

Wadhwa

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1398 OF 2024

**RAJAN GARG, RESOLUTION
PROFESSIONAL OF TRULY CREATIVE
DEVELOPERS PVT LTD,**
An adult Indian inhabitant, age 60 years, an
Insolvency Resolution Professional
registered with the Insolvency and
Bankruptcy Board of India under
Registration No. IBBI/IPA-001/IP-
P02397/2021-2022/13624, having his
residential address at Flat No. 202, B-Wing,
2nd Floor, Safal Twins, Block Punjawadi,
Sion Tromboy Road, Deonar, Mumbai
Suburban, Maharashtra-400 088.

... PETITIONER

~ VERSUS ~

- 1. CHIEF EXECUTIVE OFFICER,
SLUM REHABILITATION
AUTHORITY,**
Administrative Building, Anant
Kaneekar Marg, Bandra (East),
Mumbai – 400 051.
- 2. SLUM REHABILITATION
AUTHORITY,**
Administrative Building, Anant

Kanekar Marg, Bandra (East),
Mumbai – 400 051.

3. **STATE OF MAHARASHTRA,
HOUSING DEPARTMENT,**
Through the office of the Government
Pleader, Bombay High Court (OS),
High Court of Judicature at Bombay,
Fort, Mumbai-400 001.
4. **RAJENDRA KUNJ SRA Co-
OPERATIVE HOUSING SOCIETY
LTD,**
Rajendra Nagar, Dattapada Road,
Borivali (East), Mumbai-400 066.
5. **ABDUL HUSSAIN GULAM ALI,**
6. **MULLA ISMAIL SHEIKH SAFI
ALI,**
7. **SAFIUDDIN SHEIKH
SARFUDDIN,**
8. **VISHNU SANTU MOHITE,**
Respondent Nos. 5 to 8 abovenamed
residing at 1st Lane, Darukhana,
Mazgaon, Mumbai-400 010.
9. **BHIMA,**
10. **LAXMAN,**
11. **AHMED PEER MAHMOOD,**
Respondent Nos. 9 to 11 abovenamed
residing at Rajendra Kunj SRA Co-
operative Housing Society Ltd,
Rajendra Nagar, Dattapada Road,
Borivali (East), Mumbai-400 066.
12. **SAMTANAGAR SHOP OWNERS
WELFARE ASSOCIATION,**
Shree Clinic D/02, Gokul Residency,

Thakur Village, Kandivali (East),
Mumbai-400 101.

13. **PANDYA & COMPANY,**
1210A, C Wing, One BKC, Bandra
(East), Mumbai-400 103.
14. **RAJENDRA PANDURANG BARDE,**
C/10-2, Jeevan Terrace, Jeevan Vima
Nagar, Borivali (West),
Mumbai-400 103.
15. **DAGDU YADAV MUDDE,**
16. **AHEMD PEER MAHMOOD,**
Respondent Nos. 15 and 16 residing at
Rajendra Kunj SRA Co-operative
Housing Society Ltd, Rajendra Nagar,
Dattapada Road, Borivali (East),
Mumbai-400 066.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Devansh Shah, i/b Vidhii <i>Partners, for the Petitioner.</i>
FOR RESPONDENT NO. 4	Mr Aspi Chinoy, Senior Advocate, <i>with Chirag Bulsara, Arun Panickar, Vinay Navi, for Respondent No 4.</i>
FOR RESPONDENTS NOS 1 AND 2 (SRA)	Mr Jagdish Reddy, for the <i>Respondents Nos 1 & 2-SRA.</i>
FOR RESPONDENT STATE	Mr Suraj Gupte, AGP, for the <i>Respondent-State.</i>

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 3rd April 2024

ORAL JUDGMENT (Per GS Patel J):-

1. Heard.

2. The amendments are allowed and are to be carried out in one week. Reverification is dispensed with. Everybody waives service of the amended Petition. We proceed on the Petition as amended.

3. This Petition is a complete abuse of the process of this Court. Apart from anything else, we have to express our great displeasure in this Writ Petitioner, the Resolution Professional (“**RP**”) of a corporate developer, taking this Court literally for granted and assuming that although the matter is listed today, since an amendment has been carried out the Court will not take up the matter. An even more astonishing submission was that we should not proceed with the matter unless and until the State Government and the Slum Rehabilitation Authority (“**SRA**”) have filed Affidavits in Reply. This somehow proceeds on the footing that it is the Petitioner’s right to demand that the Respondents must reply. We understand such a submission coming from a Respondent seeking time to file a reply. It is utterly extraordinary coming from a Petitioner.

4. Mr Chinoy appears for Respondent No 4, the slum society. It has filed an Affidavit in Reply. The other Respondents, namely, the

SRA and the State Government do not think that an Affidavit in Reply is necessary.

5. What this Petition seeks is an order of this Court at the instance of this RP staying an acquisition process under the Slum Rehabilitation Act, 1995. The developer, Truly Creative Developers Pvt Ltd (“**Truly Creative**”) is a corporate well known for all the wrong reasons. It has, over the years, managed to do everything humanly possible to betray its chosen name. In that negative sense, it has been truly creative. There are, to our knowledge, at least four other projects where this developer has utterly failed to perform. This is just one more.

6. The plot in question is CTS Nos 87, 87/1 to 87/3 of Village Magathane, Taluka Borivali (East). It is a sizeable plot of just over 14,000 sq mts. Truly Creative bought this plot on 21st March 1997. Until now its name is not on the property card. There is no explanation for this but we will let this pass.

7. There were already slums on the plot when Truly Creative bought it. Truly Creative sought to implement a slum redevelopment proposal for which a Letter of Intent (“**LoI**”) had been issued even before it became an owner on 5th December 1995. There was a change in the controlling development regime in October 1997. Development Control Regulations (“**DCR**”) 33(10) was introduced to implement ‘Slum Rehabilitation Schemes’ contemplated by the amended Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“**Slum**

Act”). This meant that the earlier SRD scheme or slum redevelopment scheme could now be converted to a slum rehabilitation scheme under DCR 33(10). Truly Creative applied for such a shift and a revised LoI was issued on 28th October 2003.

8. The Affidavit of the 4th Respondent says that Truly Creative and its guiding light, one Rajendra Barde, failed to implement this scheme. After 2006 — we are now in 2024 — no further construction work was taken up. There are allegations of illegalities, not unfamiliar or atypical to Truly Creative, where Truly Creative purported to traffic in rehab tenements constructed before 2006. Between 2006 and 2018 there was no progress in the implementation of the slum rehabilitation scheme. There was no construction. Many slum dwellers were deprived of transit rent. The SRA initiated proceedings under Section 13(2) of the Slum Act by virtue of a show cause notice dated 24th August 2018. This is important because a Section 13(2) proceeding can conceivably result in the cancellation of the LoI to the developer. But the Chief Executive Officer (“**CEO**”) SRA gave Truly Creative an opportunity and apparently on 7th March 2019 said it could continue to implement this scheme. The society was aggrieved by this. It filed an application before the Apex Grievance Redressal Committee (“**AGRC**”). That application succeeded and Truly Creative’s appointment was terminated. The society was permitted to appoint another developer. This order of the AGRC is of 25th October 2019 and we find a copy at Exhibit “G” at page 178 of the Petition.

9. On 7th December 2019, the Assistant Registrar, Cooperative Societies, SRA issued a notice calling a general meeting of the society to appoint another developer. At this meeting, one Arohi Infra LLP, an entity that featured two sons of the same Rajendra Barde as partners, tried to be appointed as developers; in other words 'Truly Creative' in yet another Truly Creative avatar. The eligible members of the society by majority of more than 70% rejected this proposal and appointed one Western Habitat as the developer. There is a report of the Assistant Registrar. Meanwhile, Truly Creative challenged the AGRC order of 25th October 2019 in Writ Petition (L) No 3512 of 2019. On 18th December 2019, a Single Judge of this Court declined any interim relief. Truly Creative did nothing. Ultimately, its Writ Petition was dismissed on 17th January 2024 for a failure to cure filing defects.

10. Now this was a peculiar situation. Truly Creative was not only a developer but also was an owner. Consequently, the society had to ensure that title to the property was validly acquired to continue with slum rehabilitation. Therefore, the society applied on 18th November 2021 to the SRA to initiate steps in acquisition and for a declaration of the slum plot as a slum rehabilitation area (a distinct concept) under the provisions of Section 3C of the Slum Act. Shortly thereafter, SRA issued a Notification dated 23rd May 2022 saying that there was a policy decision to declare all slums on public and private lands and which existed prior to 1st January 2011 and which had been declared as slums under Section 4 of the Slum Act to be "deemed slum rehabilitation areas" under Section 3C.

11. The reason this is important is that the slum law in Maharashtra has literally an act within an act. The original Act of 1971 was amended and Chapters I-A and I-B were added. Section 3D of Chapter I-A makes applicable other provisions of the Slum Act but in many cases substitutes those entirely for the purposes of projects covered by Chapter I-A. Section 3B defines a slum rehabilitation scheme. Section 3C is the declaration of a slum rehabilitation area. Now not only is Section 13 substituted in Chapter I-A *vide* Section 3D, but Section 3D(c) also modifies Section 14.

12. This narrative tells us that the termination of Truly Creative was of 25th October 2019. The Writ Petition had failed by 18th December 2019. The SRA notification was of 23rd May 2022. It was not until 11th November 2022 that the National Company Law Tribunal (“NCLT”) admitted a proceeding under the Insolvency and Bankruptcy Code, 2016 (“IBC”) against Truly Creative for a Corporate Insolvency Resolution Process (“CIRP”) and appointed the present Petitioner, first as the Interim Resolution Professional (“IRP”) and then as the RP.

13. In the meantime, the SRA proceeded with the Section 14 acquisition proceedings. It issued a public notice on 24th March 2023. The Director Rajendra Barde, the IRP and the society went to the meeting before the SRA. It was pointed out that there were huge claims in excess of Rs 6,500 crores against Truly Creative.

14. It seems that the Government of Maharashtra believed that a declaration under Section 3C was nonetheless necessary for the declaration of a slum rehabilitation area. It is only on account of this that there was what we may call a revival for compliance purposes of the Section 3C proceeding and a fresh notice.

15. The RP filed this Petition on 31st January 2024 only on the basis that the Section 14 moratorium declared by the NCLT meant that the acquisition could not proceed. On 9th February 2024, when the matter was before us, the Petitioner's counsel sought time. We took it up on 16th February 2024. On that date, Senior Counsel appeared. There was some discussion on the applicability of a Supreme Court judgment. The matter was stood over to 11th March 2024. Now the Petitioner questioned the validity of the acquisition proceedings and made a submission that there was some understanding that the acquisition would not proceed. When the society disputed this position, we permitted an amendment. That has been carried out.

16. The only two points are these. First, can it ever be suggested that the provisions of the IBC and specifically the pendency of a CIRP meant to protect the assets of a potentially insolvent corporate debtor can ever prevail over the considerations of a welfare statute and the concerns of individual citizens for whom that welfare statute is intended, such as the Slum Act? We note this because it is solemnly being suggested, if not in so many words, then by necessary implication, that until entire gamut of the CIRP process is completed, and whatever be the final outcome, the 4th

Respondent's members must continue to suffer. They will not receive transit rent. They will not see any construction activity on site. The statutory promise of redeveloped premises will be denied to them and this will continue for an indefinite period of time. All this because the corporate debtor's 'asset' must be 'preserved'. At whose cost, we have to ask? And for what fault of the slum dwellers?

17. This is by no means the first time that we have had these submissions made. We have had this in at least two cases before and in exactly the same terms. We have unhesitatingly repelled this submission. We have held that the provisions of the IBC are not meant to defeat slum redevelopment and similar or allied statutes. To hold otherwise would simply be unthinkable. It would mean that a Writ Court would put a premium on corporate wrongdoing and that even a defaulting corporate debtor who had not complied with the terms of a LoI could now use the golden parachute of the IBC to secure through the RP a restraint against the welfare of slum dwellers. We can think of very little that is more unjust than this approach. In our judgments in *Nagesh Madhava Suvarna and Ors v State of Maharashtra & Ors*¹ and in our interim order of 21st March 2024 in Writ Petition No 1349 of 2024 in *Tagore Nagar Shree Ganesh Krupa Co-operative Housing Society Ltd v State of Maharashtra & Ors*, we rejected and repelled precisely these arguments. We reproduce paragraphs 5 to 10 of our order in *Tagore Nagar*:

“5. The second argument that militates against AA Estates is one that is purely in equity. What we have been told is that while AA Estates grinds its way through a CIRP, the result of which may be entirely uncertain

1 2023 SCC OnLine BOM 2849.

and might well result in an order of liquidation rather than of a successful resolution plan, these society members cannot hope to see their redeveloped homes. They can receive no transit rent. They must remain where they are. The IBC, we are told, and the corporate fortunes or misfortunes of AA Estates must prevail over the basic and fundamental rights of society members. Because AA Estate is trying to revive itself, society members must be without shelter and forced either into penury or, at the very least, to pay from their own pockets that which AA Estates was bound to pay and failed to pay.

6. As an even more absurd alternative, it is solemnly suggested that Truearth will continue paying transit rent but without any assurance that it will ever receive any benefits for the consideration that it is actually and financially bearing and paying.

7. This, we are sorry to say, is by no means an isolated case. In a city like ours there is precisely this widespread perversion of every concept of justice, equity and law. It is solemnly being argued that a statutory provision meant to protect or meant to revive the fortunes of companies can come at the cost of residents of the city and of persons who have without homes, shelter and without financial means to acquire temporary alternate accommodation. We will not accept this under any circumstances. Corporate resuscitation will not be permitted at the cost of individual city residents' rights to have a redeveloped home and to receive transit rent.

8. The Government itself is alive to this situation. It has taken policy decisions in that regard. We need not visit those at this stage.

9. AA Estates itself is no stranger to this either. It

has taken precisely this argument in an even more dramatic scenario, that of the collapse of an entire building called Govinda Tower many decades ago in 1998. AA Estates was before us as a Respondent in Interim Application (L) No 26072 of 2022 that we disposed of by our order and judgment dated 13th December 2023, reported as *Nagesh Madhava Surana & Ors v State of Maharashtra & Ors*. We dealt with precisely these submissions including the question of vested rights if any in AA Estates, Section 14 of the IBC and the consideration of justice and equity *inter alia* from paragraph 43 onwards. Even there it was argued that possession could not be resumed because of a particular judgment of the Supreme Court. We addressed that question as well.

10. This case is on an identical footing. There is no material distinction at all. The only perhaps difference there was that the Interim Application sought leave of this Court to appoint a developer because there AA Estates had been appointed pursuant to an order of a Court on certain consent terms. Otherwise, there is no material distinction.”

(Emphasis added)

18. The next argument on behalf of the Petitioner is that the decision of the Supreme Court in *P Mohanraj & Ors v Shah Brothers Ispat Pvt Ltd*² states that the purpose of the IBC is the protection of the assets of the corporate debtor. That is all that the RP is seeking to do since it is the corporate debtor that is the owner of the land in question.

² 2021 6 SCC 258.

19. Mr Chinoy for the society however points out that is not what *P Mohanraj* held at all. It contained an exhaustive analysis of Section 14 of the IBC in full, and in particular an analysis of what it was precisely that Section 14(1)(a) and what the moratorium provision in Section 14 actually meant. The Supreme Court having set out Section 14(1)(a) then proceeded to consider Section 14(3) and the definition in Section 3(33) of the expression ‘transaction’. Of course, the Supreme Court accepted the purpose and object of Section 14 of the IBC (paragraph 29) and nobody quarrels with that. Paragraph 35 of *P Mohanraj* puts it plainly and this would have to be read with paragraph 36. Both would need to be seen in the context of what is said earlier in paragraph 17 where Sub-section 3(a) was said to provide the answer, namely, that proceedings in Section 14 relate to *transactions*. In other words, as Mr Chinoy puts it, anything that is transactional or related to a transaction is affected by a Section 14 moratorium. But, as he rightly points out, *P Mohanraj* does not suggest and it is inconceivable that it could ever suggest that the *operation of a statute* could be stayed by Section 14 of the IBC.

20. What this Petition does is simply try to paper over the defaults of Truly Creative.

21. We cannot lose sight of the fact that in the RP’s anxiety to “protect the asset of the corporate debtor” not a thing is being said in this Petition about how that asset or its preservation can ever, let alone in the meantime pending a CIRP, be used for the benefit of those persons for whom the Slum Act is intended and for whose benefit essentially Truly Creative obtained an LoI in the first place.

22. This is the cardinal point that the RP has completely missed. It is not merely a question of ownership. The moment Truly Creative applied for an LoI it assumed an obligation to provide rehabilitation units and, in the meantime, transit rent or transit accommodation to eligible slum dwellers. That was a condition precedent to its acquiring free sale rights. The value of the land today to any resolution professional is not of the land being in its present state of slum encroachment. If there is a resolution applicant interested in it, it is only because of the free sale development potential that it represents. Truly Creative continues to believe that despite breaching the terms of the LoI it is still entitled to that free sale benefit as a slum project. It is not.

23. The last argument on behalf of the RP is that it ought to have been given a preferential right to self-redevelop. The argument is so unstatable that we can scarcely credit that it is being made. This is understandable where no LoI is issued at all or has been issued to somebody else to the exclusion of the owner. The argument overlooks that Truly Creative had in fact obtained an LoI. It obtained an LoI while it was an owner of the property. There is no question of it being given a preferential right or suggesting that it was 'deprived of the right to self-develop'. It was given that right. It availed of it by obtaining an LoI. There is no question of it saying that when the LoI is now cancelled the entire process of a preferential right must start all over again. That is not the scope of the law. A preferential right to an owner is available only when someone other than the owner is being preferred and the owner has never before been given or availed of a right to develop.

24. In these circumstances, we fail to see the slightest merit in this Petition. It ought never to have been filed. We have no hesitation in rejecting the Petition.

25. While concluding we must make a note of this that Mr Devansh Shah instructed by Vidhii Partners has conducted his case for the Petitioners extremely competently and with complete preparedness on facts and law. We have no quarrel with the manner in which he has dealt with the facts at hand nor should the RP. If we have any comments they are directed against the RP and not against Mr Shah. We have complete confidence in his ability to handle a case on his own.

(Kamal Khata, J)

(G. S. Patel, J)