



SLUM REHABILITATION AUTHORITY

**BEFORE THE CHIEF EXECUTIVE OFFICER,
SLUM REHABILITATION AUTHORITY**

Shree Ganesh Heramb CHS (Prop.)
CTS No.61, 61/200 to 426 of Mauje Majas,
Taluka Andheri, 1/2, Deep Narayan Tiwari Chawl,
Tilakwadi, Opp. Shivsena Shakha, Meghwadi Naka,
Jogeshwari (East), Mumbai 400 060

V/s

1. M/s. Prime Arcade Pvt. Ltd.,
Jasper House, 1st Floor, Near Air India Building,
Anand Nagar, New Link Road, Oshiwara,
Jogeshwari (West), Mumbai 400 060
2. Sushma A. Deodhar of M/s. Deodhar Associates,
106, Siddhi Vinayak Apartment,
Near Rajpurai Baug Hall, N.P. Thakkar Road,
Vile Parle (East), Mumbai 400 057.



... Respondents

ORDER
(Passed on - 11-10-2018)

Due to in-efficiency and non-performance of the Respondents, this Authority has previously issued notice of hearing dated 14.10.2013 to the Respondents as per law laid down in order dated 07.02.2013, passed by the Hon'ble High Court in Appeal from Order No.1019 of 2010 (Ravi Ashish Land Developers Pvt. Ltd. V/s. Mr. Prakash P. Kamble & Ors). As per the hearing notice dated 14.10.2013, the hearing took place before the then CEO/SRA on 22.10.2013 & on various occasions from time to time giving opportunities to the parties.

In the Writ Petition No. 44 of 2016, the Hon'ble High Court has passed an order dated 27.04.2018 and directed to conclude the said proceeding for change of Developer, after hearing all concerned, within a period of 8 weeks

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from the date of the said order. Pursuant to the said directions the notices dated 17.05.2018 were issued to the Applicant as well as Developer to remain present before this Authority on 04.06.2018.

FACTS IN BRIEF

Occupants/slum dwellers residing on plot of land bearing CTS No.61 (pt), 61 /200 to 426, admeasuring about 7900.15 sq. mtrs. of Village Majas, Jogeshwari (East), Taluka Andheri have formed society in the name of Shree Ganesh Heramb CHS (Prop.), i.e. the Applicant and appointed M/s. Prime Arcade Pvt. Ltd., the Respondent No.1 as their Developer, by resolution.

Pursuant to appointment the Respondent No.1 submitted the proposal to Slum Rehabilitation Authority and the same was accepted on 03.05.2006. The land under subject SR Scheme is owned by MCGM. Thereafter the proposal was forwarded to the Assistant Commissioner, K/East Ward, MCGM to draft Annexure II for the purpose of deciding eligibility of slum dwellers of the subject SR Scheme. Since the eligibility was not decided within reasonable time and the certified Annexure - II was not issued by the Assistant Commissioner, K/East Ward, MCGM, therefore Shree Ganesh CHS (Prop.) and Ors. filed Application No.1116 of 2009 before the Hon'ble High Power Committee seeking directions and orders that the Assistant Commissioner, K/East Ward, MCGM be directed to issue certified Annexure II.

The Hon'ble High Power Committee allowed the said Application and passed order dated 27.11.2009 directing the Assistant Commissioner, K/East Ward, MCGM to issue certified Annexure - II within 8 weeks. The SRA has sent letter dated 18.01.2010 to Respondent No.1 to submit necessary documents before the Assistant Commissioner, K/East Ward, MCGM. However, since the Assistant Commissioner, K/East Ward, MCGM did not comply with the aforesaid order dated 27.11.2009. Thereafter Shree Ganesh CHS (Prop.) and Ors. moved again before the Hon'ble HPC against the Assistant Commissioner, K/East Ward, MCGM for non-compliance of order dated 27.11.2009.



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Thereafter the Hon'ble High Power Committee on 15.02.2014 issued directions against the Assistant Commissioner, K/East Ward, MCGM to submit report about the progress of bio-metric survey regarding subject SR Scheme. The SRA once again sent letter dated 16.02.2015 to the Assistant Commissioner, K/East Ward, MCGM requesting to issue Annexure II in the subject SR Scheme.

Due to inefficiency and non-performance of Respondent No.1, this Authority previously issued notice of hearing dated 14.10.2013. As per the notice dated 14.10.2013, the hearing took place before the then CEO/SRA on 22.10.2013 & on various occasions. During the hearing on 16.09.2016, the then CEO/SRA had directed that meeting of all eligible slum dwellers of the Applicant society shall be held within one month in the presence of representative of Co-operative department of SRA to ascertain as to whether Respondent No.1 has 70% consent of slum dwellers of Applicant society. Accordingly the Authorized Officer of Co-operative Department of SRA has issued letter dated 12.10.2016 for conducting General Body Meeting of eligible slum dwellers of Applicant society.

Meanwhile, the Respondent No.1 filed the Writ Petition No. 44 of 2017 wherein the Hon'ble High Court has passed order dated 10.10.2016 and ad-interim stay of the aforesaid meeting dated 12.10.2016 was granted. Therefore, during hearing on 19.12.2016, it was decided that the next date of hearing before the then CEO/SRA will be given after the order of the Hon'ble High Court in the said Writ Petition No. 44 of 2017. In the aforesaid Writ Petition No. 44 of 2017, the Hon'ble High Court has finally passed an order dated 27.04.2018 and directed to conclude the said proceeding for change of Developer, after hearing all concerned, within a period of 8 weeks from the date of the said order.

Pursuant to the aforesaid direction finally this authority heard the matter on 04.06.2018. After hearing the parties at length, the matter was



closed for order with directions to file written statement within period of 15 days.

HEARING:

Sunil Vetkar (President), Ghanshyam Indup (Secretary), Satyawar Talekar, Satyawar Naik, Satish Sawant, Subhash Apate, Balkrishna Parab (Members) appeared for Applicant society. The Applicant had also submitted their written submission on 18.06.2018. Mohd. Aslam alongwith Adv. Minal Chavan for Respondent No.1, Developer were present. Respondent No.1 filed their written submission on 18.06.2018. Both the parties argued their matter.

ARGUMENTS OF APPLICANT SOCIETY VIZ. SHREE GANESH HERAMB CHS (Prop.).

By the representation dated 01.06.2016, the Applicant stated that, since the year 2005, the Respondent neither conducted any meeting with the members of the Applicant nor started the work of construction, therefore the residents/members of the Applicant terminated the appointment of Respondent No.1 in General Body Meeting dated 15.05.2016.

The Applicant in their written statement dated 18.06.2018 stated that, Respondent No.1 by making false allegation against the MCGM delayed the subject SR Scheme for more than 12 years. The Respondent No.1 obtained the consent of the slum dwellers in the year 2005-2006 through coercion, force and fraudulent representation and used all the wrong means to obtain the consent from the slum dwellers. Three different societies were formed by the various slum dwellers residing on the said property i.e. Shree Ganesh CHS (Prop.) and Heramb CHS (Prop.) and the third society being Shree Mangalmurti CHS (Prop.) which were subsequently merged to form Applicant society

The Applicant stated that they gave their respective consents in favour of the Respondent No.1 for implementation of the subject SR Scheme under DCR 33(10), however no consent was given by the members of the Shree Mangalmurti CHS (Prop.). Respondent No.1 could not get the signatures of



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members of Mangalmurti CHS (Prop.) and included them in the 30% non-consenting members and forcibly included them in the scheme with mala fide intention. Dave Compound Rahivasi Mandal (later on came to be known as Shree Mangalmurti CHS (Prop.) is consisting of 72 members, which is made part of the SR Scheme proposal submitted by the Respondent No.1. The Rahivasi Mandal made a complaints to the then Housing Minister informing that someone has submitted the proposal of the SR Scheme without the consents of the members of the said Mandal (Society) and survey was also conducted by them showing themselves as Government Officers.

The Applicant stated that, the SRA vide letter dated 29.04.2008 directed Respondent No.2 the Architect to pay premium at the rate of 25% of Ready Reckoner Rate within a period of 8 days in respect of the subject SR Scheme but the Respondent No.1 has failed to pay the said mandatory land premium to the SRA.

The Applicant stated that Application No. 1116 of 2009 was filed before the Hon'ble HPC seeking direction against the Competent Authority to comply with the letter dated 18.05.2006 issued by SRA to decide the eligibility of slum dwellers of the subject SR Scheme and issue Annexure II as early as possible. The Hon'ble HPC by its order dated 27.11.2009 directed the Competent Authority and MCGM to carry out survey in respect of issuance of Annexure II as per new policy of the Government expeditiously and issue certified Annexure II within 8 week from the date of order.

The Applicant stated that, SRA vide various letters informed the Respondent No.1 about the deficiencies in the draft Annexure II and further called them to give say on the documents which were not matching with the available records with Competent Authority. The MCGM has framed its policies from time to time in respect of issuance of Annexure II and NOCs for implementation of the SR Scheme on the MCGM owned properties and even to that effect issued various circulars. As per the said circulars it was mandatory that the concern Developer is required to obtain NOC from the



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Estate Department of the MCGM and unless and until the NOC is obtained, no Annexure II will be issued to them. Even then the Respondent No.1 not obtained NOC from the Estate Department of MCGM for issuance of Annexure II.

The Applicant stated that, they have cancelled Development Agreement and Consent Letter granted in favour of Respondent No.1 and all acts, deeds and things in pursuance thereto. That one Shree Chintamani CHS (Prop.) also vide letters informed the then CEO/SRA that they have lost faith and confidence in the Respondent No.1 and therefore the members of Applicant cancelled and terminated all the earlier consent letters, agreement etc. executed in favour of Respondent No.1. The Applicant requested to stop the bio metric survey in view of the letter dated 18.05.2006, 30.03.2010 and order of Hon'ble HPC dated 29.11.2009 and letter dated 19.05.2011 pertaining to the conducting of the bio metric Survey.

The Applicant stated that the MCGM conducted bio metric Survey on 14.10.2011, 15.10.2011, 28.11.2011 and 29.11.2011. Advocate for the Applicant vide letter dated 14.05.2012 requested the CEO/SRA to cancel the proposal for SR Scheme submitted by the Respondent No.1. The SRA also requested the MCGM for issuance of the Annexure II. The matter filed by the Society came before the CEO/SRA for hearing on various occasion, however the same did not take place due to unavailability of the Hon'ble CEO/SRA on those particular dates.

The Applicant stated that vide letter dated 07.02.2015 they informed the Assistant Municipal Commissioner that there is no consent of them for the development of the said property in favour of Respondent No.1 and Developer did not have mandatory consent of 70% of the members. The MCGM filed primary Bio Metric Report dated 14.09.2015 which states that the Bio Metric Survey was conducted on 14.10.2011, 15.10.2011, 28.11.2011 & 29.11.2011 and issued provisional draft Annexure II.



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