

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 683 OF 2024

Vaibhavi SRA CHS Ltd

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

Dr Abhinav Chandrachud, *with Ashish Suryavanshi & Savita
 Suryavanshi, for the Petitioner.*

Mr Vijay D Patil, *for Respondent No. 2.*

Mr Shahajirao Shinde, *with Kuldip Pawar, for Respondent No. 4.*

Mr Ashish Kamat, Senior Advocate, *with Viraj Parikh, Samit
 Shukla, Siddharth Shah & Sayali Diwadkar, i/b DSK Legal, for
 Respondent No. 5.*

Mr Suraj Gupte, AGP, *for the Respondent-State.*

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

DATED: 4th & 5th April 2024

PC:-

1. After several rounds of discussions in Court, we believe that a workable solution has emerged. Parties have in principle agreed on the frame of the order that is required to be passed. They also agreed that no reasons need be given. Hence this order.

2. At the broadest level, there are three inter connected issues that arise in the slum redevelopment project: (i) payment in

clearance of arrears of unpaid transit rent; (ii) assurances and stipulations in regard to future or ongoing transit rent; and (iii) a schedule for completion of the project in question.

3. Both sides have also agreed that this order is not in substitution of the Development Agreement between the Petitioner and the 5th Respondent developer. What we have endeavoured to do and in which both sides have cooperated is to streamline the implementation of the sanctioned Slum Rehabilitation Scheme and the DA in the interest of the society and the developer and to resolve issues that have arisen following that DA. There will of necessity be consequential orders so far as the public authority namely the Slum Rehabilitation Authority (“**SRA**”) is concern. In this context, we must note that this order is equally for the benefit of the SRA so that it has a framework for ongoing monitoring of the project.

4. There is one broader issue which we will address at the outset because it has a bearing on some of the terms that have been agreed before us. There are two recent Circulars of the SRA, Circular Nos. 210 and 210A. These came to be issued in circumstances that the SRA, though belatedly, was alive to and which had previously been brought to the notice of several Courts including the First Court in different Public Interest Litigation (“**PILs**”). The question was of persistent defaults by developers and the accumulation of large amounts of unpaid transit rent. Those issues are still very much pending before the First Court in PILs. We only summarise as compactly as possible the substance of those Circulars, which was simply this: that where they were found to be arrears of transit rent,

i.e., a default in payment of transit rent by developer, developers would be required to pay 24 months transit rent in advance. Whether this is a condition that can be imposed on a non-defaulting developer, i.e., on every developer who holds a Letter of Intent (“LoI”) under a sanctioned Slum Rehabilitation Scheme is another question but one that is unrelated to the matter at hand.

5. We are in no manner suggesting that the Circulars should be set aside or ignored. We have taken the liberty, and this is why the consent of both society and developer to this order is necessary, of fashioning after several rounds of discussion a workable arrangement which inter alia provides for both aspects, namely the clearance on a schedule of arrears of transit rent and a commitment to pay quarterly in advance ongoing transit rent. We have not stopped merely at accepting undertaking. We ourselves suggested that a failure to adhere to agreed conditions would constitute an event of default and both sides agreed to this without hesitation. There is a separate consequence to an event of default for failure to adhere construction timelines but that only highlights that the event of default in relation to financial commitments by the developer has an immediate consequence.

6. It is in this view of the matter that we deal with Mr Patil’s submission. He states that the SRA cannot on its own consent to a deviation from the two Circulars that otherwise bind it. We do not expect any such concession from the SRA. That would be completely unreasonable. Mr Patil has also submitted that whatever applications are to be processed by the SRA must necessarily be in keeping with all applicable norms, rules, policies, statutory

requirements and so on. That of course goes without saying and we have incorporated that in the order that follows.

7. The terms of the order that will now govern the operation of the Development Agreement (without constituting a separate agreement or a novation) and which may be treated as an order in invitum of this Court are as follows:

- (1) The Order dated January 10, 2023 passed by CEO, SRA terminating the Respondent No. 5's appointment as developer of the Slum Rehabilitation Scheme is set aside.
- (2) In view of Clause (1) above, Appeal No. 28 of 2023 filed by Respondent No. 5 before the AGRC, challenging the aforesaid Termination Order is disposed of as infructuous.
- (3) As per the latest Annexure II, there are 286 occupants, out of which 284 are eligible (which includes two offices). However, the said two offices which had been provided as transit accommodation will be surrendered by the Petitioner to Respondent No.5 on 30th April 2024. Therefore, the total occupants would be 282 members and two offices totalling to 284 eligible for transit rent at the rate of Rs. 20,000/- per month. One Mr. Vapilkar has received an excess amount.

- (4) Respondent No. 5 shall deposit with the Prothonotary and Senior Master of this Court, the sum of Rs. 6,81,60,000/- (Rs. 20,000 x 12 months x 284 occupants) being the ongoing transit rent for the period from 1st April 2024 to 31st March 2025 within 15 working days from the date of this Order.
- (5) The Petitioner Society and its members hereby consent to and accept the proposal for revised LOI, IOA and CC submitted by Respondent No. 5. Any further modifications/revision in the plans shall be done by the Respondent No. 5 after intimation to the Petitioner. The SRA shall henceforth not insist on any consent of the Petitioner Society or its members before granting approvals of the proposal.
- (6) Respondent No. 5 has already submitted a proposal for revised LOI, IOA and CC on account of change in applicable Development Control Regulations on 25th March 2022. The Petitioner Society consents to and accepts the revised plans and proposals submitted by Respondent No. 5 Developer. The same has already undergone scrutiny by the Engineering Department, SRA. The SRA shall complete the process the application for a revised LOI, IOA and CC within three weeks of the Respondent No. 5 depositing the Ongoing Transit Rent as per clause (4) hereinabove.

- (7) Respondent No. 5 shall deposit with the Prothonotary and Senior Master of this Court, the sum of Rs. 6,81,60,000/- (Rs. 20,000 x 12 months x 284 occupants) being the ongoing transit rent for the subsequent 12-month period starting from 1st April 2025, on or before 5th March 2025. Thereafter, Respondent No. 5, shall deposit the ongoing transit rent on a quarterly basis, at least 30 days before the commencement of each quarter, till the communication by Respondent No. 5 to the respective members of the Petitioner Society that their allotted rehabilitation units are ready for delivery of possession with an Occupation Certificate covering the allotted units.
- (8) The Petitioner Society shall be entitled to withdraw ongoing transit rent already deposited by Respondent No. 5 as per clauses hereinabove, on a quarterly basis into its bank account being Account No. 00341006000054 Mumbai District Central Co-op Bank Ltd Bank, Parel Village branch. The first withdrawal for the quarter from April 2024 to June 2024 shall be permitted within 15 days of deposit of the ongoing transit rent for the Financial Year 2024-25. All subsequent withdrawals shall be permitted seven days before the beginning of each quarter i.e. from 23rd June 2024.
- (9) It shall be the responsibility of the Petitioner Society to disburse the transit rent amount to its members. The

Petitioner Society undertakes that same shall be done in a timely manner within seven days of the withdrawal. The Petitioner Society shall file a Compliance Report of timely disbursal with this Hon'ble Court on a quarterly basis. To obviate any dispute, the list of eligible members and their bank account details will be submitted by the Petitioner within 15 days of the date of this Order.

(10) There are also arrears of transit rent for the period from 1st December 2021 to 31st March 2024. The agreed figure of arrears between Respondent No. 5 and the Petitioner after a reconciliation exercise is Rs. 17,63,90,428/- (“**Arrears amount**”) The arrears amount of transit rent shall be deposited by Respondent No 5 with the Prothonotary and Senior Master of this Court as follows:

- (i) A sum of Rs. 3,75,00,000/- shall be paid within 6 weeks from the date of this Order.
- (ii) A sum of Rs. 4,50,00,000/- shall be paid within 10 weeks from the date of this Order.
- (iii) A sum of Rs. 4,50,00,000/- shall be paid within 14 weeks from the date of this Order.

- (iv) A sum of Rs. 4,88,90,428 /- shall be paid within 18 weeks from the date of this order.
- (11) Upon deposit of the Arrears Amount, the Petitioner Society shall be entitled to immediately withdraw the aforesaid amounts into its bank account being Account No. 00341006000054 Mumbai District Central Co-op Bank Ltd Bank, Parel Village branch. It shall be the duty of the Petitioner Society to distribute these arrears to its members in a timely manner and the Petitioner Society hereby undertakes to do so. Respondent No. 5 shall not be responsible for the same. The Petitioner Society shall file a Compliance Report of timely disbursement with this Hon'ble Court with respect to the aforesaid amount. In the event that there are inter se disputes between rival claimants for the same structure (for eg: in the event of death of the eligible member) the Petitioner Society shall not distribute or utilize in any manner such amount, till eligibility is finalized by the competent authority.
- (12) As per the Agreement dated 28th March 2014, the Respondent No. 5 shall deposit the corpus fund calculated at Rs 1,31,000/- per tenant (283 x 1,31,000/-) totalling to Rs. 3,11,78,000/- (“**Corpus**”). The Respondent no. 5 shall deposit the said Corpus with the Petitioner in the bank account mentioned in clause 8 above at the time of Possession.

- (13) The Appropriate Authorities shall expeditiously process the permissions and approvals required for the implementation of the Slum Rehabilitation Scheme. An indicative list of approvals and permissions required stage-wise is provided in the annexure to this order.. The SRA and/or concerned authorities shall expeditiously process the application for approvals, permissions, and sanctions, and decide the same within four to six weeks from the date of the application in question.
- (14) Certain approvals are critical for the slum rehabilitation scheme and are likely to be bottlenecks in the process. Thus, in the interest of timely completion of the Slum Rehabilitation Scheme, the following directions are passed:
- (i) The Mumbai Fire Brigade Department, MCGM shall process the CFO NOC within three weeks from the date of submission of the application, in accordance with law.
 - (ii) SEIAA shall process the Environmental Clearance within three months from the date of submission of the Application, in accordance with law.

- (iii) The SRA shall process the occupation certificate within two months from the date of submission of the Application, in accordance with law.
- (15) The members of the Petitioner are proposed to be rehabilitated in one building consisting of rehabilitation tenements, PAP tenements, and some free sale units also i.e. the “**Composite Building**”. Rehabilitation tenements are proposed in Wing B of the Composite Building. Respondent No.5 shall complete the construction of the rehabilitation tenements as follows:
- (i) Respondent No.5 has already completed construction of the basement, plinth, and slab of ground floor, first floor- of Wing B of the Composite Building.
 - (ii) Respondent No.5 shall endeavour to complete casting of all slabs of the rehabilitation building including the top slab within 30 months from date of grant of Commencement Certificate (after approval of revised plans).
 - (iii) Respondent No.5 shall endeavour to complete remaining civil and finishing works and apply for Occupation Certificate within

36 months from date of grant of Commencement Certificate (after approval of revised plans).

- (iv) Respondent No.5 shall be at liberty to apply for a part occupation certificate with respect to the rehabilitation component or a portion thereof at an earlier point in time.

- (16) It shall be the duty of the SRA to conduct the lottery, and allot the rehabilitation tenements to the eligible members in an expeditious manner. In the event that a part OC is granted for a portion of the rehabilitation component, then the SRA shall allot the available rehabilitation tenements to the members of the Petitioner on a lottery based on 'First Out First In' principle. It is hereby clarified that Respondent No. 5's obligation to pay transit rent shall only be till the date of offering the rehab units/permanent alternate accommodation in the Composite Building to the SRA/members of the Petitioner society.

- (17) We direct that:

- (i) The Petitioner Society and its members shall not, directly or indirectly, obstruct or impede the aforesaid revised plans from being processed by the SRA and/or take any steps

which are prejudicial/obstruct to the making and/or processing of applications for permissions and approvals before the SRA and/or concerned authorities in relation to the Scheme.

- (ii) The Petitioner Society and its members shall not, directly or indirectly, obstruct any construction and development activity in any manner whatsoever or enter the project site without permission from the Respondent No.5.
 - (iii) The Petitioner Society and its members shall extend their co-operation and support to Respondent No. 5 towards implementation of the Slum Rehabilitation Scheme.
- (18) Any breach by Respondent No. 5 with respect to its obligation to deposit the Arrears Amount in transit rent from 1st December 2021 to 31st March 2024 in accordance with the timelines referred to hereinabove shall constitute an Event of Default. Respondent No. 5 shall have a period of 10 banking days to cure such default without needing a notice thereof. In the event that Respondent No. 5 fails to cure such default, the termination order dated 10th January 2023 shall stand reinstated with immediate effect.

- (19) Any breach by Respondent No. 5 of its obligation to deposit the ongoing transit rent as mentioned hereinabove, in accordance with the timelines referred to hereinabove shall constitute a separate Event of Default. Respondent No. 5 shall have a period of 14 banking days to cure such default without needing a notice thereof. In the event that Respondent No. 5 fails to cure such default, the termination order dated 10th January 2023 shall stand reinstated with immediate effect.
- (20) Any breach of Respondent No. 5 of its obligations to comply with the construction timelines with respect to the rehabilitation component in the composite building (subject to timely grant of approvals and permissions by the appropriate authorities, and no obstruction by the Petitioner Society and its members in any manner whatsoever and also subject to force majeure which shall include but not be limited to act of God, occurrence of a natural calamity, pandemic, epidemic, non-availability of raw materials, order by any authority, tribunal or court) shall constitute a third category of an Event of Default. Respondent No. 5 shall have a period of 60 days to cure such default. In the event that Respondent No. 5 fails to cure such default, Respondent No 5 shall be entitled to apply to this Court for an appropriate order. All contentions are left open for that proceeding.

(21) Upon grant of occupation certificate for the Rehab Building, the responsibility for maintenance of the Rehab Component shall be that of the Petitioner Society. Further, the Petitioner Society shall bear the pro rata share of electricity, water and property tax dues for the Rehab Component.

(22) The foregoing arrangement has been arrived at between the Parties, to protect the interests of the members of the Petitioner Society and Respondent No. 5, and in order to streamline the implementation of the slum rehabilitation scheme and not intending to substitute the terms of the Development Agreement between Petitioner and Respondent No. 5.

2. This Writ Petition is disposed of accordingly. The matter is listed for compliance on 1st July 2024.

3. In the event of any difficulty in implementations, the parties shall have the liberty to apply to this Court for appropriate reliefs/directions.

(Kamal Khata, J)

(G. S. Patel, J)

SCHEDULE

I. Permissions Required to restart the Slum Rehabilitation Scheme under DCPR 2034 on an urgent basis

No.	Description	Approving Authority	Current Status
1.	Revised Letter of Intent as per DCPR 2034	Slum Rehabilitation Authority	Revised Proposal was already submitted on 25 th March 2022, the scrutiny from Engineering Division has already been completed. Proposal was pending approval of CEO, SRA.
2.	Revised Intimation of Approval	Slum Rehabilitation Authority	Revised Proposal was already submitted on 25 th March 2022, the scrutiny from Engineering Division has already been completed. Proposal was pending approval of CEO, SRA.
3.	Revised Commencement Certificate for Composite Building	Slum Rehabilitation Authority	CC upto 7 th floor was already sanctioned as per DCR 1991 and the same will be extended upto 22 Floors

II. Permissions required after Commencement Certificate and before Application for Environmental Clearance

No.	Description	Appropriate Authority
4.	DSLRL (SRA)'s Remark	DSLRL (SRA)
5.	A.E. Survey Remark for RL	B.M.C. Dept. City
6.	Plot Area certificate by SLR	SLR
7.	Hydraulic Engineers NOC	Hydraulic Engg. Dept. MCGM
8.	Downtake Distribution Design remark	Hydraulic Engg. Dept. MCGM
9.	Internal Drainage Layout/ Remark	Slum Rehabilitation Authority
10.	Pest Control Officers NOC	Pest Control Dept. F/S Ward
11.	Solid Waste Management NOC	A.E.SWM Dept./s ward MCGM
12.	Drainage Remark	Sewerage Project (P&D) MCGM
13.	Chief Fire Officer's NOC	Mumbai Fire Brigade MCGM
14.	Traffic Dept. NOC	Traffic Dept
15.	Sewerage Remark	Dy. Supt. Gardens (City) MCGM
16.	Consent of Establish	MPCB
17.	Consent to Operate	MPCB
18.	High Rise Building Committee NOC	High Rise Building Committee, SRA
19.	Separate Property Cards Reservation / Sale / Rehab	City Survey Land Records Dept. Collector Office
20.	Subdivision/ Amalgamation of Layout	City Survey Land Records Dept. Collector Office

III. EC, Aviation NOC, High Rise Committee Building NOC & Further CC

No.	Description	Appropriate Authority
21.	Environmental Clearance	Environment Dept. Govt. of Maharashtra
22.	Aviation NOC	Aviation Dept.
23.	High Rise Building Committee NOC	High Rise Building Committee
24.	Further CC	SRA

IV. Permissions after further CC

No.	Description	Appropriate Authority
25.	A.A. & NOC	Assessment Dept. F/s Ward MCGM
26.	Mechanical Electrical Remak	Ex. Engg. (M.E.) MCGM
27.	Completion of Mechanical & Electrical Dept.	Ex. Engg. (M.E.) MCGM
28.	Completion of Tree NOC	Dy. supt. Garden (city) MCGM
29.	SWD Completion	Dy. CHE(SWD)MCGM
30.	Fire NOC Completion	Mumbai Fire Brigade MCGM
31.	Permanent Water Connection	Hydraulic Engg. Dept. MCGM
32.	Internal Drainage Completion Certificate	Slum Rehabilitation Authority
33.	Drainage completion	Sewerage Project (P&D) MCGM
34.	Power Connection	BEST
35.	Substation Handover	BEST
36.	Reservation Handover	MCGM

V. Application for OC