

SLUM REHABILITATION AUTHORITY

**BEFORE THE CHIEF EXECUTIVE OFFICER
SLUM REHABILITATION AUTHORITY,
Bandra (East), Mumbai**

No. SRA/ENG/1935/L/PL/LOI

Slum Rehabilitation Authority

... Applicant

V/s

1. M/s. Sterling Construction
212/213, Shree Mahalaxmi Society,
Jogani Complex, Building No.5,
V.N. East Road, Sion- Chunabhatti,
Mumbai- 400 022
2. Harshad K.D.
33, Milind Building,
3rd Floor, 35th Road, Khar
Mumbai- 400 052
3. Mahalaxmi SRA CHS (Prop.)
Mauje- Kurla, Taluka- Kurla
CTS No.296, 296/1 to 56,
Shidik Musa Trust, Hill Road, Sion,
Chunabhatti, Mumbai- 400 022



... Respondents

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

ORDER

(Passed on 7/6/23)

These proceedings are initiated in respect of Slum Rehabilitation Scheme on land bearing CTS No. 296, 296/1 to 56 of Village Kurla-III at Hill Road, Chunabhatti, Mumbai- 400 022 for "Mahalaxmi SRA CHS (Prop.)" pursuant to the note of Dy. Chief Engineer/SRA dated 10.04.2023. Hereinafter the above said Slum Rehabilitation Scheme is

referred to and called as "Subject S.R. Scheme". In brief the facts which lead to the present proceedings are as under;

BRIEF FACTS:

The slum dwellers residing on plot of land bearing CTS No. 296, 296/1 to 56 of Village Kurla-III at Hill Road, Chunabhatti, Mumbai- 400 022 formed Respondent No.3 Society i.e. "Mahalaxmi SRA CHS (Prop.)" and in General Body Meeting resolved to redevelop the said land by implementing the Slum Rehabilitation Scheme. The Respondent No.3 Society appointed Respondent No.1 as Developer and Respondent No.2 as Architect for implementation of subject S.R. Scheme. The proposal of subject S.R. Scheme was submitted to Slum Rehabilitation Authority on land admeasuring 1400 sq. mtrs. The said land is private. The proposal of subject S.R. scheme is accepted by Slum Rehabilitation Authority on 26.02.2008. The certified Annexure-II is issued on 11.07.2008 declaring 88 slum dwellers as eligible out of total 106. However, thereafter there is absolutely no progress in subject S. R. Scheme and the Scheme is stand still.

The note of Engineering department dated 10.04.2023 is on record. From said note it appears that 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.175. 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.

Pursuant to said order, the notices were issued to the concerned parties and matter was heard on 18.04.2023 and 10.05.2023. On 10.05.2023, the Respondent No.1 remain present alongwith their Adv. Smit Shah and Advocate Manoj Singh remain present on behalf of Respondent No.3 Society. The parties were heard at length and matter



was closed for order. Directions were given to parties to submit their written submissions within 7 days.

ARGUMENT OF RESPONDENT NO.3

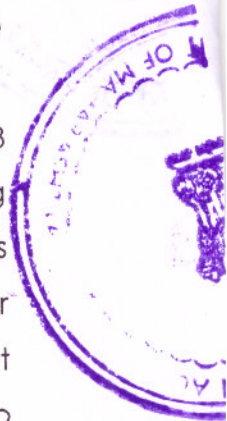
According to Respondent No.3, they have formed proposed society namely Mahalaxmi SRA CHS (Prop.) and appointed Respondent No.1 as developer and Respondent No.2 as Architect in the year 2006. They have entered into Triparty Agreement dated 15.01.2008 with Respondent No.1 and individual tenants. Pursuant to appointment, the subject SR Scheme is submitted to this Authority on 26.02.2008. The Annexure-II of the subject SR Scheme is issued in the year 2008. Since the acceptance of proposal, the Respondent No.1 has failed to obtain Letter of Intent till date. There is inordinate delay on the part of Respondent No.1 for more than 15 year. So through General Body Meeting dated 26.02.2023 they terminated the appointment of Respondent No.1 as developer. Thereafter, the Respondent No.3 society through letter dated 23.03.2023 informed this Authority to change the developer on account of inordinate delay since the year 2008. In the meanwhile this Authority has recorded 517 dormant proposals in which developers failed to show any progress. In said list the proposal of subject SR Scheme is at Sr. No. 175. It is further version of Respondent No.3 that Respondent No.1 has not started project even after lapse of 15 years with an intention to hold the project. On these grounds the Respondent No.3 has prayed to terminate the appointment of Respondent No.1 as developer.

ARGUMENT OF RESPONDENT NO.1

It is the version of Respondent No.1 that the land under the subject SR Scheme is owned by one M/s Siddique Musa Trust and the same is encroached by slum dwellers. In the year 1953, the Government of Maharashtra has taken over the charge of land bearing CTS No. 359(pt.), 361(B) excluding the said land. The name of the M/s. Siddique Musa Trust is recorded in revenue record. The land

under the subject SR Scheme is also declared as slum through notification dated 24.04.1980. It is further version of Respondent No.1 that by virtue of Triparty Agreement dated 15.01.2008 with tenants & society, they have acquired the development rights of said land to implement the subject SR Scheme. The owner of the said land has also executed Power of Attorney dated 16.01.2008 and Affidavit cum Declaration dated 12.02.2008 in their favour. Pursuant to the appointment the Respondent No.1 has submitted the proposal of subject SR Scheme and the scheme is duly accepted. The Competent Authority issued certified Annexure-II of eligible slum dwellers on 30.05.2008 declaring 88 slum dwellers as eligible out of 106 slum dwellers. The certified Annexure-II is also re-verified in the year 2016. It is the case of Respondent No.1 that the delay is not attributable to them but the same is occurred due to non-disclosure of true numbers of slum dwellers by Respondent No.3. The 56 original structures were demolished due to dilapidated condition and thereafter the owners constructed 5 chawls comprising of approximately 100 structures. Till the submission of the proposal of subject SR Scheme, the tenants were paying monthly rent to the owner.

It is further version of Respondent No.1 that the Respondent No.3 Society without intimation to them conducted a General Body Meeting on 26.02.2023 and terminated their appointment as developer. It is alleged by the Respondent No.1 that one of the committee member of the Respondent No.3 Society is having residential premises at Kandivali but still he has made representation as eligible member to avail the benefit of subject S.R. Scheme. It is further version of Respondent No.1 that in the year 2016 without following due process of law, various transfers were taken place after issuance of Annexure-II. Due to charge of Government of Maharashtra over the said land, the title of said land was not transferred in the name of Respondent No.1. It is delay in the subject SR Scheme due to non-cooperation on the



part of Respondent No.3. The Respondent No.1 has also submitted that the period of 2 years from 2020 to 2022 they could not start the work due to Covid Pandemic situation. In the meanwhile this Authority terminated the appointment of Respondent No.1 through Public Notice dated 20.04.2022 without considering their merits of the case. It is pertinent to note that the said Public Notice is set aside by Hon'ble High Court on 10.01.2023 in Writ Petition (L) No.14017 of 2022. The Respondent No.1 stated that they are ready and willing to start the redevelopment within 3 months subject to clearance of title of the said land and after vacating the slum structures. On these grounds the Respondent No.1 has prayed to drop the proceeding initiated u/s 13(2) of the Maharashtra Slum Area (I,C & R) Act, 1971.

ISSUES

From rival contentions the issue that arises for determination of this Authority is as to whether there is nonperformance on the part of Respondent No.1 and delay in implementation of subject S.R. Scheme is attributable to Respondent No.1.

REASONS

It is admitted fact that the proposal of subject S.R. Scheme is accepted by this Authority on 26.02.2008. The Annexure-II is issued on 11.07.2008. However, thereafter there is absolutely no progress in subject SR Scheme and the Scheme is stand still. It is the version of Respondent No.3 society that since the acceptance of proposal the Respondent No.1 has failed to obtain Letter of Intent till date. There is inordinate delay on the part of Respondent No.1 for more than 15 years, so through General Body Meeting dated 26.02.2023 they terminated the appointment of Respondent No.1 as developer. Through Public Notice dated 20.04.2022, this Authority has recorded 517 dormant proposals in which the subject SR Scheme is at Sr.No.175.

From record it appears that the Hon'ble High Court has quashed the Public Notice dated 20.04.2022 in Writ Petition (L) No.14017 of 2022



Nipun Thakkar V/s. CEO/SRA & Anr. It is pertinent to note that while quashing the Public Notice dated 20.04.2022, the Hon'ble High Court in order dated 10.01.2023 in para 13 has made following observation:

"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 the 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.

From the pleadings of Respondent No.1 it appears that the land under the subject SR Scheme is owned by one M/s Siddique Musa Trust and the same is encroached by slum dwellers. The land under the subject SR Scheme is also declared as slum through notification dated 24.04.1980. According to Respondent No.1 the Competent Authority has issued certified Annexure-II of eligible slum dwellers twice in the year 2008 and 2016. According to the Respondent No.1, the delay is not attributable to them but the same is occurred due to non-disclosure of true numbers of slum dwellers. It is further version of Respondent No.1 that the Respondent No.3 Society without intimation to them conducted a General Body Meeting on 26.02.2023 and terminated their appointment as developer. It is contented that this Authority wrongly through Public Notice dated 20.04.2022 terminated the appointment of Respondent No.1 without considering merits of the case. The said Public Notice is set aside by Hon'ble High Court on 10.01.2023 in Writ Petition (L) No.14017 of 2022. It is further version of Respondent No.1 states that they are ready and willing to start the



redevelopment within 3 months subject to clearance of land title of the said land and after vacating the slum structure.

Now, it will have to be seen as to whether there is any justifiable reason forthcoming from Respondent No.1 in respect of delay. The sum and substance of the contentions of Respondent No.1 is the delay is not attributable to them and same is occurred due to non-cooperation on the part of Respondent No. 3. There is no progress at all and scheme is stand still. The reasons for delay putforth by Respondent No.1 are not convincing and under the garb of inaction of public authority, the Respondent No.1 is attempting to justify their non-performance. The period of more than 15 years has passed and till date not a single slum dweller is rehabilitated. 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 Writ Petition No.2987 of 2018, M/s. Galaxy Enterprises V/s. State of Maharashtra & Ors. are relevant. The relevant observation of Hon'ble High Court are as under;

"58. In any case, the developer cannot be said to possess a vested right which would mandate the SRA to continue it's appointment for such delay and when the body appointing the said developer namely the society itself, in the given set of facts, bonafide and for an acceptable reasons, lacks confidence in the Petitioner as appointed by it. Between the slum society and the developer, it is merely contractual dispute. It cannot be said that the society in adverse circumstances would have no authority in a resolution so passed by the majority to remove a developer. The role of the SRA under law is to further the interest of the slum scheme by exercise of it's powers in the best interest of the slum redevelopment and pass such appropriate orders to achieve the said object, in exercising it's powers inter alia under section 13(2) of the Slums Act."



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 & 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 these facts and circumstances this Authority has come to conclusion that there is non-performance and inordinate delay on the part of Respondent No.1 in implementation of subject S.R. Scheme and Respondent No.1 is liable to be terminated as developer of subject S. R. Scheme. Accordingly following order is passed.

ORDER

1. The Respondent No.1 i.e. M/s. Sterling Construction is hereby terminated as Developer of S.R. Scheme on land bearing CTS No.



296, 296/1 to 56 of Village Kurla-III at Hill road, Chunabhatti, Mumbai- 400 022 for "Mahalaxmi SRA CHS (Prop.)".

2. The Respondent No.3 i.e. Mahalaxmi SRA CHS (Prop.) is at liberty to appoint new developer of its choice in accordance with rules, regulation and policy of Slum Rehabilitation Authority.
3. The new incoming developer to reimburse the actual expenses incurred by Respondent No.1 as per provisions of section 13 (3) of Maharashtra Slum Areas (I, C & R) Act, 1971.

Place:- Mumbai

Date:- **6-7 JUN 2023**


Chief Executive Officer
Slum Rehabilitation Authority

No.SRA/CEO/13 (2)/Mahalaxmi SRA CHS (Prop)/**32/2023**

Date: **6-7 JUN 2023**

Copy to:

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CTS No.296, 296/1 to 56,
Shidik Musa Trust, Hill Road, Sion,
Chunabhatti, Mumbai- 400 022
4. Deputy Chief Engineer/SRA
5. Executive Engineer (L Ward)/SRA
6. DSLR/SRA
7. Tahsildar-2/SRA
8. Finance Controller/SRA
9. Chief Legal Consultant/SRA
10. Joint Registrar (E.S.)/SRA
11. IT Officer/SRA

