

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8931 OF 2024

M/s. Sushanku Builders Ltd.
Minal Co-operative Housing Society, Vile
Parle (East), Mumbai

...Petitioner

V/s.

1. Apex Grievance Redressal
Committee, Bandra, Mumbai.
2. Bandra Ahinsa Nagar Co-operative,
Bandra, Mumbai.
3. Chief Executive office (C.E.O.), SRA,
Bandra, Mumbai.
4. Chief Officer, Maharashtra Housing
Area & Development Authority
Bandra, Mumbai

...Respondents

**WITH
INTERIM APPLICATION (ST) NO. 2197 OF 2025
IN
WRIT PETITION NO.8931 OF 2024**

1. Monohar Narayan Lad
2. Mohan Ganpat Yadav
3. Yashwant Kalya Pawar
4. Dattaram Govind Mandavkar
5. Jotiba Appaji Jadhav
6. Narayan Sulabha lad
7. Sunil Shankar Kamble

... Applicants

IN THE MATTER BETWEEN

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SHREEDHAR
PARAB

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M/s. Sushanku Builders Ltd.
Minal Co-operative Housing Society, Vile
Parle (East), Mumbai

...Petitioner

V/s.

1. Apex Grievance Redressal

...Respondents

- Committee, Bandra, Mumbai.
2. Bandra Ahinsa Nagar Co-operative,
Bandra, Mumbai.
3. Chief Executive office (C.E.O.), SRA,
Bandra, Mumbai.
4. Chief Officer, Maharashtra Housing
Area & Development Authority
Bandra, Mumbai

**WITH
INTERIM APPLICATION (ST) NO. 9730 OF 2025
(NOT ON BOARD)
IN
WRIT PETITION NO.8931 OF 2024**

Baliram Bhimanna Ichaigiri and Anr.

... Applicants

V/s.

M/s. Sushanku Builders Ltd.
Minal Co-operative Housing Society, Vile
Parle (East), Mumbai

...Petitioner

Mr. Navroz Seervai, Senior Advocate with Mr. Chirag Balsara, Ms. Laveena Tejwani, Mr. Abdul Basit Kudalkar, Ms. Dhwani Mehta, Mr. Siddharth Chavan & Ms. Madhura Shah i/b M/s. NDB Law, for Petitioner in WP/8931/2024 and for Respondent in IAST/9730/2025.

Mr. Surel Shah, Senior Advocate a/w Mr. Sahil Saiyed, Mr. Amit Padwal, for Applicant/Intervenor in IAST/2197/2025.

Mr. Mayur Khandeparkar with Mr. Arun Panickar & Mr. Vinay Nair, for Applicant in IAST/9730/2025.

Mr. Abhijit P. Kulkarni a/w Ms. Sweta Shah, for Respondent No.1 AGRC in WP/8931/2024 & for Respondent in IAST/2197/2025.

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 18 March 2025.

Judgment pronounced on: 27 March 2025.

Judgment:

1) Petitioner has filed this Petition challenging the order dated 8 January 2024 passed by the Apex Grievance Redressal Committee (**AGRC**) allowing the appeal preferred by Respondent No.2-society and setting aside order dated 6 August 2021 passed by the Chief Executive Officer, Slum Rehabilitation Authority (**CEO/SRA**) and terminating the appointment of Petitioner under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**Slum Act**). The AGRC has directed Respondent No.2-Society to implement the subject Slum Rehabilitation Scheme (**SRS**) through newly appointed developer. Petitioner is aggrieved by termination of his appointment as a developer for implementation of the subject SRS and has accordingly filed the present Petition challenging order dated 8 January 2024 passed by the AGRC.

2) Briefly stated, facts of the case are that Respondent No.2-Society was formed on 8 June 1992 by slum dwellers situated at plot bearing City Survey No.629(pt) admeasuring 5367 sq.mts, Bandra Mumbai. Maharashtra Housing and Area Development Authority (**MHADA**) granted lease in respect of the encroached plot bearing CTS No.629 (pt) for improvement/rehabilitation. The plot consists of 236 slum dwellings, of which 220 structures were certified by MHADA and declared eligible by Slum Rehabilitation Authority (**SRA**). The Society resolved for appointment of Petitioner as developer for implementation of the subject SRS and executed development agreement dated 11 April 1994. Petitioner received consent of 73% of eligible slum dwellers. On 30 July 2002, SRA issued Letter of Intent

(**LOI**) in Petitioner's favour. According to Petitioner, the subject SRS could not be implemented on account of lack of clarity on the issue of implementation of the SRS in respect of land reserved in the development plan for recreational ground. The SRA issued revised LOI on 27 December 2010 for increased entitlement of 269 sq.ft. rehab tenements. According to Petitioner, after clarification of issue relating to implementation of slum scheme on the plot reserved for recreational ground, Petitioner started taking steps for implementation of SRS from the year 2012 onwards. It arranged for shifting of 60 structure occupiers to transit accommodations and also initiated proceedings under Sections 34 and 38 of the Slum Act for eviction of remaining slum dwellers. According to Petitioner, SRA approved building plans for construction of rehab building 'A' by issuance of Commencement Certificate dated 12 March 2012.

3) It is Petitioner's case that some of the disgruntled slum dwellers who desired implementation of the SRS through another developer of their choice, started agenda for development of the Plot under Regulation 33(5) of the Development Control Regulations, 1991 (**DCR**) instead of implementing the same under DCR 33(10) towards alleged entitlement of tenements of higher area (400 sq.ft.) instead of 225-275 sq.ft. Accordingly, they moved Application No.334 of 2013 before the High Powered Committee seeking cancellation of LOI and revised LOI as well as all permissions issued in favour of the Petitioner. By order dated 3 October 2015, the Committee disposed of the said application without granting any relief in favour of the three slum dwellers.

4) On 4 October 2015, Respondent No.2-Society adopted a resolution for implementation of SRS under DCR 33(5) and thereafter

filed an application before the CEO/SRA for implementation of SRS under DCR 33(5) and not under DCR 33(10). The society also complained of delay on the part of the Petitioner in implementing the SRS and alleged that Petitioner no longer enjoyed consent of 75% slum dwellers. CEO/SRA rejected Society's application by order dated 16 June 2017 holding that it was impermissible to develop the plot under DCR 33(5) and that SRS could be implemented only under DCR 33(10). Respondent No.2-Society challenged the order of CEO/SRA dated 16 June 2017 before the AGRC. The AGRC rejected society's challenge by order dated 12 October 2018 and confirmed the order of the CEO/SRA dated 16 June 2017. Society filed Writ Petition (L) No.3559 of 2018 challenging the order passed by the AGRC. This Court remanded the matter to the AGRC for consideration of limited issue of delay in implementation of SRS, but did not disturb the order of CEO/SRA and AGRC on the issue of applicability of DCR 33(5). The AGRC decided the remanded proceedings by order dated 25 October 2019 and once again rejected Society's application and confirmed the order of CEO/SRA dated 16 June 2017. AGRC held that since 2012, delay was caused by the slum dwellers and not by the Petitioner. The society filed Writ Petition (L) No.3258 of 2019 challenging AGRC's order dated 25 October 2019. This Court rejected the Petition filed by the Society by order dated 4 February 2020 holding that Petitioner was not responsible for delay in implementation of SRS and its ouster under Section 13(2) of the Slum Act was not warranted. Respondent No.2-Society filed SLP(Diary) No.18127 of 2020 before Supreme Court challenging order of this Court dated 4 February 2020.

5) During pendency of the SLP before the Hon'ble Supreme Court, CEO/SRA issued a *suo moto* show cause notice dated 14 June 2021 to the Petitioner proposing to terminate his appointment under

Section 13(2) of the Slum Act. After hearing parties, CEO/SRA dropped the show cause notice by order dated 6 August 2021 holding that Petitioner was not responsible for delay in implementation of the subject SRS. Respondent No.2-Society filed appeal bearing Application No.174 of 2021 before the AGRC challenging the order of CEO/SRA dated 6 August 2021. In the meantime, Society also placed the order passed by the CEO/SRA dated 6 August 2021 before the Hon'ble Supreme Court by filing interlocutory application in the pending SLP (Diary) No.18127 of 2020. The Hon'ble Supreme Court dismissed the SLP preferred by Respondent No.2-Society by order dated 3 January 2023.

6) The AGRC heard the Application No.174 of 2021 filed by Respondent No.2-society and by its order dated 8 January 2024, it has allowed the appeal by setting aside order dated 6 August 2021 passed by the CEO/SRA. The AGRC directed Respondent No.2-society to implement the subject SRS through newly appointed developer by selecting it by following of rules and regulations of the SRA. Petitioner is aggrieved by order dated 8 January 2024 passed by the AGRC and has accordingly filed the present Petition.

7) Mr. Seervai, the learned senior advocate appearing for the Petitioner-developer would submit that the AGRC has grossly erred in allowing the appeal preferred by Respondent No.2-Society by ignoring the findings repeatedly recorded by the CEO/SRA, AGRC and by this Court. He would rely upon order passed by this Court on 4 February 2020 in which this Court has recorded a finding of fact that Petitioner is not guilty of delay in implementing the subject SRS and that implementation was delayed by disgruntled slum dwellers. He would submit that right since 2012, the disgruntled slum dwellers have

repeatedly involved the Petitioner in litigation and have put a spoke in smooth implementation of the subject SRS. He would further submit that by order dated 4 February 2020, this Court had specifically held that appointment of Petitioner as a developer cannot be terminated under the provisions of Section 13(2) of the Slum Act. That the judgment of this Court dated 4 February 2020 has been upheld by the Apex Court by dismissing the SLP (Diary) No.18127 of 2020 on 3 January 2023. That though CEO/SRA was erroneously persuaded to initiate *suo moto* action under Section 13(2) of the Slum Act in contravention of findings recorded by this Court in judgment dated 4 February 2020, CEO/SRA ultimately dropped the proceedings and the order passed by the CEO/SRA on 6 August 2021 was brought to the notice of the Hon'ble Supreme Court by filing Interlocutory Application. The Hon'ble Supreme Court has not only dismissed Society's SLP, but also disposed of the said Interlocutory Application without granting any relief in favour of the Society. That thus, this Court's finding that Petitioner is not responsible for delay in implementation of subject SRS got approved by the Supreme Court by order dated 3 January 2023. That thus, Petitioner could no longer be held guilty of delay in implementation of the subject SRS. AGRC has not even bothered to consider those orders and has erroneously proceeded to set aside the order of CEO/SRA dated 6 August 2021 by taking into consideration extraneous factors, which were never urged before the CEO/SRA. Mr. Seervai would further submit that AGRC was deciding an appeal against order dated 6 August 2021 passed by the CEO/SRA and therefore it could not have extended its appellate jurisdiction by taking into consideration factors which were never brought to the notice of CEO/SRA. He would submit that the findings recorded by the AGRC about forgery in respect of commencement certificate is unsupported by any material on record. That when

CEO/SRA has not recorded any finding about any forgery in the commencement certificate, AGRC could not have gone into the issue of forgery, that too by making a passing reference without recording detailed reasons to support the finding of forgery. He would submit that after passing of order dated 6 August 2021, Petitioner was prevented from making any progress in the subject SRS on account of continuous litigation by Respondent No.2-Society and its disgruntled members. That Petitioner made all earnest efforts to make progress in the subject SRS by initiating proceedings for eviction of the slum dwellers, who have till date refused to vacate their structures. That this delay post 6 August 2021 is again attributable to Respondent No.2-Society and its members and the AGRC has erroneously held Petitioner responsible for said delay.

8) Mr. Seervai would submit that the real intention of the disgruntled slum dwellers is to hand over the subject SRS to another developer of their choice, who is the real instigator behind filing series of litigations initiated against Petitioner. He would therefore submit that provisions under Section 13(2) of the Slums Act are being misused only for the purpose of ensuring that the SRS is ultimately implemented by another developer, who is actually filing all the litigations. He would rely upon judgment of the Apex Court in ***Susme Builders Pvt. Ltd. Vs. Chief Executive Officer, Slum Rehabilitation Authority and Ors.***¹ wherein the Apex Court has held that the scope of enquiry under Section 13(2) of the Slums Act is limited and the same needs to be restricted to the ground of delay alone.

9) Mr. Seervai would further submit that there is no change in Developer and the said position is not accepted by CEO/SRA in his

¹ 2017 SCC OnLine SC 1601

order dated 6 August 2021. He would submit that Petitioner contended before CEO/SRA that in view of Consent terms between Petitioner and Samrudhi Buildhome Pvt. Ltd., an Irrevocable Power of Attorney dated 29 July 2017 was executed conferring powers to Samrudhi Buildhome Pvt. Ltd. The CEO/SRA accepted the understanding between Petitioner and Samrudhi Buildhome Pvt. Ltd. and held that Petitioner is financially sound to complete the project. He would submit that the said issue having been raised before Hon'ble Supreme Court and Interlocutory Application having been rejected, it cannot be reopened before this Court once again by this disgruntled slum dwellers.

10) Mr. Seervai would question the locus of Intervenors in Interim Application (stamp) No.2197 of 2025 and Interim Application (stamp) No.9730 of 2025 by submitting that once slum dwellers are represented by Society, they cannot separate themselves and seek to espouse individual cause by filing intervention applications in the present Petitions. He would rely upon order passed by this Court in ***Nirbhay Co-op. Housing Society (SRA proposed) & Anr. V/s. Slum Rehabilitation Authority (SRA) and Ors.***² Mr. Seervai would further submit that during pendency of the present Petition, some of the disgruntled slum dwellers clandestinely filed Writ Petition (Lodging) No.971 of 2025 before the Division Bench of this Court without impleading the Petitioner and have secured order for holding of meeting for appointment of new developer. He would submit that order dated 3 February 2025 passed by the Division Bench would not come in the way of this Court deciding correctness of AGRC's order dated 8 January 2024. He would accordingly pray for setting aside AGRC's order dated 8 January 2024.

² Writ Petition (L) No.1112 of 2004, decided on 17 June 2004.

11) Mr. Surel Shah, the learned senior advocate appearing for the Intervenor in Interim Application (stamp) No.2197 of 2025 would submit that the Intervenor is required to intervene in the present Petition as Administrator has been appointed on Respondent No.2-Society and that therefore the society is unable to effectively defend itself in the present petition. That individual slum dwellers are required to intervene in the present petition to ensure that Petition is not decided without taking into consideration the stand of the slum dwellers. Mr. Shah would further submit that the Petitioner has violated the order dated 6 August 2021 passed by the CEO/SRA with impunity. That after securing dropping of proceeding under Section 13(2) of the Slum Act, Petitioner has virtually done nothing towards implementation of the SRS. That CEO/SRA had directed Petitioner to complete the subject SRS as per the Bar Chart by submitting progress report after every four months to the Executive Engineer of the SRA. That Petitioner has failed to act as per such Bar Chart. He would submit that after passing of order dated 6 August 2021 by CEO/SRA, Petitioner himself has admitted that the commencement certificate dated 2 November 2012 is false and fabricated and has lodged police complaint on 16 August 2021. He would invite my attention to the Note prepared in October 2021 by the Officers of SRA certifying that the commencement certificate itself was forged. Mr. Shah would submit that AGRC has rightly taken into consideration the factum of forgery in the commencement certificate as well as Petitioner's failure to complete the SRS as per the Bar Chart. That the order passed by the AGRC does not suffer from any patent error for this Court to exercise jurisdiction under Article 227 of the Constitution of India. Mr. Shah would accordingly pray for dismissal of the Petition.

12) Mr. Khandeparkar, the learned counsel appearing for the Applicants/ Intervenors in Interim Application (Stamp) No.9730 of 2025 would justify intervention by his clients by submitting that the Administrator appointed on Respondent No.2-Society is neither in position nor desirous of opposing the Petition and that if the Intervenors are not permitted to oppose the Petition, the Petition would have been decided in absence of any contest. He would therefore submit that Intervenors must be allowed to intervene in the Petition and assist the Court by bringing all the relevant material to the notice of this Court. He would submit that the judgment in ***Nirbhay Co-op. Housing Society*** (supra) is passed by this Court in the light of peculiar facts where there were two rival societies. In the present case, there is no rival society and the members of the society required to intervene in the present Petition only on account of peculiar circumstances of appointment of Administrator on the Society.

13) Mr. Khandeparkar would submit that Petitioner has not challenged the order of the CEO/SRA dated 6 August 2021. That the said order itself records the allegation of forgery in the commencement certificate. That it also recorded outsourcing of the subject SRS to M/s. Samruddhi Buildhome Pvt. Ltd. That the order of CEO/SRA further directed Petitioner to complete the subject SRS as per the Bar Chart submitted by them by further submitting progress report after interval of four months. He would accordingly invite my attention to the Bar Chart submitted by the Petitioner and would demonstrate that the Petitioner has not completed even a single step as per the Bar Chart. He would submit that Petitioner's architect had resigned in the year 2016 and the Petitioner had not taken any steps for appointment of new architect till 18 July 2023, when the new architect was appointed. That thus, for a period of two long years after

passing of order dated 6 August 2021, Petitioner had not even bothered to appoint an architect. That all the permissions have elapsed. That Petitioner is required to get fresh permissions under the DCPR 2034 and on account of non-availability of architect till 18 July 2023, there was no question of Petitioner taking any steps for getting revised LOI and other permissions. Even after 18 July 2023, Petitioner did not bother to secure revised LOI and other permissions under DCPR 2034 till the impugned order was passed by the AGRC on 8 January 2024.

14) Mr. Khandeparkar would submit that Petitioner himself has admitted that commencement certificate dated 2 November 2012 has been forged but seeks to blame his previous architect. That once forgery in the commencement certificate is admitted, all actions taken based thereon are automatically rendered *ab initio void*. That Petitioner has represented before CEO/SRA, AGRC and this Court in previous rounds of litigations it had valid commencement certificate and LOI and that Respondent No.2 -Society delayed implementation of the subject SRS. Now that commencement certificate itself found to be forged, the representation made to the authorities and to this Court also becomes fallacious.

15) Mr. Khandeparkar would submit that SRA is both an implementing authority as well as adjudicatory authority. It has passed order dated 6 August 2021 adjudicating the dispute relating to removal of Petitioner under Section 13(2) of the Slum Act and at the same time, it has passed orders for smooth implementation of subject SRS. That once it is found that the order passed for implementation of the subject SRS is violated, termination of Petitioner's appointment becomes imminent. That there is no explanation pleaded or argued by

the Petitioner to quell the allegations of forgery and delay post 6 August 2021. That this Court is exercising equitable jurisdiction under Article 227 of the Constitution of India and in the light of admitted forgery as well as delay after 6 August 2021, this Court would be loathe to entertain the present Petition. He would rely upon judgment of this Court in ***New Janta SRA CHS Ltd. V/s. State of Maharashtra and Ors***,³ in support of his contention that there cannot be an abstract proposition that a fair appeal cannot cure unfair trial. He would also rely upon judgment of the Apex Court in ***Central Council for Research in Ayurvedic Sciences and Another V/s. Bikartan Das and Others***.⁴ in support of his contention that writ jurisdiction need not be exercised even if order is found to be illegal or invalid. Mr. Khandeparkar would accordingly pray for dismissal of the Petition.

16) Rival contentions of the parties now fall for my consideration.

17) Before proceeding further with the merits of the Petition, the issue of right of intervenors to participate in hearing of the Petition needs to be dealt with. Petitioner has questioned locus of the intervenors in intervening in the present Petition on the ground that individual members cannot split themselves from the society and seek to espouse their own cause separately. It is true that in ordinary circumstances, once the society is impleaded to proceedings, it would collectively represent the cause of all society members based on majority decision. However, the present case presents a unique conundrum as none has appeared on behalf of Respondent No.2-Society in the present Petition. Admittedly, there is an administrator

³ Writ Petition (OS) No.2349 of 2018, decided on 26 September 2019

⁴ (2023) 16 SCC 462

appointed on Respondent No.2-Society. As of now, collective will of the society can no longer be represented through general body decision. The Society, who was all along fighting with the Petitioner for last about a decade, is now unable to defend the order passed by the AGRC by taking a collective decision. It is in the light of these peculiar facts that individual slum dwellers have sought intervention in the present Petition. Considering these unique facts and circumstances of the case, I am of the view that since the implementation of the subject SRS is for the benefit of the slum dwellers, there is no harm in considering the submissions canvassed by them while deciding the present Petition. If this is not done, there would be no opposition to the present Petition. Permitting intervention by individual slum dwellers would assist the Court in effectively deciding the Petition after considering views of both the sides. In my view therefore, the Intervention Applications filed by two sets of slum dwellers deserve to be allowed.

18) The present case involves a long battle between Respondent No.2-Society and the Petitioner with regard to right to implement SRS on the subject plot. Either individual members of Respondent No.2-Society or the Society itself has initiated numerous litigations for removal of Petitioner as a developer. Petitioner's appointment as a developer has taken place on 11 April 1994 and by now, period of 31 long years has passed where the slum dwellers on the subject plot have not been rehabilitated. It is Petitioner's contention that upto the year 2012, there was ambiguity on the issue of implementation of SRS on land reserved in the development plan as Recreational Ground. Thus, the actual implementation of the scheme started after the year 2012. The initial commencement certificate was issued on 12 March

2012 and immediately thereafter, the slum dwellers started making efforts, which according to the Petitioner, has put a spoke in smooth implementation of the subject SRS. Initially, attempts were made by three slum dwellers by filing application dated 12 December 2012 for implementation of SRS under DCR 33(5) instead of DCR 33(10) under a hope of securing larger sized tenements. After the application of three slum dwellers were rejected, society passed resolution on 4 October 2015 and filed application before CEO/SRA for implementation of SRS under DCR 33(5). While doing so, Society also accused Petitioner of delaying the project. CEO/SRA rejected Society's application on 16 July 2017 holding that implementation of SRS under DCR 33(5) was impermissible. After AGRC upheld CEO/SRA's order dated 16 June 2017, Writ Petition (L) 3559 of 2018 was filed by the Society challenging the orders passed by CEO/SRA and AGRC. This Court did not disturb the findings of impermissibility to implement the SRS under DCR 33(5) but remanded the proceedings before the AGRC to consider only the issue of delay on the part of the Petitioner in implementing the project. However in its order dated 25 October 2019, AGRC held that Petitioner was not responsible for delay. Mr. Seervai has strenuously relied on AGRC's order dated 25 October 2019, in which not only the allegation of delay was repelled but AGRC recorded specific findings that disgruntled slum dwellers deliberately prevented Petitioner from implementing the project through a proxy litigation initiated by rival developers M/s. S.L.K Housing Developer Pvt. Ltd. The relevant findings recorded by the AGRC in order dated 25 October 2019 are as under:

Thus, from the aforesaid facts this Committee concludes that the rival developer has approached slum dwellers of Applicant No. 1 Bandra Ahinsa CHS Ltd. on 15.09.2011 and promised to offer 400 sq.ft. Carpet Area. In view of the said promise, Applicant No. 1 Bandra Ahinsa CHS Ltd. conveyed and confirmed by General Body

Resolution dated 04.10.2015 that they wish to re-develop the said plot of land under Regulation 33 (5) of DCR, 1991.

Considering the said facts, this Committee is of opinion that the delay caused in implementation of subject S.R. Scheme under Regulation 33 (10) of DCR, 1991 cannot be attributable to Respondent No. 3 M/s. Sushanku-Builders on the ground that rival developer had promised on 15.09.2011 that he would provide 400 sq.ft. Carpet Area and as such the said disgruntled slum dwellers including Applicants No. 2 & 3 started causing obstructions that they want to redevelop the said plot of land under Regulation 33 (5) of DCR 1991 based on the false promises of rival developer.

This Committee is further of view that the proxy litigation brought before this Committee by rival developer M/s. S.L.K Housing Developer Pvt. Ltd.

This Committee further concludes that the delay caused for a period of 6 years from the sanction of Building Plan and IOA issued on 12.03.2012 no construction work could be started as the disgruntled slum dwellers refused to vacate their slum structures at the instance of is Applicants which is at the behest of rival Developer. Therefore Dy. Collector/SRA issued Notice of Eviction & Demolition under Sections 33 & 38 of Maharashtra Slum Areas (I.C & R) Act 1971. There afterwards Dy. Collector/SRA passed order and directed the concern slum dwellers to hand over the vacant and peaceful possession of the said premises to Respondent No. 3 M/s. Shushanku Builders (Raj Constructions) for smooth implementation of subject S.R. Scheme. Pending the hearing and final disposal of present Application, the eviction and demolition order passed by Dy. Collector/SRA under Section 33 & 38 of Maharashtra Slum Areas (I.C&R) Act 1971 has been stayed by order dated 15th April 2019 passed by Hon'ble High Court of Judicature at Bombay in writ Petition (L) No. 3559 of 2019 filed by Applicant No. 1 Bandra Ahinsa Nagar CHS Ltd. & Ors. Before Hon'ble High Court of Judicature at Bombay having Ordinary Original Civil Jurisdiction.

Considering the aforesaid facts of the case this Committee is of opinion that the delay caused in implementation of subject S.R. Scheme is attributable to Applicants. Therefore, the present Application No.42 of 2018 filed by Applicants stands dismissed.

In view of same this Committee upholds impugned order dated 16th June 2017 passed by CEO/SRA under Section 13(2) of Maharashtra Slum Areas (I. C & R) Act 1971.

19) The Society challenged AGRC's order dated 25 October 2019 by filing Writ Petition (L) No. 3258 of 2019, in which this Court exonerated Petitioner of allegation of delay and while dismissing the Petition, recorded the following findings:

5. In its impugned order, AGRC has taken into account the circumstances of the case, particularly, after commencement certificate was issued in

favour of Petitioner No.1 and Respondent No.3 by SRA. AGRC has particularly noted that almost immediately after the commencement certificate was issued, by a letter dated 12 December 2012 (commencement certificate was issued on 2 November 2012), new promoters of the society on behalf of 73 slum-dwellers wrote to CEO SRA for cancellation of the LoI as well as revised LoI purportedly on the ground that they were obtained on the basis of fraudulent documents. Interested slum-dwellers, thereafter, applied to High Power of Committee (HPC) by way of an application, being Application No.343 of 2013, requesting for revocation of the LoI and the revised LoI on the ground of illegalities committed by the earlier promoters of Plaintiff No.1 society and the developer, i.e. Respondent No.3. The application came up for hearing in September 2015. HPC disposed of the application inter alia observing that a new managing committee of Petitioner No.1 had been elected in the meanwhile and that any representation to be made to CEO or any forum such as HPC, on behalf of the society, had to be made by such new committee. On that basis, Application No.343 of 2013 was disposed of. Thereafter a fresh application was made to HPC. A general body meeting of the slum-dwellers of the subject SRA scheme was held on 4 October 2015, when a resolution was passed for re-development of the subject property under Regulation 33(5) of DCR 1991, instead of originally proposed Regulation No.33(10), and an application was thereafter made by Petitioner No.1 to Vice President, MHADA for redevelopment of the property under Regulation 33(5). It was followed by a general body meeting of Petitioner No.1 society on 21 August 2017, where the society, by resolution, terminated the appointment of Respondent No.3 for implementing the SR Scheme under Regulation 33(10). So far as the society's proposal for redevelopment of the property under Regulation 33(5) is concerned, Vice President and CEO, MHADA, vide his letter dated 30 May 2017, noted that since the plot in question was reserved as playground as per development plan of the year 1991 as also as per development plan of the year 2034 and there were no guidelines to undertake a scheme under Regulation 33(5) for a plot reserved for a playground, it was not possible to implement any scheme under Regulation 33(5) in respect of the subject plot. The matter was thereafter carried before this court in a writ petition by the aggrieved slum-dwellers. In the meanwhile, the pending application of the society, under Section 13(2) of the Act, was rejected by CEO-SRA, by his order dated 16 June 2017, on the ground that redevelopment of the subject property under Regulation 33(5) was not tenable; Respondent No.3-developer was directed to complete the project within a period of three years. This order was challenged by the slum-dwellers before AGRC, who, by its order dated 28 September 2017, refused to interfere with the order of CEO-SRA under Section 13(2). The matter was then carried by the slum-dwellers before this court in a writ petition, being Writ Petition (L) No.3559 of 2018. The petition involved two questions: firstly, whether the proposed development by the slum-dwellers' society under Regulation 33(5) was tenable and secondly, whether Respondent No.3 developer was guilty of any delay in implementing the SRA project under the LoI issued to him. This court, in its order dated 16 April 2019, partly quashed and set aside the order of AGRC and remanded the matter to AGRC for a fresh hearing in accordance with law. It was further made clear that such hearing should pertain only to the limited issue of delay in Respondent No.3 implementing the SRA project. On all other issues, the impugned order of AGRC was to be treated as final. On remand, AGRC has passed

the impugned order. Hence, this challenge. That is where the matter stands as of date.

5. The above narration makes it clear that ever since issuance of the commencement certificate for rehab portion of the SRA project, interested slum-dwellers had been agitating the matter before various authorities under the Act on a host of issues. Their grievances have been, firstly, on the footing that the original LoI was issued fraudulently; it was next contended that slum-dwellers ought to be permitted to redevelop the building under Regulation 33(5) as opposed to Regulation 33(10), under which LoI was originally issued. After all these challenges were repelled by the authorities and the orders were sustained by this court, slum-dwellers cannot now turn back and say that, all this while, since the project was not implemented by Respondent No.3-developer, the permission should be revoked under Section 13(2) of the Act. The conclusion of AGRC that it was the Petitioner society and the interested slum-dwellers, who were responsible for this delay, and not Respondent No.3-developer, cannot be termed as a perverse conclusion. It is supported by some evidence on record, as we have noted above; it has broadly taken into account all relevant and germane materials and circumstances; and it cannot be said that any irrelevant or non-germane material or circumstance is considered by AGRC for arriving at its conclusion. The order, in other words, passes muster under the judicial scrutiny expected of this court under Articles 226 or 227 of the Constitution of India.

20) Mr. Seervai has submitted that this Court has approved the conclusion of AGRC that interested slum dwellers are actually responsible for the delay. Special Leave Petition filed by Respondent No.2-Society challenging judgment dated 4 February 2020 passed in Writ Petition (Lodging) No.3258 of 2019 has been dismissed by Hon'ble Supreme Court by order dated 3 January 2023. What is more relevant is the fact that during pendency of Special Leave Petition (Diary) No.18127 of 2020, CEO/SRA had *suo moto* initiated proceedings under Section 13(2) of the Slum Act for terminating appointment of Petitioner as developer by issuance of show cause notice dated 14 June 2021. However, the said show cause notice was dropped by order dated 6 August 2021, in which again, it was held that the Petitioner was not responsible for delay and that Respondent No.2-Society and its few disgruntled members, were actually responsible for delay in implementation of the subject SRS. Relevant

findings recorded by the CEO/SRA, which are relied upon by the Petitioner are as under:

The Slum Rehabilitation Scheme is meant for providing decent housing to poor slum dwellers and to improve their living conditions. It is a social welfare measure undertaken by Government with a pious object. But in present case, this Authority has observed that the beneficiary of the Slum Rehabilitation Scheme are non-cooperative and the scheme is mainly delayed due to it. On careful consideration of facts and circumstances on record, this Authority has come to conclusion that the delay occurred in implementation of subject Slum Rehabilitation Scheme is not attributable to Respondent No.1.

Further this Authority has come to conclusion that it is the society and few disgruntled members who are responsible for delay in implementation of subject SR Scheme and proceedings are liable to be dropped.

21) This order of CEO/SRA dated 6 August 2021 was placed before the Hon'ble Supreme Court by filing Interlocutory Application in pending SLP. Similarly, the allegation of forgery in the commencement certificate was also brought to the notice of the Hon'ble Apex Court by relying on letters dated 23 August 2021 and 16 August 2021 of SRA as well as police complaint filed by the SRA about fabrication of the commencement certificate. The Special Leave Petition came to be dismissed by order dated 3 January 2023 and according to Mr. Seervai, even the Interlocutory Application to place on record additional material in the form of CEO/SRA's order dated 6 August 2021 and allegations of forgery has also been disposed of.

22) Mr. Seervai reads the order of the Apex Court to mean that delay upto 3 January 2023 has not been held adverse against the Petitioner by the Hon'ble Supreme Court. Petitioner therefore contends that if delay upto 3 January 2023 is not held to be attributable to the conduct of the Petitioner, it was impermissible for the AGRC to terminate its appointment on the ground of delay. The impugned order of the AGRC is sought to be assailed on the ground

that the same is passed in violation of findings recorded by this Court in judgment dated 4 February 2020 as upheld by the Hon'ble Apex Court. In my view, Mr. Seervai is not entirely wrong in contending so. The issue of delay in implementation of the subject SRS upto 6 August 2021 cannot be gone into on account of express findings recorded by this Court that Petitioner was not responsible for delay in implementation of the subject SRS.

23) Having held that Petitioner cannot be held responsible for delay in implementation of subject SRS upto 6 August 2021, the next issue for consideration is whether the progress of the project after 6 August 2021 could have been taken into consideration by the AGRC while passing the impugned order dated 8 January 2024. The CEO/SRA while dropping the proceedings under Section 13(2) of the Slum Act vide Order dated 6 August 2021, had made following observations while exonerating Petitioner in respect of allegation of delay:-

There is also a complaint of one Somana Karde dated 29.01.2021 on record alleging that the developer is guilty of forgery and he has submitted forged Commencement Certificate dated 02.11.2012 before the Hon'ble Apex Grievance Redressal Committee. Indeed if there is any forged Commencement Certificate submitted before the Hon'ble Apex Grievance Redressal Committee, then the issue ought to have raised before Hon'ble Apex Grievance Redressal Committee. The proceedings before Apex Grievance Redressal Committee are disposed of and Hon'ble High Court has upheld the order of Apex Grievance Redressal Committee. In view of these facts, this Authority do not think it necessary to discuss anything more. Indeed if this Authority come across any such conduct on the part of Respondent No.1 then the same will be dealt with in accordance with law.

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However, before proceeding to pass final order it is necessary to ensure that the Scheme will be completed expeditiously and eligible slum dwellers will be duly rehabilitated within reasonable period. In this regard the Respondent No.1 has alongwith additional written submission submitted a bar chart stating that they will complete the rehab component within 2 years subject to approval and society willingness. Further Respondent No.1 has stated that they have entered into a understanding with Samrudhi

Buildhome Private Limited and their networth is Rs.112,41,04,000/-. From additional written submissions as well as documents enclosed to it, this Authority find that after understanding with Samrudhi Buildhome Pvt. Ltd. There was some dispute in between them and there were Arbitration proceedings. Ultimately a Consent Terms were filed by them in Execution Application (L) No.498 of 2017 in Arbitration Award dated 26.3.2015. These Consent Terms are taken on record by Hon'ble High Court and pursuant to Consent Terms a irrevocable Power of Attorney dated 29.07/2017 is executed by Respondent No.1 in favour of Samrudhi Buildhome Pvt. Ltd. The clause (s) of irrevocable Power of Attorney reveals that the Respondent No.1 has conferred exclusive powers to Smarudhi Buildhome Pvt. Ltd. Under Development Agreement between the Respondent No.1 and Respondent No.3 Society. From these facts and circumstances this Authority is of further view that as per the understanding in between Respondent No.1 & Samrudhi Buildhome Pvt. Ltd., the Respondent No.1 is financially in sound position to complete the subject SR Scheme expeditiously. Accordingly following order is passed.

24) The operative portion of CEO/SRA's order dated 6 August 2021 reads thus:

ORDER

1. The proceedings are dropped.
2. The Respondent No.1 is directed to take necessary steps for expeditious completion of subject SR Scheme as per bar chart submitted by them and to submit progress report after every 4 months to Executive Engineer/SRA.
3. The Executive Engineer is directed to monitor the execution of subject SR Scheme as per bar chart submitted by Respondent No.1

25) Thus, while dropping the proceedings for termination for Petitioner's appointment under Section 13(2) of the Slums Act, the CEO/SRA had specifically directed Petitioner to take steps for expeditious completion of the project as per Bar Chart by submitting progress at intervals of every four months to the Executive Engineer, SRA. The CEO/SRA had also taken note of allegation of forgery in respect of commencement certificate dated 2 November 2012. However, CEO/SRA did not record any findings on the allegation of forgery on account of previous orders passed in the proceedings. The CEO/SRA also took note of arrangement executed between Petitioner and M/s. Samrudhi Buildhome Pvt. Ltd., but used the said

arrangement for the purpose of holding that Petitioner has sufficient net worth to complete the project. Thus, there are three aspects, which are taken note of by the CEO/SRA while dropping the proceedings under Section 13(2) of the Slums Act against the Petitioner viz. (i) allegations of forgery; (ii) entering into arrangement with third party developer and (iii) direction for completion of subject SRS as Bar Chart.

26) So far as allegation of forgery is concerned, though CEO/SRA had avoided to record any specific finding in respect of the said allegation in his order dated 6 August 2021, it did not take long for the Petitioner to admit the said allegation as Petitioner itself filed the police complaint 10 days after order of CEO/SRA complaining that its previous architect Mr. S.G. Nemivant had handed over false and fabricated commencement certificate dated 2 November 2012 and that the Petitioner recently learnt that said commencement certificate was false and fabricated. Petitioner's police complaint dated 16 August 2021 reads thus:

16/08/2021

To
The Senior Inspector of Police,
Kherwadi Police Station,
Government Colony Building,
Ground Floor, Government Colony,
Bandra East, Mumbai,
Maharashtra 400051

SUB: Complaint against Architect S.G. Nemivant for handing over false and fabricated Commencement Certificate dated 2nd November, 2012.

REF: CTS No.629(Part) of Village Bandra (E), Taluka-Andheri,

Dear Sir,

We would like to inform you, we are the “Developer” of the property situated at CTS No.629 (Part) of Village Bandra (E), Taluka-Andheri (“said Property”).

This complaint is against Architect Mr. S.G. Nemivant, who was appointed Architect by us for redeveloping the said Property.

Mr. S.G. Nemivant had handed over false and fabricated Commencement Certificate dated 2nd November, 2012 (“CC”) to us and it is only recently we were informed by the concerned authority that the CC handed over to us is false and fabricated as the same is not found in records of the concerned authority. A copy is enclosed for your reference.

We request you to kindly take cognizance of the same and initiate action against Architect Mr. S.G. Nemivant for handing over false and fabricated Commencement Certificate to us.

Thanking you,
Yours faithfully

For and on behalf of
SUSHANKU BUILDERS LTD.

Sd/-

(Authorised Signatory)
Encl: As above.

27) Thus, Petitioner does not deny the fact that the commencement certificate dated 2 November 2012 is actually fabricated. The issue of fabrication in the commencement certificate was in fact being highlighted by Respondent No.2-Society from time to time. However, though CEO/SRA noted the said allegation of forgery, he chose to avoid recording any finding on account of AGRC’s order dated 25 October 2019 being upheld by this Court by judgment dated 4 February 2020 and dismissal of SLP by the Apex Court by order dated 3 January 2023. If either AGRC or this Court, while rendering judgment dated 4 February 2020, were aware of the fact that the commencement certificate dated 12 November 2012 was actually forged, whether this Court would have given clean chit to the Petitioner in judgment and order dated 4 February 2020 becomes

questionable. In any case, discovery of forgery in commencement certificate on account of Petitioner's own admission given on 16 August 2021 assumes importance while deciding the issue of permissibility for the Petitioner to carry forward implementation of the project after order dated 6 August 2021 passed by the CEO/SRA.

28) Second aspect of Petitioner bringing on board a third-party developer also assumes importance while deciding whether Petitioner can at all be permitted to implement the subject SRS. Petitioner has admittedly entered into some sort of arrangement with a third-party developer. It appears that a litigation has taken place between Petitioner and M/s. Samrudhi Buildhome Pvt. Ltd. It appears that consent terms were filed in that litigation under which, an Irrevocable Power of Attorney dated 29 July 2017 has been executed conferring powers to M/s.Samrudhi Buildhome Pvt. Ltd. Thus, Petitioner has clearly involved a third-party developer in the implementation of the project. This is a significant aspect incapable of being ignored while considering the aspect of termination of Petitioner's appointment as a developer. When seen in the light of inaction of the part of Petitioner in taking any further step for implementation of SRS after 6 August 2021, involvement of third party developer in the project assumes importance.

29) The third and the most vital aspect is about the progress made by the Petitioner in implementing the project after passing of order dated 6 August 2021 by CEO/SRA. As observed above, CEO/SRA had directed the Petitioner to implement the subject SRS as per Bar Chart by submitting progress report in intervals of four months to the Executive Engineer. It appears that in pursuance of the

said direction, Petitioner submitted a Bar Chart, which envisaged completion of entire SRS within 24 months in steps indicated in the chart with timeline. However, the Note submitted by the Engineers of SRA in November 2022 would indicate that the Petitioner had failed to complete even a single step suggested in the Bar Chart, which is clear from the following information reflected in the Note of the SRS Engineers:

Sr.No.	Type of approval	Timelines submitted by developer	Present Status
1.	Submission and Revised LOI as per DCPR-2034	03 Months	SOP not submitted
2	Transit accommodation and approval of Temp. Transit building	05 months	SOP not submitted
3	IOA for 1 st Rehab Building	08 Months	SOP not submitted
4	Plinth CC of 1 st Rehab Building	11 Months	SOP not submitted
5	Further C.C. of 1 st rehab Building.	17 Months	SOP not submitted
6	O.C.C. of 1 st Rehab Building	24 Months	SOP not submitted

30) Thus, Petitioner, who had promised that he would secure revised LOI as per DCPR 2034 within a period of three months, has failed to secure the same till date. In fact, there was no question of Petitioner adhering the schedule for securing revised LOI within a period of three months as Petitioner's architect had resigned in the

year 2016 and Petitioner had not even bothered to appoint a new architect till 18 July 2023. Thus, during the period of two long years after passing of order by CEO/SRA on 6 August 2021 Petitioner did not even bother to appoint an architect, who would submit plans for revised LOI under DCPR 2034.

31) By the time, the impugned order was passed by the AGRC on 8 January 2024, period of two years and five months had elapsed and the Petitioner had not taken any steps towards implementation of the subject SRS. It is an admitted position that till passing of the impugned order passed by the AGRC on 8 January 2024, Petitioner had not bothered to secure even revised LOI under DCPR 2034.

32) AGRC has taken into account all the three aspects of forgery in commencement certificate, outsourcing of the project to third party developers and delay post 6 August 2021 in its impugned order dated 8 January 2024 and has recorded the following findings:

49. Further from the record it appears that during the hearing, before this Committee in Application No.47 of 2017, Advocate & Solicitor M/s. Little & Company for Respondent No.2 has submitted a Commencement Certificate alleged to have been issued by the Executive Engineer/SRA. Subsequently, it was revealed that the said Commencement Certificate was a bogus one and not issued by SRA. Therefore, SRA initiated appropriate action against the concerned by filing complaint in Nirmal Nagar Police Station.

Further, Respondent No.2 has submitted explanation before SRA wherein it was stated that the said alleged CC was handed over to them by Architect Shri Surendra Nemivant and they were not aware that the said CC was fraudulently obtained. Therefore, Respondent No.2 lodged a complaint in Kherwadi Police Station against Architect Shri Surendra Nemivant.

50. This case has a longstanding and chequered history of over 3 decades. The very purpose of rehabilitation of slums and improving the lifestyles of the slum dwellers have been caught in a web of rules, ambition and forgery. The order by CEO/SRA in 06.08.2021 does look at all facets of the project since inception, and has given Respondent No.2,

an opportunity to prove his contention of a time bound development in the S.R. Scheme. The Bar chart and progress report to be monitored has been stressed upon in the order.

It is again and again to be noted that it does not matter who the developer is, as long as the implementation of the scheme is taken up in a rightful manner within a time bound framework.

51. We here analyze the progress of the scheme after CEO/SRA order of 06.08.2021. The Bar Chart was submitted to SRA by Respondent No.2 with details of the approvals to be taken and projected timelines for the IOA, Plinth CC, further CC and OCC of 1st Rehab building to be implemented in a time frame of 8 months to 24 months. However, the SRA has recorded in its report, that SOP has not been submitted till November 2022 by the Developer and no further work was carried out on site. Respondent No.2 has not taken any further steps to move ahead in the speedy implementation of the scheme and has not been able to produce any justifications for the delay for the same. Even, after resignation of erstwhile Architect Shri Surendra Nemivant in the year 2016 Respondent No.2 failed to appoint new Architect till 18.07.2023. It is noted that, new developers have stepped into the shoes of Respondent No.2, to implement the subject S.R. Scheme, as is evident from the CEO/SRA's Order dated 06.08.2021. This is totally wrong precedent in a project which is already delayed.

52. Such a lackadaisical approach to the scheme affecting the life of slum dwellers and efforts to raise their standard of living cannot be accepted. It is hence, appropriate and in the interest of the SRA that the Applicant Society be given liberty to select a new Developer, but with utmost caution. SRA Schemes have to taken seriously with the right intent. Completing within the stipulated time is of utmost importance.

33) Despite recording findings by AGRC about not taking steps to implement the subject SRS after 6 August 2021, the Petitioner has not raised any pleadings in the present Petition to chart out the exact steps taken by it after 6 August 2021. The only pleadings in this regard is to be found in ground clause (o) of the Petition, which read thus:

o. The AGRC failed to appreciate that even after the CEO's Order dated 6th August 2021, Respondent No.2 society continued to prevent the Petitioners from implementing the present scheme by challenging every orders passed in favour of the Petitioners, the same is evident from the facts stated hereinabove. The Respondent No.2 society has refused to meet the Petitioners and its office bearers to discuss further course of action to develop the project which is causing hurdles to the Petitioners from implementing the present scheme. The Petitioners have paid rent upto June 2023 and continuously requested the slum society to co-

operate with the Petitioners. However, the ring leaders of the slum society at the instigation of SLK Buildcon continued to instigate the slum dwellers not to vacate the site. This has prevented the smooth implementation of the Scheme by the Petitioners.

34) Thus, there are no pleadings in the present Petition about the exact steps taken by the Petitioner for implementation of the subject SRS after passing of order dated 6 August 2021 by CEO/SRA. Admittedly, no Court had passed any restraint order against the Petitioner for implementation of the project till 8 January 2024 when the AGRC passed the impugned order. The only reason pleaded for inaction post August 2021 is refusal by society and its office bearers to meet the Petitioner. It is not understood as to why meeting with society was necessary once Petitioner was directed by CEO/SRA to complete the project as per the bar chart. There is no justification pleaded as to why new architect was not appointed for over two years after passing of order by CEO/SRA. There is no pleading about the steps taken for procuring permissions under the DCPR 2034. Petitioner was whiling away time in settling scores with his old architect by blaming him for procurement of fraudulent commencement certificate rather than taking any steps for completion of the project. Though Mr. Seervai has orally submitted that Petitioner initiated proceedings under Sections 33 and 38 of the Slum Act for eviction of slum dwellers, who refused to co-operate with implementation of the project, there is no such pleading, much less documentary proof. In any case, the issue of vacating the structures would arise only after revised permissions were procured. Thus Petitioner has not made any attempt to justify the delay after 6 August 2021 in the memo of the petition.

35) So far as the allegation of outsourcing of the project to third party developer is concerned, the only explanation sought to be

pleaded in the present Petition is to be found in ground clause (p) of the Petition as under:

p. The AGRC has come to a completely erroneous finding that a new developer had stepped into the shoes of the old developer especially in view of this Respondent meeting the argument of the Petitioners that there was no new developer. The Petitioners arguments in this regard have not even been considered in the findings. The Petitioners were surprised to receive fresh notice dated 27th October, 2023 for rehearing on 3rd November, 2023 as the matter was already closed for orders by AGRC on 13th January, 2023 to enable Respondent No.2 Society to file a compilation and pass an Order on that basis. The impugned Order is therefore totally capricious and mala fide.

36) The exact arrangement entered into with the new developer has not been explained in any manner in the present Petition. Thus, it is now conclusively proved that the original commencement certificate dated 12 November 2012 is a fabricated document. That Petitioner has entered into some sort of arrangement with third party developer and that the Petitioner has acted in violation of directions issued by the CEO/SRA in order dated 6 August 2021 for implementation of subject SRS as per the Bar Chart. Therefore, though Petitioner cannot be blamed in the respect of delay upto 6 August 2021, its conduct post 6 August 2021 is most certainly blameworthy. After securing an order in its favour on 6 August 2021 by dropping proceedings under Section 13(2) of the Slum Act, the Petitioner had sat idle on the project and had not taken any steps for implementation of the project for two long years. He did not even bother to appoint even an architect. He has admitted that the commencement certificate, on which it was relying, itself is a fabricated document. The issue is whether such developer can be permitted to continue with the project?

37) It must be borne in mind that a developer appointed by the society of slum dwellers is a mere licensee, who is licensed to execute

the project and earn profits therefrom. Unlike the development agreement where rights in the land are vested in favour of the developer, no right gets vested in favour of a developer appointed to implement SRS. This is the reason why provision is made under Section 13 of the Slums Act to terminate appointment of developer, if it is found that the developer delays implementation of the project or has carried out development in violation of conditions under Section 12 of the Slums Act. The ultimate objective behind implementation of SRS is to ensure that the slum is cleared and the slum dwellers are rehabilitated in authorised structures in newly constructed building. Petitioner's appointment was made in the year 1994 i.e. 31 years ago. The slum still continues to subsist on the concerned plot. Though Petitioner is exonerated of allegations of delay upto 6 August 2021, his conduct post that date is most certainly blameworthy. In my view, the findings recorded by the AGRC after taking into consideration the aspects of forgery, outsourcing and delay post 6 August 2021 are factually correct and cannot be termed perverse by any stretch of imagination. The order passed by the AGRC ultimately ensures that the subject SRS is implemented in an expeditious manner. The issue is whether such an order passed by the AGRC can be interfered with by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

38) It is sought to be contended that if allegation of delay post 6 August 2021 was to be raised against the Petitioner, it ought to have been given an opportunity to explain the same. It is further contended that AGRC was exercising merely appellate jurisdiction over the findings recorded by the CEO/SRA and could not have taken into consideration events subsequent to 6 August 2021 while deciding the appeal. True it is that in a given case, AGRC could have either

remanded the proceedings to CEO/SRA or could have granted liberty to the society to move fresh application under Section 13(2) of the Slum Act before CEO/SRA. In the present case, however, AGRC has itself decided to terminate the Petitioner's appointment as developer considering the long delay in implementation of the subject SRS. I am in full agreement with the findings recorded by the AGRC that implementation of the SRS is important over the issue of rights of developer, who is found to be negligent in implementing the same. Therefore, mere alleged erroneous exercise of jurisdiction by AGRC would not be a reason for this Court to exercise extraordinary jurisdiction under Article 227 of the Constitution of India. Petitioner has been given full opportunity of explaining even the circumstances post 6 August 2021 during the course of hearing of the appeal. Petitioner himself has pleaded in the present Petition that fresh notice dated 27 October 2023 was issued by the AGRC for rehearing of the appeal. Petitioner was thus given full opportunity of explaining the delay post 6 August 2021. Reliance in this regard by Mr. Khandeparkar on judgment of this Court in *New Janta SRA CHS Ltd.* (supra) is apposite. This Court after considering the entire case law on the subject had held that there cannot be an abstract proposition that a fair appeal cannot cure unfair trial. This Court held in paragraph 253 and 254 as under:

253. **Adverting to the above clear position in law, it needs to be observed that there cannot be an abstract proposition that a fair appeal cannot cure an unfair trial.** This would certainly depend upon in the facts and circumstances of each case. In the present case, it is quite clear that AGRC has given sufficient opportunity to the parties including the petitioner, to urge all their pleas and assert their contentions, not only in respect to the documents but on all other issues. The AGRC considering these pleas as also matters which were not argued before the CEO SRA, has rendered its findings on all the issues. The petitioner having urged fresh/new pleas before the AGRC, which were not urged before the CEO-SRA cannot blow hot and cold in the same breath.

254. In any case as now the requirement of law would not be mere assertion that there is breach of principles of natural justice but what is required to be satisfied is that the breach of the principles of natural justice has caused prejudice to the complaining party. If the petitioner is not in a position to show any prejudice, the mere argument of breach of the principles of natural justice cannot be sustained. It can certainly be observed that no prejudice was either pleaded or caused to the petitioner as sufficient opportunity was granted to the petitioner by AGRC...

(emphasis added)

39) It is also well settled principle of law that jurisdiction of this Court under Article 227 of the Constitution of India is corrective in nature and in exercise of that jurisdiction, this Court is not expected to correct every error of law or fact. So long as the final outcome is justified, the High Court can refuse to exercise supervisory jurisdiction under Article 227 of the Constitution of India even if it notices a procedural error. In ***Garment Craft V/s. Prakash Chand Goel***⁵ it is held in paragraph 15 as under:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. Jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

40) It is well settled principle of law that when justice is not on the side of Petitioner, this Court can decline to grant relief in exercise

⁵ (2022) 4 SCC 181

of writ jurisdiction. In ***State of Bombay Vs. Morarji Cooverji***⁶ the Division Bench of this Court held in paragraphs 42 and 44 as under:

42. This is, on the contrary, a case where the premises requisitioned for a public purpose are occupied by a Government servant and are sought to be taken possession of by the landlord by asking the Court to throw the Government servant out and restore possession to the landlord when that landlord has never shown his need of those premises by occupying them himself. **Therefore, this is clearly a case where justice is not on the side of the petitioner, it is on the side of the State, and we see no reason why we should grant any relief to the petitioner.**

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44. With respect to the learned Judge, the matter is much more serious than merely the question of this particular vacancy of 1956 not being relevant to the vacancy which is the subject matter of the requisition order. **On a writ petition, as we have already said, the petitioner has not merely to show good faith, but he has not to suppress any facts and has also to show that justice lies on his side.** If the learned Judge had taken these circumstances into consideration and then had come to the conclusion that the discretion should be exercised in favour of the landlord, then undoubtedly we would not have interfered with the order passed by the learned Judge.

(emphasis added)

41) In ***M.P. Mittal Vs. State of Haryana and Ors***⁷ the Hon'ble Supreme Court has held that the discretionary jurisdiction of the High Court can be declined where the Petitioner seeks to secure dishonest advantage to perpetuate an unjust gain. The Apex Court held in paragraph 5 as under:

5. Now there is no dispute that the appellant knowingly and deliberately entered into the Guarantee agreement, and is liable as Guarantor to make payment of the dividend due from Messrs Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at Rs 2,02,166 — in respect of the period ending with the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him,

⁶ 1958 Bom Law Reporter Vol LXI 318

⁷ (1984) 4 SCC 371

and that the appellant made no attempt to discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. **The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.** This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail.

(emphasis added)

42) In *Central Government for Research Ayurvedic Sciences*, (supra) the Apex Court held in paragraphs 49 and 50 as under:-

49. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of the Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

50. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & enquiry projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after selling right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

43) Applying the above settled principles, I am not inclined to exercise extraordinary jurisdiction under Article 227 of the Constitution of India to interfere in the order dated 8 January 2024

passed by the AGRC after having taken into account the three factors viz., (i) forgery in commencement certificate dated 12 November 2012 (ii) arrangement entered into by the Petitioner with third party developer and (iii) no progress made towards implementation of subject SRS after 6 August 2021. The Order passed by the AGRC is thus unexceptionable.

44) The Petition, in my view, is devoid of merits and is liable to be dismissed. Petition is accordingly **dismissed**. There shall be no orders as to costs. All Interim Applications are also disposed of as allowed.

[SANDEEP V. MARNE, J.]

45) After the judgment is pronounced, the learned counsel appearing for Petitioner would pray for continuation of arrangement which was directed by this Court on 18 March 2025 while reserving the judgment. Since meeting of the Society for choosing new Developer was scheduled to be held on 23 March 2025, this Court had directed deferment of the said meeting till pronouncement of the judgment. Mr. Khandeparkar, the learned counsel appearing for Intervenors would submit that fresh meeting of the Society cannot be convened without giving prior notice of two weeks. He would however fairly makes a statement that requisition for convening fresh meeting shall not be submitted by the members of the Society for a period of two weeks. This would sufficiently protect the interest of the Petitioners effectively for a period of four weeks.

[SANDEEP V. MARNE, J.]