

SLUM REHABILITATION AUTHORITY

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

**P-N/PVT/0135/20110318
SRA/DDTP/0163/PN/PL/LOI**

1. Shri. Ashish Udayshankar Mishra
2. Shri. Udayshankar Bansraj Mishra
3. Smt. Nisha Udayshankar Mishra
2103, Daffodil Tower CHS Ltd.,
Chincholi Pathak, Malad (West),
Mumbai – 400 064

... Applicants

V/s

1. Aakash SRA CHS
CTS No. 841, 841/1 to 841/3, 847, 851,
851/1 to 851/11, Village - Malad,
Taluka - Borivali, Chincholi Bander,
Malad (West), Mumbai – 400 064
2. M/s. Qaswa Construction
Levata Tower, 15th Floor,
Office No.1501, 62-64-66,
Nagdevi Street, Mumbai – 400 003
3. M/s. Ellora Project Consultant Pvt. Ltd.
317-321, Ninad CHS Ltd., Building No.7,
Kher Nagar, Service Road, Bandra (East),
Mumbai – 400 051



... Respondents

ORDER

(Passed on 7/8/23)

These proceedings are initiated pursuant to the order of Hon'ble Apex Grievance Redressal Committee dated 02.11.2022 in Application No.95 of 2022. Through said order the Hon'ble Apex

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Grievance Redressal Committee directed the Chief Executive Officer/SRA to hear the Applicants and all necessary parties in respect of allegations and thereafter to pass appropriate order expeditiously. The brief facts are as under;

FACTS IN BRIEF

From record it appears that, the slum dwellers residing on plot of land bearing CTS No.841, 841/1 to 3, 842, 847(pt), 844, 851 & 851/1 to 11 of Village Malad (S), Taluka Borivali (West), formed Aakash CHS (Prop.) and resolved to redevelop the said land by implementing the Slum Rehabilitation Scheme. The Respondent No.1 Society appointed Respondent No.2 as Developer and Respondent No.3 as Architect for redevelopment of land in their occupation by implementing Slum Rehabilitation Scheme. Pursuant to the appointment, the Respondent No.2 & 3 submitted proposal of said SR Scheme to Slum Rehabilitation Authority. The proposal of said SR Scheme is duly accepted on 18.03.2011. The Competent Authority has issued certified Annexure-II for Aakash CHS (Prop.) on 20.12.2013 for 208 slum dwellers, out of which 56 were declared as eligible. The said SR Scheme is amalgamated with already approved SR Scheme on non-slum plot bearing CTS No.844, 844/1 to 8 & 847(pt) of Village Malad (S), Taluka – Borivali (West), Mumbai under Regulation 33(14)D of DCR, 1991 for which LOI, IOA and plinth CC was already issued. Both the Schemes were clubbed and revised clubbing Letter of Intent is issued on 23.09.2015. Amended Intimation of Approval to Composite Building was issued on 19.04.2017. Hereinafter the above said Slum Rehabilitation Scheme is referred to and called as "subject SR Scheme".

According to Applicants they are the eligible slum dwellers and Applicant No.1 is former Chief Promoter of Respondent No.1 society. In the month of June 2011, they have appointed Respondent No.2 as developer for implementation of the subject SR Scheme. The



Respondent No.2 has submitted proposal to Slum Rehabilitation Authority and the same is accepted on 18.03.2011. The Slum Rehabilitation Authority has issued Letter of Intent, Intimation of Approval and plinth Commencement Certificate to subject SR Scheme. It is further version of Applicants that in the year 2016, the Respondent No.2 started construction and the same is stopped after 4 months.

It is further version of Applicants that since there is inordinate delay on the part of Respondent No.2, they have terminated the Development Agreement entered with Respondent No.2 through their Advocate's notice dated 18.09.2020. It is further version of Applicants that the Respondent No.2 neither replied to the said notice nor disputed the facts in the said notice. According to Applicants, the Respondent No.2 has illegally constructed structures and rented out illegally to third parties and therefore the Applicants through letter dated 11.02.2021 requested the Competent Authority to take action against these illegal structures as per section 3Z(2) of the Maharashtra Slum Areas (I, C & R) Act, 1971 but till date no action on said illegal structures is taken by Competent Authority.

It is the case of Applicants that the Respondent No.2 is neither paying rent nor entered into Agreement with them, so the Applicants have filed Civil Suit No.1030 of 2021 in the City Civil Court and prayed to direct Respondent No.2 to enter into Agreement for alternate accommodation and till then not to demolish the structures without following due process of law. In said Suit the City Civil Court has passed status quo order by protecting the structures of Applicants on site. It is further contented by Applicants that the Respondent No.2 has put the sale component for advertisement in Maharera website. According to Applicants the Respondent No.2 has demolished the slum structures without following due process of law.

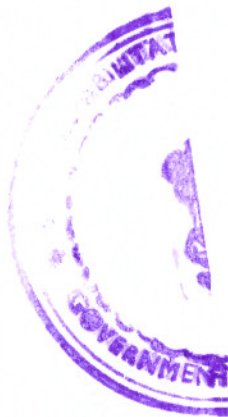

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The Applicants have approached to the Hon'ble Apex Grievance Redressal Committee in Application No.95 of 2022 contending that there is nonperformance on the part of Respondent No.2 since December 2016 and the Respondent No.2 failed to comply with conditions of LOI, IOA & plinth CC. After considering the submission made by Applicants and after going through the record, the Hon'ble Apex Grievance Redressal Committee observed that the Applicants have raised some allegation against Respondent No.2 in respect of subject SR Scheme and therefore Hon'ble Apex Grievance Redressal Committee through order dated 02.11.2022 directed this Authority to hear the Applicants and all the necessary parties in respect of said allegations and thereafter to pass order expeditiously.

Pursuant to the directions of the Hon'ble Apex Grievance Redressal Committee, the notices of hearing were issued to parties. The matter was heard on 01.12.2022 and 16.12.2022. On 16.12.2022 Adv. Nitesh Bane for Applicants remain present. Adv. Abhijeet Patil for Respondent No.1 remain present. Advocate Bhuvan Singh for Respondent No.2 remain present. Heard all of them and the matter is closed for order. Directions were given to parties to submit their written submission within 7 days.

ARGUMENT OF APPLICANTS

According to Applicants they are the eligible slum dwellers and Applicant No.1 is former Chief Promoter of Respondent No.1 society. In the month of June 2011, they have appointed Respondent No.2 as developer to implement the subject SR Scheme. The Respondent No.2 has submitted proposal to Slum Rehabilitation Authority and same is accepted on 18.03.2011. The Slum Rehabilitation Authority has issued Letter of Intent, Intimation of Approval and plinth Commencement Certificate.



It is further version of Applicants that in the year 2016, the Respondent No.2 started construction and the same is stopped after period of 4 months. Due to inordinate delay on the part of Respondent No.2, they have terminated the Development Agreement entered with Respondent No.2 through their Advocate's notice dated 18.09.2020 and said notice is not replied by Respondent No.2. The Respondent No.2 is neither paying rent nor entered into Agreement with them, so the Applicants moved before the City Civil Court by filling Civil Suit No.1030 of 2021 and prayed to Hon'ble Court to direct Respondent No.2 to enter into agreement for alternate accommodation and not to demolish their structures without following due process of law. In said Suit the City Civil Court has passed status quo order dated 12.05.2021 protecting the structures of Applicants. It is further contented by Applicants that the Respondent No.2 has put the sale components for advertisement in Maharera website.

According to Applicants the Respondent No.2 demolished the slum structures without following due process of law. After issuance of Commencement Certificate on 30.08.2012, the Respondent No.2 was supposed to initiate proceedings u/s 33 & 38 of the Slum Act to implement subject SR Scheme but the Respondent No.2 has initiated action against those slum structures who are not coming in the way of redevelopment. According to Applicants the City Civil Court has granted status quo order on 15.03.2022 in Suit No.1030 of 2021 in respect of 22 structures. On these grounds the Applicants have prayed to take action u/s 13 (2) of the Maharashtra Slum Areas (I, C & R) Act, 1971 against Respondent No.2.

ARGUMENT OF RESPONDENT NO.1

It is the case of Respondent No.1 that the present application is filed by the Applicants is not maintainable and the same is filed with

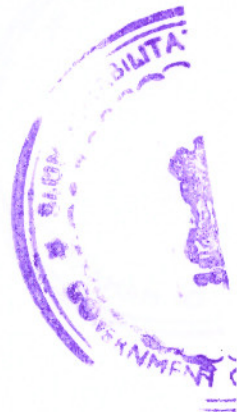


an intention to deviate the Respondent No.2 who initiated proceedings u/s 33 & 38 of the Slum Act against the Applicants. Further in Annexure-II the Applicants were held non-eligible for permanent alternate accommodation in lieu of their structures. It is the case of Respondent No.1 that they have not passed any resolution for termination of developer. Further they have full trust and confidence in Respondent No.2. On these grounds the Respondent No.1 prayed to reject the Application of Applicant.

ARGUMENT OF RESPONDENT NO.2

It is the case of Respondent No.2 that they have entered into MOU in the month of March 2007 with late Shri. Bansraj Mishra, father of Applicant No.1 in respect of land bearing CTS No.847, admeasuring 5968 sq. mtrs. for certain consideration. Pursuant to the said MOU the Applicants were required to handover the possession. It is further version of Respondent No.2 that till date the possession of said structures is not handed over to them. In the month of April 2021, the Applicant No.1 filed Suit No.1030 of 2021 in City Civil Court and prayed Hon'ble Court to direct Respondent No.2 to enter into agreement for permanent alternate accommodation in respect of 22 structures owned and possessed by Applicants. In said suit the City Civil Court through order dated 12.05.2021 granted status quo. The Respondent No.2 challenged the said order dated 12.05.2021 in Appeal from Order No.78 of 2022 in Hon'ble High Court and accordingly the Hon'ble High Court through order dated 08.02.2022 directed the City Civil Court to dispose of the Notice of Motion within two weeks from the date of order.

It is further version of Respondent No.2 that the said Notice of Motion No.1154 of 2021 was heard by the City Civil Court and through order dated 15.03.2022 the same is disposed. The Respondent No.2 has challenged the said order in Appeal from Order No.448 of 2022 in



the Hon'ble High Court and through order dated 18.11.2022, the Hon'ble Court has allowed the Respondent No.2 to proceed further for development and demolition of structures after following due process of law.

According to Respondent No.2 the delay is not attributable to them but the same is occurred due to various litigations filed in Hon'ble Courts. It is further version of Respondent No.2 that the Applicant No.2 himself has abandoned the MOU of the year 2007. The Annexure-II of the subject SR Scheme is issued in the year 2013 by the Competent Authority and in Annexure-II, the Applicants were declared as non-eligible. It is further version of Respondent No.2 that subsequently in the year 2020-2021, the Applicants were declared eligible in Supplementary Annexure-II. It is the case of Respondent No.2 that in the year 2014, there are 56 slum dwellers out of 208 slum dwellers declared eligible and the same is increased to 85 subsequently. The Respondent No.2 took appropriate steps against the non co-operative slum dwellers by initiating action u/s 33 & 38 of the Slum Act.

According to Respondent No.2, the Applicants have not approached before this Authority with clean hands. The structures of Applicants were declared as unauthorized by MCGM and notice u/s 351 of the MMC Act, 1888 was issued against them and order was also passed. It is further contended by Respondent No.2 that the Applicants have suppressed the fact that a LC Suit No.319 of 1997 was filed by Applicant No.2 as also order dated 10.01.2013 passed in Writ Petition No.43 of 2013 wherein the Hon'ble Court has directed the MCGM to reconsider their decision and pass appropriate order. It is the case of Respondent No.2 that even after termination of MOU in the year 2007, the Applicants failed to invoke the Arbitration proceedings and on the contrary they filed Suit in City Civil Court.



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According to Respondent No.2 the Applicant No.2 as Chief Promoter has filed a Writ Petition (L) No.14586 of 2021 in Hon'ble Court seeking directions for change of developer of subject SR Scheme. The said Writ Petition is withdrawn and fresh proceedings is filed before the Hon'ble Apex Grievance Redressal Committee. The Hon'ble Apex Grievance Redressal Committee has directed this Authority to decide the allegations raised by Applicants. Apart from these litigations the Applicant No.2 has also filed Suit No.3510 of 2021 against the Respondent No.2 seeking injunction from demolishing two structures on said land without following due process of law. The Applicant No.2 has also filed Commercial Suit No.269 of 2021 for cancelation of MOU dated 24.08.2007.

According to Respondent No.2, the Applicants have filed various frivolous and false complaints with Police only with a view to extort money and pressurize the Respondent No.2 to succumb to illegal demands. Some of the slum dwellers have also filed Writ Petition (L) No.20172 of 2022 against the Respondent No.2 seeking directions from Hon'ble Court to take effective steps for execution of Agreements for Permanent Alternate Accommodation and through order dated 06.10.2022 the Hon'ble Court directed these slum dwellers to vacate their structures on or before 20.10.2022 and despite the said order these slum dwellers have failed to vacate the structures and created obstruction to them.

According to Respondent No.2 the said land is declared as Slum through Notification dated 22.04.2010. The Applicant No.2 was elected as Chief Promoter of Aakash SRA CHS and in the month of June 2011 and they have appointed Respondent No.2 as their developer. During the year 2011 to 2014 they have obtained IOA, CC and Annexure-II from Competent Authority. There is proposed DP Road of 9.15 mtrs. in the middle of plot proposed by MCGM in Draft



DP 2034 and they have taken appropriate steps to challenge proposed road & recently obtained order. The Respondent No.2 has constructed Transit Camps and at present there are 17 slum dwellers have been shifted in Transit Camps. The Respondent No.2 has also paid the transit rent to 8 slum dwellers for temporary alternate accommodation.

According to Respondent No.2 there is certain disputes amongst the partners and proceedings were initiated before Arbitral Tribunal and accordingly Award dated 18.01.2016 was passed. Due to restraining order of Court as well as Covid lockdown the delay is occurred. On these grounds the Respondent No.2 has prayed to rejects the applications filed by Applicants.

ISSUES & 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 Respondents needs to be revoked and whether the Application is maintainable.

As stated hereinabove the present proceedings are initiated pursuant to the order of Hon'ble Apex Grievance Redressal Committee dated 02.11.2022 in Application No.95 of 2022. Through said order the Hon'ble Apex Grievance Redressal Committee directed this Authority to hear the Applicants and all necessary parties in respect of allegations and thereafter pass appropriate order expeditiously.

The grievance of Applicants is in respect of delay on the part of Respondent No.2 in implementation of subject SR Scheme. The contention of Applicants is that in the year 2016 the Respondent No.2 started construction and the same is stopped after 4 months. On the other hand it is the case of Respondent No.2 that after their appointment as developer they submitted proposal and obtained



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Intimation of Approval, Commencement Certificate & Annexure-II during the year 2011 – 12. However thereafter it was noticed that in Draft DP 2034, the MCGM had proposed a DP Road of 9.15 mtrs. in the middle portion of Scheme plot, they were required to take several steps and ultimately they obtained order in the year 2015. Thereafter they obtained permission for construction of Transit Camp in the year 2016 and a Transit Camp is constructed at site. Presently 17 slum dwellers are residing in said Transit Camp.

It is further version of Respondent No.2 that due to non-cooperation on the part of Applicants they could not take further steps. These Applicants have made false complaints to various Authorities against them. Besides complaints, these Applicants have also filed several litigations. From pleadings of the parties it appears that the following litigations has taken place in respect of subject SR Scheme;

1. A Civil Suit No.1030 of 2021 was filed in City Civil Court, Dindoshi by Applicants challenging the action initiated by Respondent No.2 u/s 33/38 of the Maharashtra Slum Areas (I, C & R) Act, 1971 for demolition of 22 structures. In said Suit a Notice of Motion No.1154 of 2021 was taken out by Applicants and the City Civil Court through order dated 15.03.2022 granted interim relief in terms of prayer clause (a) & (c) of Notice of Motion restraining Respondent No.2 from demolishing 22 structures. The record further reveals that the order of City Civil Court dated 15.03.2022 was challenged by Respondent No.2 developer by way of Appeal from Order No.448 of 2022. The said Appeal from Order is disposed of by Hon'ble High Court through order dated 18.11.2022. The Respondent No.2 was permitted to demolish the 22 structures by following due process of law.



2. A Writ Petition (L) No.14586 of 2021 was filed by Aakash SRA CHS (Prop.) alleging that the Respondent No.10 therein is carrying out illegal construction on land CTS No.841, 841/1 to 3, etc. of Village Malad (West). In said Writ Petition, the Advocate for Petitioner has sought liberty to withdraw the Petition with liberty to file appropriate proceeding before the Apex Grievance Redressal Committee and the Petition was accordingly disposed of on 20.07.2021.
3. Pursuant to order dated 20.07.2021 in Writ Petition (L) No.14586 of 2021, the present Applicants filed Application No.95 of 2022 before the Hon'ble Apex Grievance Redressal Committee and the Hon'ble Apex Grievance Redressal Committee through order dated 02.11.2022 directed this Authority to hear the Applicants and all the necessary parties and to pass appropriate order.
4. A Civil Suit (L) No.3510 of 2021 (later on regd. as Civil Suit No.1437 of 2021) was filed in City Civil Court, Dindoshi by Radhesh Bansraj Mishra & Rajesh Bansraj Mishra against Respondent No.2. The official website of Hon'ble City Civil Court reveals that the said Suit is pending and next date is 27.09.2023. There appears to be no order passed by Court.
5. A Commercial Suit No.269 of 2021 (later on converted into Civil Suit No.140 of 2022) was filed in City Civil Court, Dindoshi by Applicant No.2 against Respondent No.2. The official website of Hon'ble City Civil Court reveals that the said Suit is pending and next date is 04.10.2023. There appears that no order is passed in said Suit.
6. A Writ Petition (L) No.20172 of 2022 was filed by Pradip Keshav Ghag & 2 Ors. seeking directions from Hon'ble Court to take effective steps for execution of Agreements for Permanent



Alternate Accommodation. The Hon'ble High Court through order dated 06.10.2022 directed the Petitioners to vacate their structures on or before 18.10.2022. The official website of Hon'ble High Court reveals that the said Petition is at Admission stage.

It is pertinent to note that the Respondent No.2 developer is sought to be terminated by three Applicants only and society is supporting the Respondent No.2 developer. It is needless to mention that individual slum dweller cannot seek termination. The right of slum dweller is limited to the extent of rehabilitation subject to his eligibility as observed by Hon'ble High Court in the case of Awdesht Tiwari and Ors. V/s The Chief Executive Officer/SRA. A report was also called by Chief Legal Consultant/SRA from Assistant Registrar/SRA regarding the arrears of rent and the Assistant Registrar/SRA through letter dated 15.03.2023 has informed that there is no any complaint received by co-operative department in respect of nonpayment of rent. Considering above facts and circumstances it is difficult to accept the contention of the Applicants regarding inordinate delay and nonperformance. Accordingly following order is passed.



ORDER

1. The Application of Applicants is hereby rejected.
2. The Respondent No.2 is directed to submit bar chart regarding speedy implementation of subject SR Scheme in time bound manner.
3. The Executive Engineer/SRA is directed to visit the site periodically and to ensure the timely completion of the scheme as per bar chart submitted by Respondent No.2.

Place: - Mumbai

Date: - 7 AUG 2023


Chief Executive Officer
Slum Rehabilitation Authority

No. SRA/CEO Order/Aakash SRA CHS/50 /2023

Date: 27 AUG 2023

Copy to:

1. Shri. Ashish Udayshankar Mishra
2. Shri. Udayshankar Bansraj Mishra
3. Smt. Nisha Udayshankar Mishra
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7. Tahsildar-2/SRA.
8. Dy. Chief Engineer/SRA.
9. Executive Engineer P-N Ward/SRA.
10. Financial Controller/SRA
11. Joint Registrar C.S. (Western Suburbs)/SRA
12. Information Technology Officer/SRA.
13. Chief Legal Consultant/SRA.