

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 449 OF 2024

Alchemi Developers Pvt Ltd ...Petitioner
Versus
Apex Grievance Redressal Committee, Slum
Rehabilitation Authority & Ors ...Respondents

Mr Aspi Chinoy, Senior Advocate, with Karl Tamboly, Aadil Parsurampuriah, Bharat Jain & Romin Sangoi, i/b IC Legal, for the Petitioner.

Mr Vijay D Patil, for Respondent No 1-AGRC.

Mr Jagdish G Aradwad (Reddy), for Respondent No 2-SRA.

Mr Mohit Jadhav, Addl GP, with Himanshu Takke, AGP, for the Respondent-State.

Mr Darius Khambata, Senior Advocate, with Simil Purohit, Rohan Savant, Ammar Faizullahoy, Jitendra Jain, Laxman Jain & Rohit Bamne, i/b Yogesh Adhia, for Respondent No 3.

Mr Navroz Seervai, Senior Advocate, with Chirag Balsara, i/b Shrishail Sakhare, for Respondent No 4.

Mr Mayur Khandeparkar, with Arun Panickar, for Respondents Nos 5 & 6.

Mr Sharan Jagtiani, Senior Advocate, with Apurva Manwani & Arun Panickar, for Respondent No 7.

Mr Mohit Jadhav, Addl GP, with Himanshu Takke, AGP, for the State.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 11th March 2024

PC:-

1. The matter was heard for some time on 7th February 2024. We kept the matter on 23rd February 2024. On that date also it was part-heard. In addition to what had been submitted before us, we had further questions for both sides. Additional submissions were made.
2. We have since heard both parties at some length. In response to a suggestion from the Court, both sides have now presented us with suggested issues that the Apex Grievance Redressal Committee (“**AGRC**”) should be asked to consider. The submission is that the matter be sent back to the AGRC for a full-fledged reconsideration.
3. The challenge in this Petition is to an AGRC order of 30th October 2023. A copy is at Exhibit ‘A’ from page 67. The order in question dealt with several applications. They arose out of an order of the CEO of the Slum Rehabilitation Authority (“**SRA**”) of 3rd October 2022.
4. While reasons for this order are, it is agreed, not necessary, we believe it may be useful to summarize briefly the factual conspectus. The dispute relates to a plot of land of about 2005 sq mts at Survey No 261 (Part), equivalent to CTS No 620A/1A/1(Part) and now given a new CTS No 620/A/1A/1B/1 and 620/A/1A/1B/2 of Village Malad, Taluka Borivali at Goregaon (East).

5. This plot was reserved in the Development Plan for a recreational garden (“**RG**”).

6. The Petitioner (“**Alchemi**”) represented by Mr Chinoy is a transferee of this plot from Respondent No 4 (“**Phuldai**”) represented by Mr Seervai.

7. The plot was originally part of a larger tract of land owned by the FE Dinshaw Trust. In November 1987, this plot was amongst several that were declared as a slum by a Government Notification. By two separate Conveyance Deeds of 1991 and 2001, Phuldai purchased the plot from the FE Dinshaw Trust.

8. Phuldai then transacted with the plot by a Memorandum of Understanding (“**MOU**”) with one Harishree Enterprises (“**Harishree**”). In turn, Harishree entered into a MOU with one Vikas Housing Pvt Ltd (“**Vikas Housing**”). Harishree filed Suit No 1514 of 1995 seeking specific performance of its MOU with Phuldai. It obtained no ad interim relief. The motion itself was dismissed. Ultimately, although this happened several years later, Harishree’s suit was dismissed for default on 6th April 2020.

9. Before that dismissal, however, Harishree purported to include the plot in question in a slum rehabilitation scheme which was of a much larger area of 18,727.30 sq mts.

10. There are other intervening events, but we will leave those aside for the time being. Vikas Housing filed Suit No 1611 of 2000 against Harishree. Consent terms were filed on 3rd August 2000.

11. In the meantime, Phuldai filed Suit No 1018 of 2000 in the City Civil Court for an injunction against both Harishree and Vikas Housing.

12. An intervening event of 31st July 2002 occurred in a Public Interest Litigation¹ filed by Citispace in regard to slum redevelopment on encroached RG plots. There was an injunction in regard to slum re-development on such encroached RG plots.

13. Harishree sought a revision of its slum rehabilitation scheme and there is some controversy about the exclusion of the Phuldai plot from the revised scheme. What is important, at least for this compact narrative, is that on 4th June 2004 a revised Letter of Intent (“**LoI**”) came to be issued in Harishree’s name.

14. On 19th October 2011, Phuldai’s Suit against Harishree and Vikas Housing was decreed in her favour. She was declared to be the owner and in possession of the land. She obtained a permanent injunction. A First Appeal filed by Vikas Housing was admitted² but

¹ *Citispace & Ors v The State of Maharashtra*, Order dated 31st July 2002 in Writ Petition No 1152 of 2002.

² *Mudhit Gupta v Phuldai Ramsanehi Yadav & Ors*, Order dated 30th November 2011 in First Appeal No 2324 of 2011.

a Civil Application for stay was dismissed. A Review Petition³ and a Special Leave Petition⁴ suffered the same fate.

15. Vikas Housing appointed the principal contestant Jyoti Builders, represented by Mr Khambata, as the developer for a slum rehabilitation scheme on this plot. Jyoti Builders had already been on site in a slum rehabilitation scheme for other lands.

16. Then comes an important and crucial order of 26th February 2015 by the CEO of SRA. One of the questions was whether Jyoti Builders could implement the scheme on the Phuldai plot. The fact that there was a RG reservation was undisputed. There was a direction to the Deputy Collector, SRA to initiate acquisition proceedings under Section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“**Slums Act**”).

17. On 31st May 2021, Vikas Housing executed a conveyance in favour of Jyoti Builders. That conveyance deed purported to record that Harishree had acquired title to various properties, including the Phuldai plot. This was later rectified to delete that recital.

18. On 1st March 2022, the revised Development Control and Promotion Regulations 2034 (“**DCPR**”) having come into effect, this Court clarified that the order in the Citispace Writ Petition

³ *Mudhit Gupta v Phuldai Ramsanehi Yadav & Ors*, Order dated 27th March 2012 in Review Petition (St) No 3117 of 2012.

⁴ *Mudhit Gupta v Phuldai Ramsanehi Yadav & Ors*, Order dated 15th July 2013 in Special Leave Petition (Civil) No 22870 of 2012.

would not come in the way of development under DCPR 17(3)(d) which allowed for the development of 65% of an RG plot to be used for a slum rehabilitation scheme.⁵

19. Alchemi purchased the plot in question from Phuldai on 26th March 2022. It then submitted its own slum rehabilitation scheme for the Phuldai plot and this provided for a surrender of 35% of the RG area and the construction of rehab and sale units on the remaining 65%.

20. Jyoti Builders filed Writ Petition (L) No 23703 of 2022 seeking an enforcement of the CEO SRA's direction of 26th February 2015 to proceed with the compulsory acquisition of the Phuldai plot under Section 14 of the Slums Act. Alchemi and Phuldai appeared and opposed this Petition. Ultimately, there came to be made an order of 2nd August 2022 by the High Court.⁶ It directed the CEO of SRA to consider Jyoti Builders' representation for the acquisition of the Phuldai plot and also the objections of Alchemi (and presumably Phuldai) to that very acquisition, in addition to Alchemi's demand that it should be issued an LoI for the slum rehabilitation scheme that it had propounded.

21. This led to the CEO of SRA passing an order on 3rd October 2022. He held that Phuldai was the owner of the plot in question. He held that there was no right, title or interest vested in either

⁵ *Citispac & Ors v The State of Maharashtra & Ors*, Order dated 1st March 2022 in IA (L) No 12380 of 2021 in Writ Petition No 1152 of 2002.

⁶ *Jyoti Builders v The CEO, Slum Rehabilitation Authority & Ors*, Order dated 2nd August 2022 in Writ Petition (L) No 23703 of 2022.

Harishree or Vikas Housing or Jyoti Builders. It was only Alchemi that had acquired title to the land. The Phuldai plot and the Floor Space Index (“FSI”) attached to it had always been “kept in abeyance”, the CEO of SRA held, and Jyoti Builders did not have the benefit of the FSI from the Phuldai plot. Importantly, the CEO of SRA held that the owner claimed a “preferential right to develop the land”, i.e., a right of first refusal and therefore, Alchemi had submitted its proposal for slum redevelopment.

22. Jyoti Builders went in appeal to the AGRC. Various co-operative societies also filed appeals. In the meantime, the SRA granted an in-principle approval to Alchemi’s slum rehabilitation proposal.

23. Ultimately, on 30th October 2023, the AGRC passed the impugned order. To summarize this, spread over several findings, the AGRC held that Phuldai had waived or had otherwise lost her preferential right to redevelop the plot that was in her name and that title had in fact validly passed, ultimately resting in Jyoti Builders.

24. We have considered the impugned order carefully. Mr Chinoy submits that many of the individual findings are demonstrably incorrect and cannot be sustained.

25. In light of what has been suggested before us, it is not necessary to return a finding on every conclusion arrived at by the AGRC. Without further discussion, and as commonly agreed between Alchemi and Phuldai on one side and Jyoti Builders on the

other, the impugned order of 30th October 2023 is set aside. The three Appeals/Applications filed by Jyoti Builders, the Slum Society and Alchemi (to which the co-operative societies are already parties) are restored to the file of the AGRC. This is a remand for a consideration afresh without any regard at all to the impugned order of 30th October 2023. We clarify that despite this brief narrative above, we have not expressed any opinion on the several rival contentions canvassed before us.

26. We proceed now to set out what according to us are the questions/issues that the AGRC must consider. These questions for determination are drawn from the suggestions submitted by both sides. We have not followed them exactly but have altered them and merged them as we thought necessary. There will also be certain further directions of an administrative nature in view of some of the submissions that were advanced for the first time in the Writ Petition before us.

27. The questions that the AGRC must decide are these:

1. Whether Section 14 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 ("**Slums Act**") can be applicable/ utilized for acquiring an encroached plot reserved for a garden (RG), with the stated intent/ object of handing over the plot to the MCGM and for the FSI potential/ TDR to be used in the Slum Rehabilitation Scheme being implemented on the adjoining plot?
2. Whether Alchemi/Phuldai Yadav are entitled to submit a

scheme for redevelopment of the subject Property i.e. land bearing CTS No.620A/1A/1(pt) now given new CTS No 620A/1A/1B/1 and 620A/1A/1B/2 admeasuring 2005 sq mtrs of Village Malad (E), Taluka Borivali and grant of Lol in their favour?

3. Whether the Respondent No 4 / Petitioner's subject property admeasuring 2005 sq. mts [which is private property] is presently included in the Respondent No 3's Slum Scheme?
4. Whether Phuldai Yadav/Alchemi had a preferential right to propound a slum scheme in light of the slum redevelopment being undertaken by Jyoti Builders and DC Regulation 33(10) r/w Section 4 of the SRA Act, 1971 on the Larger Property, which includes the Subject property?
5. Assuming that Phuldai Yadav had a preferential right to propound a slum scheme, whether such preferential right no longer survived / or has been waived?
6. Whether the question of waiver of the Respondent No 4's preferential right to owner to propose a Slum Scheme on the subject property admeasuring 2005 sq mts. could arise in view of the subject property admeasuring 2005 sq mts not forming part of the Respondent No 3's slum Scheme and in the absence of any express notice to Respondent No 4, requiring her to propose a Scheme?
7. Whether Phuldai Yadav did not propound her slum

rehabilitation scheme due to operation of the Citispace Order dated 31 July 2002?

8. Whether in view of the order of this Hon'ble Court dated 02nd August, 2022, the order of the CEO SRA dated 3rd October, 2022 refusing the request of Respondent No. 3 for acquisition of the said land under Section 14 of the Slums Act as per the earlier order dated 26th January, 2015 on the ground of the Petitioner/ Respondent No 4 having preferential right as owner of the subject property admeasuring 2005 sq mts to propose their Slum Scheme, is valid in law?

28. We make it clear that these are the issues and questions that according to us need to be decided. There may be other issues as well and we are not restricting the scope of the appeal before AGRC only to the questions that we have set out above.

29. We do, however, make it clear that the impugned order is being fully set aside and the decision will be *de novo* on merits and by a fresh consideration on all issues.

30. Instead of amending the Appeal, Jyoti Builders and Alchemi/Phuldai will be entitled to file further statements or submissions in respect of their additional cases or grounds that they propose to take.

31. A few administrative directions are necessary. This is because for the first time in the Writ Petition, Mr Chinoy argued that there

was the order of the High Court in the *Citispace* PIL that prevented Phuldai or Alchemi from exercising a preferential right. Equally, Mr Khambata endeavoured in arguments to raise a wholly new point that the development was under Regulation 33(10) of the Development Control Regulations, 1991 and no question of a preferential right even arose. Neither of these points seem to have actually been canvassed before the AGRC. It is for that reason that we have specifically noted both those issues above and, in accordance with those directions, we now grant both sides the additional liberty of amending the grounds of the appeals and the replies to the appeals to take these additional points. Both sides will also have the right to submit such additional documents as may be necessary whether in relation to these additional questions or otherwise.

32. The second question that we have raised is also a new point that does not seem to have been canvassed before the AGRC.

33. We request the AGRC to endeavour to dispose of the Appeals/Applications.

34. For clarity, we note that the AGRC had before it three applications. One was by Jyoti Builders. Another was by the Slum Society. The third was by Alchemi Developers. All three are restored to file and all three are to be disposed of by a common order at the earliest possible and preferably within four months from today, i.e., by 11th July 2024.

35. Whatever be the result of the appeals before the AGRC, the resultant order of the AGRC will not be acted upon or implemented for a period of three weeks after the order is made available.

36. During the pendency of the matters before the AGRC and for the additional period of three weeks noted above, a complete status quo as regards the Phuldai Yadav plot of 2005 sq mts is to be maintained, both in regard to acquisition and any development works on that land. All parties, including the SRA, will maintain that status quo.

37. Jyoti Builders maintained that it was already on site in regard to a slum rehabilitation scheme since 2004. Whether its Slum Rehab Scheme could or could not have included the Phuldai plot is indeed the question that is at large.

38. If there is any clarification required about the questions that we have set out above, liberty to the parties to apply.

39. The Writ Petition is disposed of in the above terms.

(Kamal Khata, J)

(G. S. Patel, J)