



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

**R-S/STGOVT/0012/20110310**

Sainath CHS (Prop.)  
CTS No.518/A/5(pt)  
Village - Kanheri, Taluka- Borivali,  
Indira Nagar Slum, Kulupwadi,  
Borivali (East), Mumbai - 400 066

... Applicant

V/s

1. M/s. Durgeshwari Construction Pvt. Ltd.  
402. Jasodha Bhavan,  
Kasturba Road No.9,  
Borivali (East), Mumbai - 400 066

2. M/s. Design World,  
Om Siddhivinayak Bldg. CHS,  
Near Surbhi Hotel, 90 feet Road,  
Thakur Complex, Kandivali (East),  
Mumbai - 400101



... Respondents

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

**ORDER**

(Passed on **9 JAN 2024**)

These proceedings are initiated in respect of Slum Rehabilitation Scheme on land bearing CTS No.518/A/5(pt), Village Kanheri for "Sainath CHS (Prop.)" pursuant to application of Applicant dated 21.03.2023. 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. 518/A/5(pt), Village Kanheri formed Applicant society i.e. Sainath CHS (Prop.) and in General Body Meeting resolved to redevelop the said land by implementing the Slum Rehabilitation Scheme. The Applicant 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 1550.70 sq. mtrs. The said land is of State Government. The proposal of subject S. R. Scheme is accepted by Slum Rehabilitation Authority on 10.03.2011. However, thereafter there is absolutely no progress in subject S.R. Scheme and the Scheme is stand still.

Since there were several dormant proposals, this Authority took a decision to record these proposals. Accordingly through Public Notice dated 20.04.2022, the 517 dormant proposals of Slum Rehabilitation Schemes were recorded. In said list of 517 Slum Rehabilitation Schemes, the subject Slum Rehabilitation Scheme is at Sr. No.457. In the meanwhile, after recording the proposal of Respondent No.1, the Applicant society has held General Body Meeting on 19.10.2022 in presence of authorized officer of Slum Rehabilitation Authority and appointed one M/s. AVA Lifespaces as new developer. In said General Body Meeting a resolution is passed by society appointing Shri Ramshankar Ambikaprasad Tripathi as Chief Promoter. 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.

Thereafter the Applicant through Application dated 23.01.2023 contended that the Respondent No.1 has failed to make any progress since last 12 years and further requested to terminate their appointment u/s 13(2) of the Maharashtra Slum Areas (I, C & R) Act, 1971 on the basis NOC of Respondent No.1 dated 16.03.2023. Pursuant to said Application the notice of hearing was issued to the concerned parties. Accordingly hearing was held on 26.09.2023 and 31.10.2023. On 31.10.2023 office bearers of Applicant



society remain present along with their Advocates. The Respondent No.1 also remain present. Shri Vinod Gangawane for M/s. AVA Lifespaces remain present Suo Moto. The parties were heard at length and matter was closed for order. Directions were given to parties to submit their written submissions within 15 days.

#### **AGRUMENT OF APPLICANT**

There appears to be two fractions in Applicant society. One fraction is led by Shri Ramshankar Ambikaprasad Tripathi and another fraction is led by Smt. Aditi Desai. Both fractions have submitted their separate written submissions. The contentions of both fractions regarding termination of Respondent No.1 is almost identical. They are at variance in respect of appointment of new developer. According to fraction led by Shri Ramshankar Ambikaprasad Tripathi, they have appointed one M/s. AVA Lifespaces as new developer and the Respondent No.1 has given NOC dated 16.03.2023 stating that due to their personal reason they are unable to redevelop the said land, so they have no objection to appoint new developer. On the other hand the fraction led by Smt. Aditi Desai contends that M/s. Swami Samarth Infra should be appointed as new developer. Both fractions have contended that Respondent No.1 has submitted the proposal on 10.03.2011. The period of almost more than 12 years has passed. Due to failure of Respondent No.1 to rehabilitate the slum dwellers, the proposal was recorded in the list of 517 dormant proposals through Public Notice dated 20.04.2022. In said list the subject SR Scheme was at Sr. No.457.

#### **AGRUMENT OF RESPONDENT NO.1 THROUGH MR. PRAKASH MOTIRAM MISHRA**

It is the version of Respondent No.1 that the Applicant Society has appointed them as developer of subject SR Scheme. There is no delay on their part but the same has occurred due to some financial reasons, Covid-19 pandemic and litigation in National Company Law Tribunal. Further this Authority has recorded 517 dormant proposals through Public Notice dated 20.04.2022. In said list of 517 Schemes, the subject SR Scheme is at Sr. No.457. Thereafter as per guidelines dated 08.06.2022, the Applicant has appointed M/s AVA Lifespaces as their new developer.



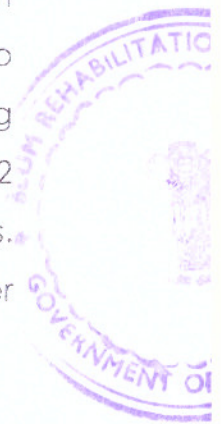


In the meanwhile the Public Notice dated 20.04.2022 is set aside by Hon'ble High Court through order dated 10.01.2023 in Writ Petition (L) No.14017 of 2022, Nipun Thakkar V/s. Chief Executive Officer/SRA & Anr. In the interest of the Applicant society they have issued NOC dated 16.03.2023 by granting their no objection to implement SR Scheme through any other developer. On these grounds the Respondent No.1 has requested to appoint new developer in their place.

**AGRUMENT OF RESPONDENT NO.1 THROUGH SMT. SUDHA MOTIRAM MISHRA**

It is the version of Respondent No.1 that she is the wife of erstwhile Director Mr. Motiram Mishra. The proposal of Applicant society is submitted to this Authority in the year 2011. According to Respondent No.1, Mr. Rakesh Mishra, Mr. Prakash Mishra & Mr. Rajesh Mishra are the children's of deceased Mr. Motiram Mishra from his first marriage to one Late Ashrafi Mishra. After the death of Smt. Ashrafi Mishra in the year 1995, she and Mr. Motiram Mishra got married in the year 1996. It is further version of Respondent No.1 that she is having 50% shareholding in Respondent No.1 Company.

It is further version of Respondent No.1 that she was inducted as Director in Respondent No.1 Company on 06.06.2013 and remained Director till the year 2017. The said children's of deceased Mr. Motiram Mishra removed her Directorship from Respondent No.1 Company to take over the redevelopment of subject SR Scheme. According to Respondent No.1 she alongwith deceased Mr. Motiram Mishra spent Rs.50,00,000/- for construction and redevelopment of subject SR Scheme. It is further version of the Respondent No.1 that a Company Petition No.817 of 2017 is also pending before the National Company Law Tribunal regarding mismanagement in Company. According to Respondent No.1 since last 12 years the Respondent No.1 Company could not rehabilitate slum dwellers. Thus in the interest of slum dwellers, she requested this Authority to allow her to complete the subject SR Scheme alongwith new developer.





## **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**

Before proceeding to discuss the rival contentions it is necessary to look into the factual aspects of subject S.R. Scheme. The proposal of subject S. R. Scheme is accepted by this Authority on 10.03.2011 on land bearing CTS No. 518/A/5(pt), Village Kanheri, area admeasuring 1550.70 sq. mtrs. The land is owned by State Government. Since appointment of Respondent No.1 in the year 2011, the period of around 12 years has passed but till date no approvals are obtained by Respondent No.1. Even the Respondent No.1 failed to obtain Annexure-II.

There is copy of report of Assistant Registrar/SRA dated 28.07.2023 on record. From said report 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 S.R. Scheme is at Sr. No.457. After recording of proposal of the Respondent No.1, the Applicant society has held General Body Meeting on 19.10.2022 in presence of authorized officer of Slum Rehabilitation Authority. Out of total 77 slum dwellers, the 34 slum dwellers were present and they appointed one M/s. AVA Lifespaces as developer. In said General Body Meeting a resolution is passed by society appointing Shri Ramshankar Ambikaprasad Tripathi as Chief Promoter. In the meantime one Nipun Thakkar has filed Writ Petition (L) No.14017 of 2022 in Hon'ble High Court challenging the Public Notice dated 20.04.2022. The Hon'ble High Court through order dated 10.01.2023 quashed the said Public Notice dated 20.04.2022 recording 517 SR Schemes. While quashing the Public Notice dated 20.04.2022, the Hon'ble High Court in paragraph no.13 of the order made following observations;





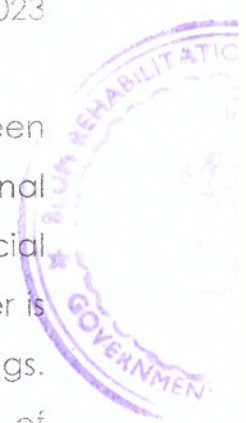
***"13. We make it clear that we have not restricted or constrained the powers of the SRA to take action in accordance with law, where justified. We have only quashed the impugned notice because it is entirely outside the frame of the law and not in accordance with law".***

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.

From record it appears that there are two rival groups in the said Society and they have appointed two separate developers through two General Body Resolutions. The written submissions of two groups of Applicant is on record. One group of Applicant is represented through Shri Ramshankar Ambikaprasad Tripathi, Chief Promoter by virtue of General Body Resolution dated 19.10.2022. According to him after recording of proposal of Respondent No.1, through General Body Meeting dated 19.10.2022 in presence of authorized officer of Slum Rehabilitation Authority they appointed one M/s AVA Lifespaces as new developer. Further Respondent No.1 has also issued NOC dated 16.03.2023 stating that due to their personal reason they are unable to redevelop the said land.

There is another written submission of another group of Applicant represented through Smt. Aditi Desai, Secretary on record. According to Smt. Aditi Desai the intimation of General Body Meeting dated 19.10.2022 in which M/s. AVA Lifespaces are appointed as developer was not given to all members. Further it is contended that M/s. Shree Swami Infra have been appointed as new developer in General Body Meeting dated 31.08.2023 with the consent of more than 80% slum dwellers.

It has also sufficiently come on record that there is dispute between Directors of Respondent No.1 Company and proceedings before National Company Law Tribunal bearing CP No.817 of 2017 are pending. The official website of National Company Law Tribunal reveals that the said matter is pending and Slum Rehabilitation Authority is not party to said proceedings. According to one of the Director i.e. Mr. Prakash Motiram Mishra of





Respondent No.1, there is no delay on the part of Respondent No.1 but the same was occurred due to some financial reasons, Covid-19 pandemic and litigation in National Company Law Tribunal and in the interest of the Applicant society they have issued NOC dated 16.03.2023 by granting their no objection to implement SR Scheme through any other developer.

There is copy of written submission submitted by Smt. Sudha Motiram Mishra on behalf of Respondent No.1 on record. She is claiming to be wife of erstwhile Director Mr. Motiram Mishra. According to her, Mr. Rakesh Mishra, Mr. Prakash Mishra & Mr. Rajesh Mishra are the children's of deceased Mr. Motiram Mishra from his first marriage with Late Ashrafi Mishra. After the death of Smt. Ashrafi Mishra in the year 1995, she and Mr. Motiram Mishra got married in the year 1996. She further stated that she was having 50% shareholding in Respondent No.1 Company. Thus in the interest of slum dwellers, the Respondent No.1 requested this Authority to allow her to complete the subject SR Scheme alongwith new developer. This Authority is having no concern with the internal dispute among the Directors of Respondent No.1 and Authority's concern is of rehabilitation of slum dweller.

The developers implementing the Slum Rehabilitation Schemes are expected to complete the same within reasonable time. 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 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 15<sup>th</sup> 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. Developers 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"***

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."***

It has sufficiently come on record that there are two rival groups in society. The contention of both the groups is identical regarding termination of Respondent No.1 as developer. Further it is apparent from record that, after recording of proposal of the Respondent No.1, the Applicant society has held General Body Meeting on 19.10.2022 for appointment of new developer in presence of authorized officer of co-operative department/SRA. The report of co-operative department dated 01.11.2022 is on record. From said report it appears that as per official record of Slum Rehabilitation Authority, Shri Ramshankar Ambikaprasad Tripathi is Chief Promoter and in General Body Meeting dated 19.10.2022 M/s. AVA Lifespaces were appointed as developer.





Considering the said version of Applicant society and NOC of Respondent No.1 dated 16.03.2023, it will be just and proper to terminate them as developer of subject SR Scheme and direct the society to hold fresh General Body Meeting in presence of authorized representatives of Co-operative department of Slum Rehabilitation Authority and to take decision with majority in respect of appointment of new developer. Accordingly, this Authority proceed further to pass following order;

**ORDER**

1. The appointment of Respondent No.1 i.e. M/s. Durgeshwari Construction Pvt. Ltd. is terminated as developer of subject SR Scheme i.e. SR Scheme on CTS No.518/A/5(pt), Village Kanheri for "Sainath CHS (Prop.)".
2. The society i.e. Sainath CHS (Prop.) is at liberty to appoint new developer by passing fresh General Body Meeting as per rules, regulations 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 the Maharashtra Slum Areas (I, C & R) Act, 1971.

Place: - Mumbai

Date: - 09 JAN 2024

Chief Executive Officer  
Slum Rehabilitation Authority

No. SRA/CEO/13(2)/Sainath CHS (Prop.)/ 02 /2024

Date: 09 JAN 2024

Copy to:

1. Sainath CHS (Prop.)  
CTS No.518/A/5(pt)  
Village - Kanheri, Taluka- Borivali,  
Indira Nagar Slum, Kulupwadi,  
Borivali (East), Mumbai - 400 066
2. M/s. Durgeshwari Construction Pvt. Ltd.  
402, Jasodha Bhavan,  
Kasturba Road No.9,  
Borivali (East), Mumbai - 400 066





3. M/s. Design World,  
Om Siddhivinayak Bldg. CHS,  
Near Surbhi Hotel, 90 feet Road,  
Thakur Complex, Kandivali (East),  
Mumbai - 400101
4. Deputy Chief Engineer/SRA
5. Executive Engineer (R/C)/SRA
6. DSLR/SRA
7. Deputy Collector (Spl. Cell)/SRA
8. Finance Controller/SRA
9. Chief Legal Consultant/SRA
10. Joint Registrar (W.S.)/SRA
- ✓ 11. IT Officer/SRA

