



SLUM REHABILITATION AUTHORITY

BEFORE THE CHIEF EXECUTIVE OFFICER,
SLUM REHABILITATION AUTHORITY
BANDRA, MUMBAI

Bhandup Vakratunda SRA CHS. Ltd.
Nec Bank of Baroda, J. M. Road,
Bhandup (West), Mumbai - 400 078

... Applicant

Vs

M/s Ideal Builders and Developers
F-21, Dreams Mall LBS Road,
Bhandup (West), Mumbai - 400 078

... Respondent

ORDER

(Passed on 09.07.2019)

The present proceeding is initiated by this Authority pursuant to the directions of Hon'ble High Court vide Order dated 01.04.2019 in Writ Petition No. 929/2019 filed by Applicant Society in respect of S.R. Scheme on plot of land bearing CTS No. 454 of village Bhandup, Tal- Kuria against the Respondent Developer i.e. M/s. Ideal Builders and developers.

FAC TS IN BRIEF

The Slum dwellers residing on plot of land bearing CTS No. 454 of village Bhandup, Tal. Kuria admeasuring area about 1625 sq. mtrs., have formed, Bhandup Vakratunda SRA CHS. The plot of land under the said scheme is declared as Slum and the same is owned by the private owners. The Applicant Society appointed Respondent M/s. Ideal Builders and Developer as their developer for implementation of subject S.R. scheme and executed development agreement, Power of Attorney

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etc. with Respondent Developer for implementation of S.R. scheme under regulations 33(10) read with Appendix IV of DCR 1991.

The Additional Collector(E/R)/SRA and Competent Authority issued Certified Annexure-II on 26.09.2005, for total 52 Nos. of slum dwellers of out which 33 slum dwellers are held eligible. The Respondent Developer submitted proposal to SRA on 07.01.2007. On the basis of Certified Annexure-II SRA issued LOI on 06.08.2009 and revised LOI on 13.10.2011 and 22.02.2012. IOA for composite building consisting of Ground + 7th Upper floors issued on 04.10.2011.

The Applicant Society filed complaint to SRA and alleged that Respondent Developer has failed to pay rent to the eligible slum dwellers who had vacated their structure since 2013. The Deputy Collector (ES)/SRA vide letter dated 07.11.2015 forwarded the same complaint to Joint registrar/SRA for necessary action. Pursuant to the said complaint hearing was fixed before Joint Registrar/SRA. During the said hearing the Applicant Society pointed out that respondent Developer did not pay rent to eligible Slum dwellers since year 2013.

However, the Respondent Developer alleged that he has opened a separate Bank Account in union bank of India and he has deposited amount of Rs.35,02,000/- for the month from October, 2016 to September 2017 i.e. for period of 11 months. Since the amount deposited by the Respondent Developer was not as per the circular issued by SRA. A show-cause notice under Section 13 (2) of Maharashtra Slum Areas (I.C. & R.) Act, 1971 was issued to Respondent Developer on 16.08. 2016 on the ground of delay and non-performance and hearing was fixed before the Authority. However, the then CEO/ SRA after hearing concerned parties, passed an order on 02.06.2017 which reads as under;

"1) All the members of Bhandup Vakratunda SRA CHS should decide their Developer amicably within a period of three weeks in the interest of their own development.

2) If the Society fails to do so, then the Slum Rehabilitation Authority will itself play the role as competent Developer. Accordingly SRA will complete the project in the interest of innocent slum dwellers, those have become victims of two rival groups."

Thereafter Applicant Society filed Writ Petition No. 1178/2018 before Hon'ble High Court in which Order was passed by Hon'ble High Court of Bombay on 12.10.2018 to hold a meeting for appointment of new developer in accordance with the law within a period of four weeks from the date of Order. The Joint Registrar, SRA thereafter conducted special general body meeting on 14.11.2018 to appoint new developer in accordance with the circular No. 169 dated 31.12.2015. Accordingly "M/s. Iqra Builders & Developers" was appointed as new developer in General Body Meeting on 14.11.2018 in the presence of Joint Registrar, SRA

Thereafter Respondent Developer approached to the Apex Grievance Redressal Committee against the Applicant Society and filed an appeal being Appeal No. 246 of 2018.

A Writ Petition No.929/2019 was filed against "M/s. Iqra Builders & Developers" in which the order was passed on 01.04.2019 directing the Authority to complete the proceedings as prayed for in prayer therein within period of 8 weeks from the date of the said order is uploaded and this proceeding.

Hearing:

Accordingly hearing was fixed and notices were issued to concerned parties. Respondent Developer was present. Adv. Sahil Soyed on behalf of Applicant Society was present. On 5.05.2019 after hearing concerned parties matter stood closed for order.

ARGUMENTS OF APPLICANT SOCIETY BHANDUP VAKRATUNDA SRA C HS LTD.:

It is the case of Applicant Society that, in the year 2004, the Applicant Society decided to develop the subject property under the provision of 33(10) of the Development Control Rules, 1991. Respondent Developer i.e. M/s. Ideal Builders and Developers through its partner Mr. Iqbal A. Kothivale approached them and represented that they are reputed builders and developers and have developed several projects in the Mumbai City and he has the financial wherewithal to undertake implementation of Slum Scheme on the said Property and will rehabilitate all their members within period of 18 months.

It is the case of Applicant Society that, the Applicant Society verily believed on the representation and assurances given by Respondent Developer and agreed to appoint him as the developer for the implementation of the Slum Scheme on the said Property.

It is the case of Applicant Society that, the Applicant Society through its then committee members entered in to Development Agreement dated 23.12.2004 with Respondent Developer and a Power of Attorney was executed on 24.12.2004 in favor of Mr. Iqbal A. Kothivale.

It is the case of Applicant Society that, the competent Authority issued Annexure-II on 04.06.2005 in favor of the Applicant Society for the implementation of the Slum Scheme on the said Property. It is alleged that Respondent Developer forged and fabricated the said Annexure-II by making changes in the certified Annexure-II by hand and other modes.

It is the case of Applicant Society that, the Respondent Developer subsequently entered in to Development Agreement on 28.12.2005 with M/s. Makdum and Makdum Construction Company for the redevelopment of the said property. It is further alleged that the Respondent Developer is in the habit of making false and fabricated

documents for the implementation of slum scheme on the said property. It is further alleged that Respondent Developer also forged signature of dead person namely Mr. Shesh Narayan Pathak in the undertaking submitted to the slum Rehabilitation Authority dated 19.05.2011.

It is the case of Applicant Society that, the Authority issued LOI dated 06.08.2009 in favor of Respondent Developer for the implementation of slum scheme on the said property.

It is the case of Applicant Society that, Respondent Developer along with Applicant Society filed Suit No. 1021 of 2010 in the Hon'ble City Civil Court challenging the termination of Development Agreement dated 28.05.2005 and the revocation of NOC in the favor of Respondent Developer for the implementation of slum scheme on the said property by M/s. Makdum and Makdum Construction Company being the purported owner of the said property. The notice of motion preferred in the said suit for interim relief was dismissed/ rejected by the Hon'ble City Civil Court by its order/judgment dated 22.10.2010 by holding that the balance of convenience does not lie in favor of Respondent and the relief claimed is time barred.

It is the case of Applicant Society that, the Assistant Registrar, Co-operative Society SRA issued Registration Certificate in the favor of Respondent on 23.05.2011 under the provision of Maharashtra Co-op. Society Act, 1960. Further the Assistant Registrar, Co-operative Society SRA removed their erstwhile committee members and appointed new committee members, who were elected by Respondent's members in its special general body meeting conducted under supervision of Assistant Registrar, Co-op. Society SRA on 30.07.2011.

It is the case of Applicant Society that, SRA issued IOA dated 04.10.2011 for composite building comprising of rehab and sale building in favor of Respondent Developer for the implementation of slum

scheme on the said property. Respondent Developer illegally and without following due process of law evicted majority of their members from respective structures and demolished the same.

It is the case of Applicant Society that, Respondent Developer initially paid the rent at the rate of Rs.6,000/- per month to their members by in lieu of transit accommodation. Respondent Developer has not paid rent to their members since November, 2013.

It is the case of Applicant Society that, Respondent Developer without obtaining commencement certificate, started illegal construction on the said Property on or about 03.10.2014 and thereby violated the conditions of the LOI and IOA thereby imperiled and jeopardized the implementation of Slum Scheme on the said property.

It is the case of Applicant Society that, SRA by its letter dated 08.09.2015 intimated the Respondent About suspension of its LOI. The Secretary, SRA also prepared a report dated 28.01.2016 again indicating delay in the implementation of Slum Scheme on the said property attributed to Respondent.

It is the case of Applicant Society that, the Assistant Registrar, SRA by its report dated 08.07.2016 again indicated that Respondent is not making payment of rent in lieu of transit accommodation to their members and is also not complied with the circulars issued by SRA.

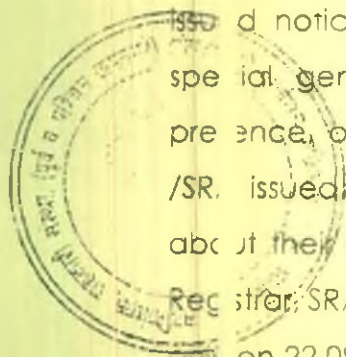
It is the case of Applicant Society that, SRA issued show cause notice on 16.08.2016 U/s. 13(2) of Slum Act. Further, applicant society vide its letter dated 05.06.2017 and 13.06.2017 along with the copy of agenda requested Joint Registrar, SRA to supervise its special general body meeting to be held on 21.06.2017.

It is the case of Applicant Society that, in their special general body meeting held on 21.06.2017, out of total 32 members, 27 members

attended the meeting, 21 members voted in favor of M/s. Iqra builders and developers as it new developer for further implementation of said scheme on the said property.

It is the case of Applicant Society that, the joint Registrar, SRA prepared a report dated 12.07.2017 pursuant to the said order and resolution passed in special general body meeting held on 21.06.2017 evincing that the same was not held in consonance with the said circular. Joint registrar, SRA issued notice dated 27.07.2017 to applicant society and new developer to remain present in the hearing to be held on 03.08.2017 at 12.000 Noon before the Authority. The joint registrar, SRA issued another notice dated 31.07.2017 to new developer intimating that notice dated 27.07.2017 is rescinded and new developer may not remain present for the same. The Authority held on 03.08.2017 was of the opinion that special general body meeting to appoint new developer should be held under the supervision of the Joint registrar, SRA in consonance with said circular. The Authority directed Joint registrar, SRA to hold their special general body meeting under supervision to appoint new developer.

It is the case of Applicant Society that, the Joint Registrar, SRA issued notice dated 01.09.2017 appointing officer to supervise their special general body meeting to appoint new developer in his presence, on 21.09.2017 at 5pm. Authorized officer of Joint Registrar /SR, issued public notice dated 04.09.2017 intimating public at large about their special general body meeting. Authorized officer of Joint Registrar, SRA issued another letter dated 20.09.2017 which was received on 22.09.2017 cancelling their special general body meeting to be held on 21.09.2017 and postponed the same until further notice. Overwhelming majority of their members were present on 21.09.2017 but



no meeting was held under supervision of joint registrar took place as authorized officer of joint registrar, SRA did not remain present.

It is the case of Applicant Society that, the Applicant society through its officer bearers several time approached the authority and the Joint Registrar, SRA to schedule fresh special general body meeting to appoint new developer but to no avail. The applicant society through its Advocates letter dated 28.12.2017 and 16.01.2018 called upon the Joint Registrar, SRA to schedule a fresh special General Body Meeting to appoint a developer in consonance with the said circular.

It is the case of Applicant Society that, the applicant Society filed writ Petition before Hon'ble Bombay High Court, seeking writ of Mandamus against the Authority and the Joint registrar SRA, to schedule a fresh special General Body Meeting to appoint a developer in consonance with the said circular.

It is the case of the Applicant Society that, Respondent Filed chamber summons in the said writ petition, which was declined by Hon'ble Bombay High Court by its order dated 29.08.2018. The aforesaid Writ Petition was allowed by the Hon'ble Bombay High Court on 12.10.2018. The Joint Registrar, SRA thereafter conducted Special General Body Meeting on 14.11.2018 to appoint new developer in consonance with the said circular and said order. Accordingly "M/s. Iqra Builders & Developers" was appointed as new developer in General Body Meeting on 14.11.2018 under the supervision of Joint Registrar, SRA in accordance with the circular No. 169 dated 31.12.2015.

It is the case of the Applicant Society that, the Respondent Developer stopped paying rent in lieu of transit accommodation to their members since the year 2013 and he is guilty of inordinate delay in the implementation of Slum Rehabilitation Scheme on the said property.

The members are living elsewhere since 2012 waiting for their respective permanent alternate accommodation.

ARGUMENTS OF RESPONDENT DEVELOPER Viz. M/S. IDEAL BUILDERS & DEVELOPER:

As per the letters dated 31.07.2017 and 15.09.2017 it is the case of the Respondent that, in the operative part of order dated 02.06.2017 passed by SRA, it has been nowhere stated that respondent i.e. M/s. Ideal builders and developers had been terminated from the said S.R. Scheme and CEO/SRA has nowhere asked the errant slum society to appoint "New developer". The Order dated 02.06.2017 clearly asked the members of the Applicant society to get together and 'decide' about the developer, which means that they have decided on supporting the existing developer or SRA may take over the said S.R. Scheme.

It is the case of the Respondent that, in the SRA report submitted to CEO/SRA in month of July 2017 the authority mention that the appointment of new developer by the errant slum society is not valid due to representative of cooperative department not being present for the alleged general body meeting held by the errant society. Further the appointment of the proxy developer is contrary to the due process of law and does not even have consent of 70% eligible Slum dwellers and there is no video shooting of the said meeting available thereby making the entire process suspicious and contrary to the rules of Maharashtra Co-operative Society Act 1960.

It is the case of the Respondent that, as per the condition No.21 of IOA dated 06.08.2009 Respondent developer had to submit 70% consent of the eligible slum dwellers and the Respondent Immediately after issue of IOA dated 04.10.2011 had submitted 100% consent of the eligible Slum dwellers with registered notary. Hence, the question of Respondent submitting or procuring or begging the slum dwellers to

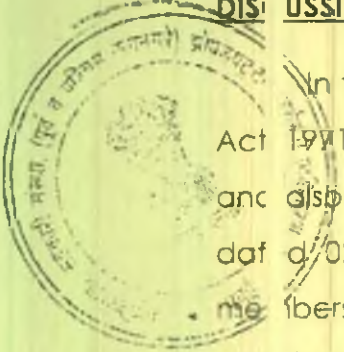
support him again does not arise at all. Keeping in the mind the said bare facts and events Respondent requested to withdraw the letter with immediate effect, failing which Respondent shall take up said matter with the appropriate forum as letter dated 27.07.2017 seems to have been issued in nexus with the errant slum society office bearer, the proxy developer and a MLA (Shri, Sadar Tara Singh) who keeps on writing letters and making phone calls to SRA stating false and misleading facts and seems to have taken keen interest in S.R. Scheme which seems strain as the said MLA is not even the local MLA. The said MLA and another person claiming to be the P.A. to the said MLA has tried in the past and is still trying to influence the CEO/SRA to support the proxy developer thereby not allowing the CEO, SRA and other officers of SRA to take any decision based on merit which is unconstitutional and unfair. It is further alleged, the person claiming to be a P.A. of said MLA is close aide to a person who is the prime accused and who was arrested in May 2011 in a bribery scandal in which the then Revenue Minister was indirectly accused and finally in June 2014 the said minister had to resign this shows the extend of political interference in SRA's day-to-day matters.

It is the case of the Respondent that, Respondent Submitted by letter dated 15.09.2017 nowhere in the operative order dated 02.06.2017 the onus of the delay in the S.R. Scheme is put on respondent developer, in fact the CEO, SRA has said that there are two groups in the slum dwellers, and they should amicably decide their support to the developer which means existing developer. Respondent Stated that he has submitted consent/agreements (individual and common) on three separate occasion to SRA as and when demanded. Whereas there is no provision in Maharashtra Slum Areas (I.C & R) Act, 1971 to repeatedly submit the consent of the Slum dwellers to the SRA and there are several judgments of High Power Committee (HPC) that repeated submission of

comments is not required. The joint registrar, SRA does not have power to terminate any developer from S.R. Scheme without clear cut written approval of CEO, SRA.

It is the case of the Respondent that in the reports made by the joint registrar, SRA it is mentioned that he is proposing certain actions based upon the letter of one senior MLA of the majority ruling party of the state. This means he is not taking decision on merit and are listening to MLA which shows that the judgment of the matter may be prejudice and against the principle of Natural Justice. It is pointed out that there are several incriminating judgments of Hon'ble High Court regarding decision based upon political interface instead of merits. Most importantly the CEO/SRA conducted a hearing in present of joint registrar with applicant society members on 03.08.2017 and thereafter the file after going through the legal department is lying with the CEO, SRA since 31.08.2017 for final instructions and/or order. Therefore as per routine protocol the matter is sub-judice (means under judicial consideration and hence prohibited from discretion in public) and there should be no new movement in the matters till the file is cleared by the CEO, SRA.

DISCUSSIONS AND CONCLUSION:



In this case action u/s. 13(2) of Maharashtra Slum Areas (I. C. & R) Act 1971, was already initiated on the grounds of non-payment of rent and also inordinate delay. After considering the rival contentions order dated 02.06.2017 was passed by the then CEO, SRA. By this order members of the Applicant Society were directed to decide their Developer within the period of 3 weeks. The decision was required to be taken by the society in the interest of their own Development. So far as this order is concerned the society has taken steps for appointment of new Developer. On the other hand the Respondent Developer is

referring the order to draw conclusion that, the appointment has not been terminated. The order is very clear as it states that, society members together should decide about their Developer. This means that, they were given option to continue with Respondent Developer or to appoint the new Developer of their choice. This order cannot be read to mean that Application for termination of appointment of the Respondent Developer has been rejected. In the circumstances the option chosen by the Society to elect new Developer will have to be taken into consideration.

The Developers contention as to he was having more than 70% of consent and he cannot be asked to take consent repeatedly have no bearing as the appointment is terminated by the Society in pursuance of the order dated 02.06.2017.

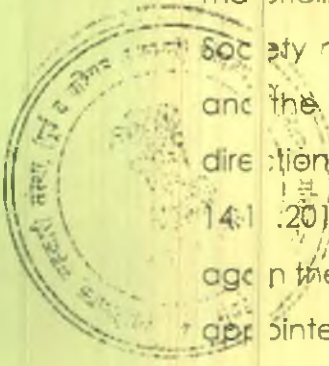
The Society has placed on record certain facts stating as to how there is total inaction on part of Respondent Developer. It is argued by the Society that by the Development Agreement the Respondent Developer had promised to complete the Rehabilitation within 18 months from the date of agreement signed in 2004. However, till date nothing has taken place.

The LOI was issued on 06.08.2009 and the same was revised on 03.10.2011 and 22.02.2012 even IOA was issued on 04.10.2011 for composite building comprising of ground + 7 floors. The slum dwellers vacated their structures and those were demolished in the year 2013. Even thereafter the rent was not paid to the slum dwellers. For arrears of rent proceeding had taken before the Joint Registrar/SRA and directions were not complied. Therefore proceedings under section 1 (2) were initiated wherein above said order dated 02.07.2017 was passed.

The Developer has not pointed out that, all the arrears of the rent have been paid to the slum dwellers and on the other hand its submission doesn't referred to this issue.

One of the submission of the Developer is that, in order dated 02.06.2017 it had not been observed that the onus of delay is on the Respondent Developer. The facts has to inaction and not completing the subject S. R. Scheme before passing of order dated 02.06.2017 as well as after the order are clear enough and therefore it cannot be said that the Developer is not responsible for delay.

After the order dated 02.06.2017 the Society had made attempt for appointment of new Developer. They had submitted their letters dated 05.06.2017 and 13.06.2017. Those letters were for holding General Body Meeting for appointment of new Developer on 21.06.2017. They have pleaded that in the said meeting out of 32 members 27 members were present and out of them 21 eligible members voted in favour of new Developer M/s. Iqra Builders and Developers. However in this meeting representative of Joint Registrar, SRA was not present. There after Joint Register/SRA also issued notice dated 01.09.2017 for a meeting to be held in present of representative on 21.09.2017 for the agenda of Appointment of new Developer. However, the same was not materialized as the meeting was canceled. Ultimately the Applicant Society moved to Hon'ble High Court in Writ Petition No. 1178 of 2018 and the Hon'ble High Court passed order dated 12.10.2018. As per the direction of Hon'ble High Court General Body Meeting was held on 14.11.2018 in presence of representative of Joint Registrar/SRA and again the new Developer M/s. Iqra Builders and Developers came to be appointed for the development of subject S. R. Scheme. The Joint Registrar has submitted report dated 17.11.2018 and stated that out of 32 eligible slum dwellers 25 were present and out of those 25 eligible slum



dweller 18 slum dwellers voted in favour of appointment of new developer M/s. Iqra Builders and Developers. Apparently the Society has finally decided in compliance of requirement of circular No. 69 dated 31.12.2015 and as such the Society has repeatedly refused to consider the continuation of Respondent Developer.

In the aforesaid circumstances following order has been passed.

ORDER

1. The termination of appointment of Respondent Developer i.e. M/s. Ideal Builders and Developers in respect of the S.R. Scheme on plot of land bearing plot of land bearing CTS No. 454 of Village Bhandup, Tal. Kurla is hereby confirmed.
2. The appointment of new Developer M/s. Iqra Builders and Developers by General Body Resolution dated 14.11.2018 is hereby confirmed. He should take further steps to pursue the Scheme within one month of the date of this order, as per the law, rules and regulation of SRA and obtain LOI.
3. The newly appointed Developer should reimburse the actual expenses / legally incurred by the Respondent Developer for implementation of subject S.R. Scheme till date of this order as determined u/s 13 (3) of the Slum Act.

Place: - Mumbai

Date: - 09.07.2019


Chief Executive Officer
Slum Rehabilitation Authority

No. SRA/CEO Order/ Bhandup Vakratunda 13 (2)/ 2019/ SRA/ce.ow/31430

Date: 10.07.2019

Copy to:

Bhandup Vakratunda SRA CHS. Ltd.

Near Bank of Baroda, J. M. Road,

Bhandup (West), Mumbai - 400 078

M/s. Ideal Builders and Developers

F-219, Dreams Mall LBS Road,

Bhandup (West), Mumbai - 400 078

Mumbai-33.

Deputy Chief Engineer-I/SRA

Deputy Collector (E.S.) / SRA

Joint Registrar (Eastern & Western Suburbs)/SRA

Finance Controller/SRA

Chief Legal Consultant/SRA

Astt. Town Planner /SRA

Administrative Officer/SRA

✓ JTI Officer - To update the fact sheet and computer record.

