

SLUM REHABILITATION AUTHORITY

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

File No. SRA/Ch E/288/KW/MHL/LOI

Slum Rehabilitation Authority

... Applicant

V/s

1. Sahyog Kalpana CHS
CTS No.1103 (pt), Mauje - Versova,
Taluka - Andheri, Sunderwadi, Flower Chawl,
Aaramnagar, Part- 1, Seven Bungalow,
Near Khadi Bhandar Quarter,
Andheri (West), Mumbai - 400 058
2. M/s. Dynamic Civil Developers Pvt. Ltd. (Sunderwadi)
5, Meridian Apartment-1, Veera Desai Road,
Andheri (West), Mumbai - 400 058
3. Hemant Kankaria of M/s. Deeksha City Scope
D-4/68, S.V.P. Nagar,
Near Lokhandwala Complex,
Versova, Andheri (West),
Mumbai - 400 053
4. Atlantic construction Co.
101, Kushwa Chembur, Makwana Road,
Apurva Industrial Estate, Marol Naka,
Andheri (East), Mumbai - 400 070
5. M.V. & Associates,
Kohinoor City Mall, Unit No.27/1, 1st Floor,
Premier Road, Kurla (West),
Mumbai - 400 070



... Respondents

**Sub:- Suo Moto Proceedings u/s 13 (2) of the Maharashtra Slum Areas (I,
C & R), Act, 1971.**


SRA

ORDER

(Passed on - **5 FEB 2024**)

These Suo Moto proceedings are initiated in respect of Slum Rehabilitation Scheme on land bearing CTS No.1103 (pt) of Village – Versova, Andheri (West) for “Sahyog Kalpana CHS” pursuant to note of Executive Engineer (K/W Ward)/SRA dated 21.02.2023. Hereinafter the abovesaid Slum Rehabilitation Scheme is referred to and called as “subject SR Scheme”. In brief the facts which lead to the present proceedings are as under;

BRIEF FACTS:

The proposal of subject SR Scheme is accepted on 25.11.1998 and certified Annexure-II is issued on 06.08.2019. Since then there is no progress. From record it appears that the Respondent No.1 society earlier appointed one M/s. Atul Project (India) Ltd. as developer and Mr. Nathalal B. Delvadia as Architect of the subject SR Scheme. Through order dated 15.12.2015 the then Chief Executive Officer/SRA has terminated the appointment of M/s. Atul Project (India) Ltd. as developer of the subject SR Scheme. From fact sheet it appears that the Respondent No.1 society has appointed Respondent No.2 as developer of the subject SR Scheme. However thereafter there is absolutely no progress in subject SR Scheme and the Scheme is stand still.

Due to inordinate delay in implementation of the subject SR Scheme, the Respondent No.1 has earlier submitted application dated 09.03.2022 for termination of appointment of Respondent No.2 as Developer. Pursuant thereto the Tahasildar-2/SRA has submitted a note dated 10.05.2022 and accordingly notices for hearing were issued to the concerned parties. The matter was heard on 03.06.2022. On said day parties were heard and matter closed for order.

In the meanwhile, the Slum Rehabilitation Authority has recorded 517 dormant proposals through Public Notice dated 20.04.2022 in which the developers and societies have failed to take necessary steps. In said list of 517 Schemes the subject SR Scheme is at Sr. No.144. Since the





proposal is already recorded through Public Notice dated 20.04.2022, hence the proceedings were disposed of on 07.07.2022.

The report of engineering department dated 21.02.2023 is on record. From said report it appears that as per Guidelines dated 08.06.2022 issued by this Authority, the Respondent No.1 has appointed Respondent No.4 as their new developer. The report further reveals that the Respondent No.4 has also obtained all the requisite NOC's from various departments of SRA and also deposited one year advance rent amounting to Rs.1,16,40,000/- with Finance Controller/SRA. The proposal of Respondent No.4 is approved by the Slum Rehabilitation Authority on 25.01.2023 and accordingly the Respondent No.4 deposited scrutiny fees on 30.01.2023.

In the meanwhile, the said Public Notice dated 20.04.2022 is set aside by Hon'ble High Court through order dated 10.01.2023 in Writ Petition (L) No.14017 of 2022, Nipun Thakkar V/s. Chief Executive Officer/SRA & Anr. While quashing the Public Notice dated 20.04.2022, the Hon'ble High Court in paragraph no.13 of the order made following observations;

"13. We make it clear that we have not restricted or constrained the powers of the SRA to take action in accordance with law, where justified. We have only quashed the impugned notice because it is entirely outside the frame of the law and not in accordance with law".

Due to said order, the acceptance letter is not issued to Respondent No.4. Pursuant to said order, the notices for hearing were issued to the concerned parties. Accordingly hearing was held on 31.03.2023 & 28.12.2023. On 28.12.2023 the office bearers of Respondent No.1 Society remain present. Advocate Kailash Dubey for Respondent No.2 remain present. Advocate A.N. Giri for Respondent No.4 remain present. The parties were heard at length and matter was closed for order. Directions were given to parties to submit their written submissions within fifteen days.

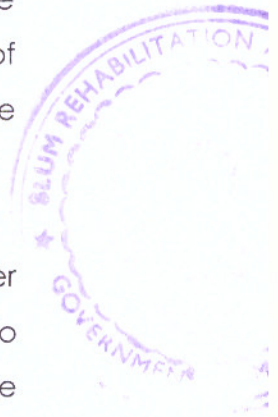

ARGUMENT OF RESPONDENT NO.1

There appears to be two fractions in Respondent No.1 society. One fraction is led by Mr. Mahadev Pant and another fraction is led by Smt. Kalyani Mandavkar. Both fractions have submitted their written submission. The contention of both fraction regarding termination of Respondent No.1 is almost identical. They are at variance in appointment of new developer. According to fraction led by Mahadev Pant, they have appointed one M/s Atlantic Construction Company i.e. Respondent No.4 as new developer. He further submitted that Respondent No.4 has obtained all the NOC's of SRA as per circular no.144 after recording of proposal through Public Notice dated 20.04.2022. In the meanwhile the said Public Notice dated 20.04.2022 is set aside by Hon'ble High Court on 10.01.2023 in Writ Petition (L)No.14017 of 2022 Nipun Thakkar V/s. CEO/SRA & Anr.

On the other hand the fraction led by Smt. Kalyani Mandavkar contended that the appointment of Respondent No.2 has been terminated through Public Notice dated 20.04.2022 as well as order dated 07.07.2022. It is further version of Smt. Kalyani Madavkar that after recording of the proposal of Respondent No.2 through Public Notice dated 20.04.2022, the Respondent No.4 has submitted fresh proposal and also paid scrutiny fee on 30.01.2023. In the meanwhile the said Public Notice dated 20.04.2022 is set aside by Hon'ble High Court through order dated 10.01.2023 in Writ Petition (L)No.14017 of 2022 Nipun Thakkar V/s. CEO/SRA & Anr. There is delay on the part of Respondent No.2 since their appointment. According to Smt. Kalyani Mandavkar, the Respondent No.1 society prayed to terminate the appointment of Respondent No.1 as well as Respondent No.4 and direction may be given to appoint new developer through General Body Resolution.

ARGUMENT OF RESPONDENT NO.2

According to Respondent No.2, the Respondent No.1 has earlier appointed one M/s. Atul Project India (India) Ltd. and due to nonperformance of the part of M/s. Atul Project India (India) Ltd., the



Respondent No.1 society appointed them as developer. According to Respondent No.2, the land CTS No.113(pt) is partly affected with road, therefore MCGM has issued notices for demolition to road affected structures. A Suit is also filed before the Civil Court for issuance of Annexure-II. It is further version of Respondent No.2 that in the year 2019, the MHADA had issued Annexure-II as per direction of Hon'ble High Court. After issuance of Annexure-II they have vacated road affected structure and paid rent to these slum dwellers. It is further version of Respondent No.2 that some of the disgruntled members of Respondent No.1 Society at the instance of rival developer initiated action for change of developer. On these ground the Respondent No.2 prayed to drop the present proceeding.

ARGUMENT OF RESPONDENT NO.4

It is the case of Respondent No.4 that the appointment of Respondent No.2 is already terminated by this Authority through order dated 07.07.2022. Through General Body Meeting dated 18.08.2022, the Respondent No.1 society appointed them as developer and their appointment is also accepted by this Authority. Admittedly after approval of their proposal, they have deposited Rs.1,16,40,000/- towards transit rent for one year and Rs.7,200/- for LOI scrutiny fees. In the meanwhile the Public Notice dated 20.04.2022 is set aside by Hon'ble High Court through order dated 10.01.2023 in Writ Petition (L) No.14017 of 2022 Nipun Thakkar V/s. CEO/SRA & Anr. On these ground the Respondent No.4 has prayed to allow their appointment as new developer and terminate the appointment of Respondent No.2

ISSUES

From rival contention the issue that arises for determination of this Authority is as to whether there is nonperformance on the part of Respondent No.2 and delay in implementation of subject S.R. Scheme is attributable to Respondent No.2.



CEO / SRA

REASONS

Before proceeding to discuss about rival contention, it is necessary to refer to few material facts. The proposal of subject SR Scheme is submitted on 25.11.1998 and developer was M/s. Atul Project (India) Ltd. Further it appears that due to failure of developer, Respondent No.1 approached to Slum Rehabilitation Authority for termination of developer and the then Chief Executive Officer/SRA through order dated 15.12.2015 terminated M/s. Atul Project (India) Ltd. as developer of subject SR Scheme. From fact sheet it appears that the Respondent No.1 society has appointed Respondent No.2 as new developer of the subject SR Scheme. However thereafter there is absolutely no progress in subject SR Scheme and the Scheme is stand still.

Due to inordinate delay in implementation of the subject SR Scheme, the Respondent No.1 has earlier submitted application dated 09.03.2022 for termination of appointment of Respondent No.2 as Developer and accordingly the parties were heard and closed the matter for order on 03.06.2022.

The Slum Rehabilitation Authority has recorded 517 dormant proposals through Public Notice dated 20.04.2022 in which the developers and societies have failed to take necessary steps. In said list of 517 Schemes, the subject SR Scheme is at Sr. No.144. Since the proposal is already recorded through Public Notice dated 20.04.2022, therefore the said proceedings were closed on 07.07.2022.

The note of Executive Engineer dated 21.02.2023 reveals that after recording of proposal, the Respondent No.1 has held General Body Meeting on 18.08.2022 and passed resolution for appointment of Respondent No.4 as new developer. From the report of engineering department it appears that the Respondent No.1 has appointed Respondent No.4 as their new developer and the Respondent No.4 has also obtained all the requisite NOC's from various departments of Slum Rehabilitation Authority and also deposited one year advance rent amounting to Rs.1,16,40,000/- with Finance Controller/SRA. The proposal



of Respondent No.4 is also approved by this Authority on 25.01.2023 and accordingly the Respondent No.4 deposited scrutiny fees on 30.01.2023. However during the course of hearing the authenticity of General Body Resolution dated 18.08.2022 was strongly disputed. So, this Authority in hearing dated 31.03.2023 has directed to hold fresh General Body Meeting and to pass resolution.

In the meanwhile, the said Public Notice dated 20.04.2022 is set aside by Hon'ble High Court through order dated 10.01.2023 in Writ Petition (L) No.14017 of 2022, Nipun Thakkar V/s. Chief Executive Officer/SRA & Anr. While quashing the Public Notice dated 20.04.2022, the Hon'ble High Court in paragraphs no.13 of the order made following observations;

"13. We make it clear that we have not restricted or constrained the powers of the SRA to take action in accordance with law, where justified. We have only quashed the impugned notice because it is entirely outside the frame of the law and not in accordance with law".

From above observation of Hon'ble High Court, it is crystal clear that the Hon'ble High Court has not restricted or constrained the powers of this authority to take action in accordance with law, where justified. In other words, this Authority is having powers to take action in case of inordinate delay. Due to said order, the acceptance letter is not issued to Respondent No.4.

From record it appears that there are two rival groups in Respondent No.1 society. The written submissions of two groups of Respondent No.1 society is on record. The contention of both groups regarding termination of Respondent No.2 is almost identical. They are at variance in respect of appointment of new developer. According to One Group represented through Mr. Mahadev Pant, they have appointed one M/s Atlantic Construction Company i.e. Respondent No.4 as new developer. On the other hand the other group represented through Smt. Kalyani Mandavkar contended that the appointment of Respondent No.4 has been done after recording the proposal of Respondent No.2 through Public Notice dated 20.04.2022 and the



Respondent No.2 as well as Respondent No.4 should be terminated and direction may be given to appoint new developer through General Body Resolution.

As stated hereinabove the developers implementing the S. R. Schemes are expected to complete the same within reasonable period. Due to delay on the part of developer the noble object behind introducing the S.R. Scheme is getting frustrated. This Authority being a Planning and Project Management Authority can't be a mute spectator to such nonperformance. The Slum Rehabilitation Scheme is social welfare scheme for the benefit and advancement of slum dwellers. Such inordinate delay in rehabilitation of slum dwellers is bound to frustrate the basic object of Government in introducing the Slum Rehabilitation Schemes.

In this regard the observation of Hon'ble High Court in order dated 01.03.2013 in Writ Petition No.2349 of 2012 M/s. Hi Tech India Construction V/s. Chief Executive Officer/SRA are relevant. In said case the developer was terminated by the Chief Executive Officer/SRA on account of delay of 3 years. The said termination was upheld by High Power Committee. The order of High Power Committee was challenged by developer through said Writ Petition. The Hon'ble High Court upheld the termination. The observation of Hon'ble High Court in para 5 of said order are relevant and same are reproduced as it is for convenience;

"The mere issuance of the letter dated 15th May, 2008, would not indicate that there was no delay on the part of the petitioners. These are slum rehabilitation schemes. It is for the developers to pursue the matter and to ensure that the scheme is implemented without delay. Developer cannot, by merely addressing letters to the authorities, sit back and contend that they had nothing more to do in the matter till they received a reply."

Bearing in mind the above observation of Hon'ble High Court, this Authority proceeds further to discuss the various grounds put forth by Respondent No.2. It is contended by Respondent No.2 that delay is not attributable to them. The Respondent No.2 is trying to justify the delay by raising various other grounds such as notices for demolition issued by



MCGM to road affected structures in subject SR Scheme & delay in issuance of Annexure-II by Competent Authority. It is further version of Respondent No.2 that some of the disgruntled members of Respondent No.1 Society at the instance of rival developer initiated action for change of developer. In fact the Respondent No.2 is expected to give cogent reasons as to how the delay is not attributable to them.

The Respondent No.2 knowing all these issues has agreed to implement the subject SR Scheme. So at this juncture it is not open for Respondent No.2 to justify the inordinate delay on these grounds. This Authority being a Planning and Project Management Authority is under legal obligation to see that the scheme is completed within reasonable time. In the event of nonperformance and inordinate delay, this Authority is bound to take necessary action. The observation of Hon'ble High Court in Appeal from Order No.1019 of 2010, Ravi Ashish Land Developers Ltd. V/s Prakash Pandurang Kamble and Anr. are relevant. The relevant observation of Hon'ble High Court are as under;

"One fails to understand as to how persons and parties like Respondent No.1 are languishing and continuing in the transit accommodations for nearly two decades. When the slum rehabilitation projects which are undertaken by the statutory authority enjoying enormous statutory powers are incomplete even after twenty years of their commencement, then it speaks volume of the competence of this Authority and the officials manning the same. In all such matters, they must ensure timely completion of the projects by appropriate intervention and intermittently. They may not, after issuance of letter of intent or renewals thereof, fold their hands and wait for developers to complete the project. They are not helpless in either removing the slum dwellers or the developers. The speed with which they remove the slum dwellers from the site, it is expected from them and they must proceed against errant builders and developers and ensure their removal and replacement by other competent agency."

Considering the lack of faith of slum dwellers in Respondent No.2, it will be just and proper to terminate them as developer of subject SR Scheme and direct the Respondent No.1 society to hold fresh General Body Meeting in presence of authorized representatives of Co-operative department of Slum Rehabilitation Authority and to take decision in



respect of appointment of new developer. Accordingly, this Authority proceeds further to pass following order;

ORDER

1. The appointment of Respondent No.2 i.e. M/s. Dynamic Civil Developers Pvt. Ltd. (Sunderwadi) is hereby terminated as Developer of S.R. Scheme on land bearing CTS No.1103 (pt) of Village – Versova, Andheri (West) for "Sahyog Kalpana CHS"
2. The Respondent No.1 society i.e. Sahyog Kalpana CHS is at liberty to appoint new developer by passing fresh General Body Resolution in presence of authorized officer of Slum Rehabilitation Authority in accordance with circular no.169 of Slum Rehabilitation Authority.
3. The new incoming developer to reimburse the actual expenses incurred by Respondent No.2 as per provisions of section 13(3) of the Maharashtra Slum Areas (I, C & R) Act, 1971.
4. The newly appointed developer to comply with the provisions of circular no.210 of Slum Rehabilitation Authority.

Place:- Mumbai

Date:- 15 FEB 2024


Chief Executive Officer
Slum Rehabilitation Authority

No. SRA/CEO/13(2)/Sahyog Kalpana CHS/04 /2024

Date: 15 FEB 2024

Copy to:

1. Sahyog Kalpana CHS
CTS No.1103 (pt), Mauje - Versova,
Taluka - Andheri, Sunderwadi, Flower Chawl,
Aaramnagar, Part- 1, Seven Bungalow,
Near Khadi Bhandar Quarter,
Andheri (West), Mumbai – 400 058
2. M/s. Dynamic Civil Developers Pvt. Ltd. (Sunderwadi)
5, Meridian Apartment-1, Veera Desai Road,
Andheri (West), Mumbai – 400 058



3. Hemant Kankaria of M/s. Deeksha City Scope
D-4/68, S.V.P. Nagar,
Near Lokhandwala Complex,
Versova, Andheri (West),
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4. Atlantic construction Co.
101, Kushwa Chembur, Makwana Road,
Apurva Industrial Estate, Marol Naka,
Andheri (East), Mumbai – 400 070
5. M.V. & Associates,
Kohinoor City Mall, Unit No.27/1, 1st Floor,
Premier Road, Kurla (West),
Mumbai – 400 070
6. Deputy Chief Engineer/SRA
7. Executive Engineer (K/W Ward)/SRA
8. DDLR/SRA
9. Deputy Collector (Spl. Cell)/SRA
10. Finance Controller/SRA
11. Chief Legal Consultant/SRA
12. Joint Registrar (E.S.)/SRA
13. IT Officer/SRA