



SLUM REHABILITATION AUTHORITY  
BEFORE THE CHIEF EXECUTIVE OFFICER,  
SLUM REHABILITATION AUTHORITY,  
BANDRA (EAST), MUMBAI

PS/PVT/0092/20210921/LOI

1. Mr. Kirit Dhirajlal Doshi & Mrs. Rupa Kirit Doshi  
Flat No.4, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104
2. Mrs. Lata V. Patel,  
Garage, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104
3. Mrs. Bhavanaben Kiritbhar Gala,  
Flat No.5, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104
4. Mrs. Shilpa Harish Sheth  
Flat No.7, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104
5. Mr. Poonamchand Jain & Mrs. Lalita Jain,  
Flat No.6, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104


... Applicants

V/s

1. M/s. Rajputana Residency LLP, (Developer)  
Shop No.1/2/3, Samarth Complex,  
Dayabhai Patel Road, Opp. Municipal Market,  
Goregaon (West), Mumbai - 400 104
2. M/s. Archpro India, (Architect)  
Eco-Space IT, Park Premises,  
Unit No.1, Off. Nagardas Road,  
Mogra Village, Andheri (East),  
Mumbai - 400 069

... Respondents

Sub.: Representation dated 05.09.2022 of Applicants Mr. Kirit Dhirajlal Doshi & Ors.

  
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**ORDER**

(Passed on 08 APR 2024)

These proceedings are initiated pursuant to order of the Hon'ble High Court dated 08.12.2022 in Writ Petition (L) No.36680 of 2022. Through said order the Hon'ble High Court has directed to decide a representation of Applicants dated 05.09.2022 on its own merit and in accordance with law. Pursuant to said directions notices were issued to all the concerned parties.

**BRIEF FACTS:**

The record of engineering department reveals that the Licensed Surveyor has submitted the proposal of Slum Rehabilitation Scheme on land CTS No.555, 555/1 to 2, Village Pahadi, Goregaon (West), Taluka Borivali, Goregaon (West), Mumbai in P/S Ward under regulation 33(11) of the Development Control & Promotion Regulation, 2034. Hereinafter the abovesaid Slum Rehabilitation Scheme is referred to and called as "subject SR Scheme". The land under the subject SR Scheme is owned by The Jawahar Nagar CHS Ltd. and the name of Mr. Kirti Kanther is reflected in PR Card as Lessee. There are 8 tenants (7 Residential + 1 Garage) in building known as Rajputana Residency. The Assistant Engineer (B & F)-II, P/S Ward, MCGM has issued notice dated 04.01.2019 u/s 354 of the Mumbai Municipal Corporation Act, 1888

Thereafter the said building was demolished by MCGM on 31.01.2019. The plot under the subject SR Scheme is vacant site. Mr. Kirti Kanther, leaseholder has formed Respondent No.1 firm i.e. M/s. Rajputana Residency LLP and gave General Power of Attorney for development of the said plot to M/s. Rajputana Residency LLP. The Respondent No.1 had applied for development of the said plot under regulation 33(11) of the Development Control & Promotion Regulation, 2034 and accordingly said proposal is accepted on 19.09.2021. Earlier tenants have granted 100% consent for redevelopment under regulation 33(7)-A of the Development Control & Promotion Regulation, 2034. Now, tenants have objected to the

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proposal for redevelopment under regulation 33(11) of the Development Control & Promotion Regulation, 2034 submitted by Respondent No.1. The Letter of Intent was issued on 29.12.2021 and Intimation of Approval to composite building was issued on 06.04.2022. A condition is incorporated in Letter of Intent that the Respondent No.1 to submit registered consent of tenants before Plinth Commencement Certificate to composite building.

The Applicants filed Writ Petition (L) No.36680 of 2022 in Hon'ble High Court challenging the permissions granted to subject SR Scheme and also prayed for other reliefs against this Authority from Hon'ble Court. The Hon'ble High Court through order dated 08.12.2022 has directed this Authority to decide representation of Applicants dated 05.09.2022 on its own merit and in accordance with law.

Pursuant to said directions, the notices were issued to parties and parties are heard on 05.04.2023 & 18.04.2023. On 18.04.2023, Advocate Bhavin R. Bhatia appeared on behalf of Applicants. The Respondent No.1 remain present with Adv. Abhishek Jain. The representative of Respondent No.2 also remain present. Parties are heard at length and matter closed for order. The parties were directed to submit written submissions within seven days. The Respondent No.1 submitted their written submission dated 27.04.2023 on record.

#### **CASE OF APPLICANTS**

According to Applicants they are tenants of tenanted building situated on land CTS No.555, 555/1 to 2, Village Pahadi, Goregaon (West), Taluka Borivali. The said land is owned by The Jawahar Nagar Co-operative Housing Society Ltd. and The Jawahar Nagar Co-operative Housing Society Ltd. has assigned the said land in favour Mr. Kirti J. Kanther from its erstwhile lessee Smt. Veerawali Pishorilal Sethi through registered Deed of Assignment in the year 2007. Mr. Kirti Kanther was also one of the tenant of said building. It is further version of Applicants that after acquiring the said plot, Mr.

  
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Kirti Kanther never bothered to maintain the said building. Thus the MCGM declared the said building as C-1 category u/s 354 of Mumbai Municipal Corporation Act, 1888 by issuing notice dated 04.01.2019 and the same was demolished by MCGM on 31.01.2019.

It is further alleged by Applicants that after issuance of said notice also they decided to challenge the same, but due to assurance given by Mr. Kirti Kanther to them that he would commence redevelopment of said plot under regulation 33(7)(A) of the Development Control & Promotion Regulation, 2034 they granted their consent for redevelopment in order to submit the same with MCGM. The said individual consents also submitted to MCGM by Mr. Kirti Kanther through letter dated 10.01.2019. According to Applicants stamp paper used for individual consent is purchased in the name of one Mr. A.P. Maru, Advocate and as per Bombay Stamp Act the same be treated as illegal. It is alleged by Applicants that signatures obtained at the bottom of stamp paper are also forged. According to Applicants none of the tenants appeared before Advocate A.P. Maru, Notary as well as Advocate Dubey, so necessary legal action be initiated against them for attesting false and forged documents.

According to Applicants Mr. Kirti Kanther instead of availing permissions from MCGM substituted Planning Authority SRA without their consent. The information obtained under RTI from this Authority reveals that Mr. Kirti Kanther submitted Scheme under Slum Act under Regulation 33(11) of the Development Control & Promotion Regulation, 2034 in the name of Respondent No.1 i.e. M/s. Rajputana Residency LLP having its partners namely Mr. Kirti Kanther, Mr. Pravesh Kanther & Mrs. Saroj Kanther without consent of Applicants. It is further version of Applicants that due to offence committed by Kanther Family & Ors. they approached the concerned Police Station and accordingly FIR dated 08.03.2022 was registered against Kanther Family u/s 420, 468, 471 of Indian Penal Code.

  
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The Applicants further stated that they came to know that The Jawahar Nagar Co-operative Society Ltd. has terminated the lease through letter dated 05.04.2022 due to irregularities on the part of Mr. Kirti Kanther in said redevelopment. So, the Applicants submitted representation dated 05.09.2022 in respect of various irregularities committed by Respondent No.1. Since January, 2019 the Applicants remained roofless and not receiving any rent. Further Applicants prayed to revoke Letter of Intent dated 29.12.2021.

**ARGUMENT OF RESPONDENT NO.1**

According to Respondent No.1 they have submitted the proposal of subject SR Scheme to this Authority. The land under the subject SR Scheme is owned by The Jawahar Nagar CHS Ltd. and the name of Mr. Kirti Kanther is reflected in PR Card as Lessee. There are total 8 tenants in building known as Rajputana Residency. The MCGM has issued notice dated 04.01.2019 u/s 354 of Mumbai Municipal Corporation Act 1888. Thereafter the said building was demolished by MCGM on 31.01.2019. Mr. Kirti Kanther, leaseholder has formed Respondent No.1 firm i.e. M/s. Rajputana Residency LLP and given General Power of Attorney for development of the said plot to M/s. Rajputana Residency LLP. They had applied for development of the said plot under regulation 33(11) of the Development Control & Promotion Regulation, 2034 and accordingly the said proposal is accepted on 19.09.2021. The Letter of Intent and Intimation of Approval is also issued to subject SR Scheme.

According to Respondent No.1 they have also filed various litigations on different grounds against the tenants in Small Causes Court and same is pending. The said building consists 7 residential and 1 garage premises. Out of which 1 residential room was occupied by owner/landlord and other 6 residential rooms were occupied by tenants. Out of 6 residential tenants, eviction Suit against 3 tenants in Small Causes Court is pending. It is further version of Respondent No.1 that they have executed registered Agreements of Permanent Alternate Accommodation with 5 tenants.

  
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The Respondent No.1 is ready and willing to execute Agreement for permanent alternate accommodation with balance 3 tenants subject to final outcome of proceedings pending before Small Causes Court.

So the Respondent No.1 prayed this Authority to issue Commencement Certificate in the light of the judgements of Hon'ble High Court in the matter of Mr. Raj Ahuja & Anr. V/s MCGM & Anr. as well as G.M. Heights LLP V/s MCGM. In the matter of Mr. Raj Ahuja & Anr. V/s MCGM & Anr. matter, the Hon'ble Court has directed the MCGM to issue Commencement Certificate in favour of Petitioner (developer) without insisting for permanent alternate accommodation Agreement in respect of 100% consents. According to Respondent No.1 the said matter is similar to their matter as various litigations in respect of tenanted premises are pending before Small Causes Court and permanent alternate accommodation Agreement in respect to such tenants can only be executed subject to final outcome of pending litigations.

The Respondent No.1 further submitted that in the matter of G.M. Heights LLP V/s MCGM matter, the Hon'ble High Court has observed that tenants cannot take position to foist, dominate and/or dictate to owner, nature and course of redevelopment owner desires to have. In para 19 of said order it is further observed by the Hon'ble Court that right of tenants is limited to alternate accommodation of an equivalent area occupied by them before building was demolished.

#### **ISSUES AND DISCUSSION**

From rival contentions the issue that arises for determination of this Authority is as to whether the permissions granted to subject SR Scheme of Respondent No.1 needs to be revoked and whether the representation is maintainable.

It is not in dispute that existing building known as Rajputana Residency is declared as dilapidated and the same was demolished by MCGM on 31.01.2019. It is also not in dispute that all the tenants have granted 100% consent to Respondent No.1 for redevelopment of

said building under regulation 33(7) of the Development Control & Promotion Regulation, 2034.

Now, this Authority proceeds further to discuss in respect of several issues raised by Applicants in their representation. The first contention of Applicants is that though they have given consent for redevelopment under regulation 33(7) of the Development Control & Promotion Regulation, 2034 for MCGM being Planning Authority, the Respondent No.1 instead of availing permissions from MCGM substituted Planning Authority SRA without their consent.

As against this it is submitted by Respondent No.1 that the said building consists 7 residential and 1 garage premises, out of which 1 residential room was occupied by owner/landlord and other 6 residential rooms were occupied by tenants. The Agreement for permanent alternate accommodation with 5 tenants are executed by them. The Respondent No.1 is ready and willing to execute Agreement for permanent alternate accommodation with balance 3 tenants subject to final outcome of proceedings pending before Small Causes Court.

The Applicants in their representation have contended that stamp paper used for individual consent is purchased in the name of one Mr. A.P. Maru, Advocate and as per Bombay Stamp Act the same be treated as illegal. It is further alleged by Applicants that signatures obtained at the bottom of stamp paper are also forged and none of the tenants appeared before Advocate A.P. Maru, Notary as well as Advocate Dubey, so necessary legal action be initiated against them for attesting false and forged documents.

In this regard it is pertinent to note that this Authority has no role whatsoever in appointment of Developer in Slum Rehabilitation Schemes under Regulation 33(11) of the Development Control & Promotion Regulation, 2034. The Respondent No.1 being the landlord has submitted the proposal of subject Slum Rehabilitation Scheme and the permissions were granted time to time in accordance with the prevailing Development Control Regulations.

  
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Although this Authority has also incorporated a condition in Letter of Intent that the Respondent No.1 to submit registered consent of the tenants before Plinth Commencement Certificate to composite building. So far as the alleged fraud and manipulation of stamp paper is concern, the Applicants may approach to appropriate Authority in this regard. Criminal law will take its own course. Due to registration of offence the redevelopment cannot be stopped.

Now, this Authority proceed further to deal with another contention of Applicants. It is contended by Applicants that due to offence committed by Kanther Family & Ors. they approached the concerned Police Station and accordingly FIR dated 08.03.2022 is registered against Kanther Family u/s 420, 468, 471 of Indian Penal Code. So far as the issue of criminal proceedings initiated against the Respondent No.1 is concern the same will take its own course and this Authority is not prevented from issuing any permissions in the light of criminal proceedings.

The another contention of Applicants is that the Applicants learnt that The Jawahar Nagar Co-operative Society Ltd. has terminated the lease through letter dated 05.04.2022 due to irregularities on the part of Mr. Kirti Kanther in said redevelopment. It is pertinent to note that the circular no.167 of Slum Rehabilitation Authority states that once Scheme is duly accepted and approvals are granted the same shall not be stayed on account of complaint in respect of title etc. Unless there is injunction or stay of Competent Court. In the absence of any order, injunction or stay of Hon'ble Court it will not be just and proper to issue stop work notice in respect of said land.

Moreover the copy of Lease Deed dated 24.10.2007 on record reveals that the said land CTS No.555, 555/1 to 2, admeasuring 700 sq. yards equivalent to 585 sq. mtrs. is owned by The Jawahar Nagar Co-operative Housing Society Ltd. The land owner society through registered Lease dated 25.11.1958 has granted Leasehold rights of said land for the term of 998 years to One Smt. Veeravai Pishorilal



Sethi and thereafter Smt. Veeravali Pishorilal Sethi with prior permission of land owner society dated 22.09.2007 has assigned has assigned Leasehold rights in favour of Mr. Kirti J. Kanther through registered Indenture dated 24.10.2007. In view of these facts, this Authority do not find substance in contention of Applicants regarding termination of leasehold rights. It is pertinent to note that leasehold rights granted through registered document cannot be terminated by a simple letter.

There is copy of letter dated 23.10.2023 submitted by Respondent No.1 on record. The Respondent No.1 has relied upon two judgement of Hon'ble High Court. In first judgement, the observation of Hon'ble High Court in order dated 20.03.2023 in Writ Petition No.5130 of 2022 Raj M. Ahuja & Anr. V/s MCGM & Anr. alongwith Writ Petition (L) No.8486 of 2022 are relevant. In said matter the question arise for determination is as to whether the MCGM would be justified in imposing a condition that the owner/landlord who intends to undertake redevelopment of demolished building is required to obtain 100% consent of all tenants/occupants by submitting permanent alternate accommodation Agreement executed with developer as condition for issuance of a Commencement Certificate. In said Writ Petitions the Hon'ble Court while passing order has directed the MCGM to process the Commencement Certificate in favour of Petitioners without insisting for permanent alternate accommodation Agreements in respect of 100% of tenants. The Hon'ble Court has also observed that requirement of 100% consent of tenants entering into Permanent Alternate Accommodation Agreement with landlord/owner would not be applicable in respect of such any proposal when the DCPR 2034 itself mandates consent of 51% to 70% respectively of the occupants. The observation of Hon'ble High Court of said order are relevant and same are reproduced as it is for convenience;

***"27. For the sake of completeness, we may also observe that the MCGM may receive proposals under regulation 33(5), 33(7), 33(9) and 33(10) of the DCPR-2034. On such***

  
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proposals being received by the MCGM, there is nothing to suggest that the MCGM would not apply clause 1.15 of the 2018 Guidelines. In our opinion, the position in regard to such proposals also would not be different and hence, the requirement of 100% consent of tenants entering into PAAA with the landlord/owner would not be applicable in respect of such any proposal when the DCPR 2034 itself mandates consent of 51% to 70% respectively of the occupants/tenants.


30. In the light of the above discussion, in our opinion, Writ Petition No.5130 of 2022 is required to be allowed in the following terms:

(i) It is declared that Clause 1.15 of the 2018 Guidelines "Guidelines issued by the MCGM for declaring private and municipal buildings as 'C1' category (Dangerous, Unsafe)" do not mandate consent/agreement to be obtained from all (100%) tenants/ occupants, as consent of 51% to 70% of the occupants/tenants of the building, as applicable to the proposals made under the relevant regulations DCPR-2034 as noted above, shall amount to sufficient compliance for processing development/ redevelopment proposal, for a commencement certificate to be issued, including in respect of buildings covered under Section 354 of the MMC Act.

31. In so far as the Writ Petition (I) No.8486 of 2022 is concerned, the petition shall stand allowed in terms of the orders passed by us in Writ Petition No.5130 of 2022. The MCGM is accordingly directed to process the commencement certificate in favour of the petitioners without insisting for permanent alternate accommodation agreements in respect of 100% of tenants.

According to Respondent No.1, the observation of Hon'ble High Court in Writ Petition No.5302 of 2022, G M Heights LLP V/s. MCGM & Ors. are also relevant. In said matter the Hon'ble High Court has observed that tenants cannot dictate to owner as to the nature and course of redevelopment. In para 19 the Hon'ble Court also observed that only rights of tenants would be provided an alternate accommodation of an equivalent area occupied by them before building was demolished. The operative part of Hon'ble High Court order is as under;

**"(a) We direct the Municipal Corporation to issue Commencement Certificate to the Petitioner without insisting for compliance of condition nos.7 & 8 of the IOD for want of the Petitioner executing an agreement for an alternate accommodation, as per the decision of this Court in Raj M. Ahuja (supra) with Respondent No.3"**

  
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However recently the Hon'ble High Court passed an order dated 26.09.2023 in Writ Petition No.605 of 2023, Shree Ram Builders V/s. MCGM & Ors. alongwith two other Writ Petitions. The relevant observations of Hon'ble High Court in order dated 26.09.2023 are as under;

***"18. It may be observed that Respondent No.3 in his capacity as a tenant has limited rights. Respondent No.3 within the ambit of such rights cannot dictate the petitioner-owner, as to the nature of redevelopment. If such contention, as urged on behalf of the Respondent no.3, is accepted, it would amount to recognizing rights which are certainly not conferred by law on the tenants. Recognizing such rights would infact take away and/or obliterate the legal rights of the owners of property to undertake redevelopment in a manner as may be permissible in law, including under the DCPR 2034.***

***19. Thus, tenants cannot take a position to foist, dominate and/or dictate to the owner the nature and the course of redevelopment the owner desires to have. The rights of the owners of the property to undertake redevelopment of the manner and type they intend, cannot be taken away by the tenants, minority or majority. Tenancy rights cannot be stretched to such an extent that the course of redevelopment can be taken over by the tenants, so as to take away the basic corporeal rights of the owner of the property, to undertake redevelopment of the owners choice. The only rights the tenants have, would be to be provided an alternate accommodation of an equivalent area occupied by them before the building was demolished."***

There is copy of report of Executive Engineer/SRA dated 24.11.2023 on record. From said report it appears that the developer has agreed to provide excess area under Regulation 33(11) as compared to Regulation 33(7)A of DCPR, 2034 to all tenants. The report reveals that in the event of redevelopment under Regulation 33(7)A of DCPR, 2034 the tenants were getting maximum 5% additional area, whereas in redevelopment under regulation 33(11) the tenants are getting excess area of 29% to 34%. As there are 8 tenants and developer has submitted registered Agreements of 5 tenants, the consent is more than 51%. Considering the observations of Hon'ble High Court in aforesaid judgements, this Authority is of view that the right of owner to redevelop the property cannot be denied.

  
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On careful consideration of all these facts and circumstances this Authority do not find merit in representation of Applicants. The representation is liable to be rejected. Accordingly this Authority proceed to pass following order.

**ORDER**

The representation of Applicants dated 05.09.2022 is hereby rejected.

Date: 28 APR 2024

Place: Mumbai

  
Chief Executive Officer  
Slum Rehabilitation Authority

No.: SRA/CEO/HC Dir./Rajputana/28/2024

Date: 28 APR 2024

Copy to:

1. Mr. Kirit Dhirajlal Doshi & Mrs. Rupa Kirit Doshi  
Flat No.4, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104  
Also having address at D-8, 2<sup>nd</sup> Floor,  
Building No.3, Saibaba Enclave Tower,  
CD Baug, Goregaon (West), Mumbai - 400 104
2. Mrs. Lata V. Patel,  
Garage, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104  
Also having address at 234/4, Jawahar Nagar,  
Road No.15, Goregaon (West), Mumbai - 400 104
3. Mrs. Bhavanaben Kiritbhai Gala,  
Flat No.5, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104  
Also having address at 122/901, Regent Palace,  
Road No.10, Jawahar Nagar,  
Goregaon (West), Mumbai - 400 104
4. Mrs. Shilpa Harish Sheth  
Flat No.7, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104  
Also having address at Vijay Building,  
Flat No.104, L.TX Road No.2, Tilak Nagar,  
Goregaon (West), Mumbai - 400 104

5. Mr. Poonamchand Jain & Mrs. Lalita Jain,  
Flat No.6, Plot No.221,  
Jawahar Nagar, Road No.11,  
Goregaon (West), Mumbai - 400 104  
Also having address at Anjali Co-Op Society Ltd.,  
Plot No.278, Flat No.13, 3<sup>rd</sup> Floor, Road No.3,  
Jawahar Nagar, Goregaon (West), Mumbai - 400 104
6. M/s. Rajputana Residency LLP, (Developer)  
Shop No.1/2/3, Samarth Complex,  
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7. M/s. Archpro India, (Architect)  
Eco-Space IT, Park Premises,  
Unit No.1. Off. Nagardas Road,  
Mogra Village, Andheri (East), Mumbai - 400 069
8. Deputy Collector (Special Cell)/SRA
9. Dy. Chief Engineer/SRA
10. Executive Engineer P-S Ward/SRA
11. Financial Controller/SRA
12. Joint Registrar C.S. (Eastern & Western Suburbs)/SRA
- ✓ 13. Information Technology Officer/SRA
14. Chief Legal Consultant/SRA