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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1453 OF 2017

WITH

CHAMBER SUMMONS NO. 343 OF 2018

IN

WRIT PETITION NO. 1453 OF 2017

Maharashtra State Textile Corporation Ltd ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr Akshay Shinde, *for the Petitioner.*
Ms Jyoti Chavan, Addl GP, with Uma Palsuledesai, AGP, *for the Respondent-State.*
Mr Jagdish G Aradwad (Reddy), *for Respondents Nos 3 to 5-SRA.*
Mr Karl Tamboly, *with Vivek Kakade & Prathamesh Ayare, for Respondent No 14.*
Mr DK Jain, *i/b Divya Jain, for Intervenors in CHS/343/2018.*

CORAM **G.S. Patel & Kamal Khata, JJ.**
DATED: **20th March 2024**

PC:-

CHAMBER SUMMONS NO. 343 OF 2018

1. The Chamber Summons for impleadment by Bhairav Erectors is rejected as being unnecessary because that entity has filed a regular civil suit in respect of its rights, and which is still pending. No order in this Writ Petition can affect the contentions taken in that civil suit, which will proceed on merits. It would have been a different thing if Bhairav Erectors had been made a respondent because then it might have been bound by orders passed in the Writ Petition. Since the Chamber Summons is not pressed, that situation does not arise. Bhairav Erectors may pursue its remedies in a Court of appropriate jurisdiction. Those proceedings will be decided on merits, unaffected by the outcome of these proceedings.

2. The Chamber Summons is disposed of in these terms.

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3. **Rule**. Returnable forthwith.

4. Mr Shinde for the Petitioner has instructions to state that the Maharashtra State Textile Corporation Limited ("**MSTCL**"), as the owner of the property, intends to pursue the slum redevelopment on its own. This will have several consequences.

5. The Writ Petition challenges certain orders of the Slum Rehabilitation Authority ("**SRA**"). Specifically, after an extensive amendment, the challenge in this Petition is to some orders of 2017 passed by the Chief Executive Officer, SRA. The effect of those orders of 15th February 2017 and 17th May 2017 (Exhibit "HHH" and Exhibit "LLL") is effectively to permit the slum redevelopment by the 14th Respondent, a private enterprise called Hariyali Estate Pvt Ltd ("**Hariyali**"), represented by Mr Tamboly, although the Petitioner, a State Government undertaking, is the owner of the land.

6. Mr Shinde's submission on behalf of the Petitioner is that even under the amended Maharashtra Slum Areas (Improvement,. Clearance and Redevelopment) Act, 1971 ("**the Slum Act**") the Petitioner corporation would have a preferential and pre-emptive right to redevelop the slum. The existence of this statutory right is not contentious. Whether it does this slum re-development with its own funds and by itself directly or in a public-private partnership or a joint venture is of no concern. The public corporation stands to gain significantly in financial terms with funds passing to the public exchequer from any such owner-driven self-redevelopment. Mr Shinde rightly submits that there is no reason at all why a private developer ought to be automatically preferred by the SRA when a State-owned Corporation which owns the land and in whom the land is vested is perfectly prepared to carry out the same redevelopment as any other private landowner would.

7. Fundamentally, the point that Mr Shinde makes is that if a pre-emptive right, a right of first refusal or a preferential right is afforded to a private owner of land then there is no reason why that same right should not be given to a State-owned Corporation which also owns the land.

8. The submission appears to us to be completely correctly placed and we can see no answer to it at all from any of the Respondents. It is only if that pre-emptive right is somehow lost as contemplated in law that the right to slum redevelopment can pass on to another entity. The SRA can leapfrog the pre-emptive right and bypass the owner.

9. Mr Tamboly appears for the private developer, Hariyali. Mr Surana is for the society.

10. Mr Surana's problems are many. To begin with, the Petitioner may not be his choice as developer but there, unfortunately for Mr Surana, lies the problem. We know of no law by which an encroacher or even a tenant can choose her or his land owner or the landlord. If this is a *slum* society then it is not for the society to dictate who the owner should be. The question is not if the members of the slum society are encroachers or tenants. They may be either, or some combination. The declaration or notification of a slum speaks to the existence of statutorily recognized slum-like conditions at site, not whether the individuals are tenants or encroachers. But it is entirely certain that whether tenants or encroachers, the members of the society and the society itself are not the owners of the land. If the owner has a pre-emptive right to self redevelop, it is not for the society to nominate private entities to oust the rights of the owner or to defeat the pre-emptive or preferential rights. Mr Shinde's submission, therefore, that in another manner of speaking, this would amount to expropriation by the slum society through the SRA of property vested in a State-owned corporation is entirely accurate. This is truly a unique, and perhaps even a bizarre scenario, where a State-owned corporation finds that it is being deprived of its own property by another instrumentality of the State at the instance of the slum society that is not the owner of the land.

11. The Petitioner Corporation does not seem to have been given an unequivocal opportunity to redevelop. What it was told on 19th September 2014 was that within two months it had to get its name on the Property Cards ("**PR cards**"). Those requirements and conditions are unsustainable. Entries in PR cards are an administrative and ministerial reflection of documents of transfer of title to property. The entries in themselves are not transfers of title but record a transfer of title. MSTCLwas undoubtedly the owner of the property — irrespective of any entry in the PR card. At the time when notice was given in 2014 the Slum Act had not been amended to provide for a specific time limit within which an owner had to submit a redevelopment proposal. Presumably, therefore, that submission would have to be made in a reasonable time. The amendment now says that the owner's proposal for self-redevelopment must come within 120 days.

12. But the question is, 120 days from what starting date? Can it be a date of knowledge? Should it be a date of declaration or notification of a slum rehabilitation scheme? Or should it be the date on which the property owner is given notice that a slum rehabilitation area has been notified and calling upon the property owner to exercise the preferential right for self-redevelopment? Either of the first two, we believe, is needlessly ambiguous and would always result in unnecessary litigation in this Court. When did the Petitioner come to know? Is the Petitioner deemed to have had notice? All these, and other questions in this vein, would arise.

13. As a matter of administrative precision and to avoid all ambiguities, we believe it is necessary for the SRA, and surely it is a trivial thing to manage, to give notice in writing to the property owner that there has been a slum declaration as contemplated in law/notification and giving the property owner the time contemplated by law to submit a proposal for self-redevelopment. In a case such as this, particularly, where the land-owning entity is a State corporation, this is all the more necessary. A decision one way or the other would, as Mr Shinde points out, need to be taken at the highest levels, for there would be serious repercussions. Ultimately, it is the government that controls the State-owned entity that would take such a decision. Therefore, it was necessary for the SRA to give specific notice to the MSTCL so that a proper decision could be taken.

14. In the present case, no such opportunity was given to the Petitioner.

15. At the previous hearing, the question was whether the Petitioner being a State-owned Corporation was even interested in this exercise. That is why we asked Mr Shinde to take instructions. His instructions are now, specifically, that the Petitioner does intend to pursue this self-redevelopment as the property owner.

16. This means that the impugned communications cannot be sustained. They are quashed and set aside. This also means that the rights of the 14th Respondent, Hariyali, and the nomination of Hariyali by the society are presently to be held in abeyance. They are not quashed and set aside, for evident reasons. If MSTCL ultimately loses its pre-emptive rights, then the nomination of Hariyali will revive (or emerge from its eclipse). We certainly do not want another round of litigation with the society later ejecting Hariyali and choosing someone else.

17. For the same reasons, the existing Letter of Intent in favour of Hariyali is necessarily to be held in abeyance. It may be renewed or revalidated depending upon the outcome of the proposal from the Petitioner.

18. The CEO, SRA will write to the Petitioner no later than by 1st April 2024 giving the Petitioner time as contemplated in law (and no further) to submit a proposal for redevelopment of the declared/notified slum rehabilitation area.

19. If the Petitioner does not submit a proposal in that stipulated time frame, then the other steps contemplated in the statute will be followed by the SRA and by the slum society (including the renewal/revalidation of the LoI and the nomination of Hariyali).

20. No further orders are required. Rule is made absolute in these terms. There will be no order as to costs.

(Kamal Khata, J) **(G. S. Patel, J)**