeper than we had imagined because even the survey process is not yet complete, let alone the process of deciding eligibility and preparing or finalizing an Annexure II. We note this only to impress on the CEO SRA the grave urgency because this has been the situation for the last 12 years. It is inconceivable that a scheme can be prepared on the basis that there are slum-like conditions and that situation then continues for over a decade.

16. As we noted, SB Realty may well have an explanation for a part of the whole of this delay. That will undoubtedly have to be considered. We are noting these facts not with a view to ascribing responsibility to any party but only to impress upon the CEO SRA that it is imperative that he take his decision at the earliest possible.

17. Undoubtedly, SB Realty, the two Societies, and if it wishes, Shreya Developers, must be given the option of putting in written submissions which should be concise and confined to the facts that are relevant. The CEO SRA will afford a hearing to representatives

of all these stakeholders. A decision should be rendered at the earliest possible and, preferably by 5th January 2024.

18. **All before us agree that these directions are sufficient to dispose of the Petition.** Necessarily, and for completeness in the Writ Petition, the impugned notice and circular dated 20th April 2022 is quashed and set aside in regard to this project. We are constrained to make this order although we had made rule absolute in *Nipun Thakkar* because there are cases where the developers have accepted their removal and ouster from the projects in question. Thus, this order is not in substitution of our order in *Nipun Thakkar* but is merely clarificatory in nature.

19. However, for the purposes of compliance by the Registry the matter is listed for directions on Tuesday, 31st October 2023. Parties need not attend.

(Kamal Khata, J)

(G. S. Patel, J)

Note: This order is corrected as per order dated 3rd November 2023. The corrections are shown in bold, italics and underline.