

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.(L) NO. 12949 OF 2024**

M/s. Lashkaria Housing &
Infrastructure Pvt. Ltd.

}

..Petitioner***: Versus :***

1. Slum Rehabilitation Authority
2. Chief Executive Officer
3. Sarvodaya Residence SRA CHS
(Proposed)

4. Apex Grievance Redressal Committee }

..Respondent**WITH****INTERIM APPLICATION (LODG.) NO. 15499 OF 2024****IN****WRIT PETITION (LODG.) NO. 12949 OF 2024**

1. Salahuddin Akid Ansari
2. Mohd. Israeel Abdul Rahid Khan
3. Mohd. Asif Noor Mohd. Khan
4. Sabera Shahid Varsi

}

***..Applicant/ Intervenor
(Proposed Respondent)******In the matter between :***

M/s. Lashkaria Housing &
Infrastructure Pvt. Ltd.

}

..Petitioner***: Versus :***

1. Slum Rehabilitation Authority
2. Chief Executive Officer
3. Sarvodaya Residence SRA CHS
(Proposed)
4. Apex Grievance Redressal Committee } **..Respondent**

Mr. Mayur Khandeparkar, with Mr. Santosh Pathak, Mr. Chirag Thakkar and Mr. Kailash Pathak, for the Petitioner.

Mr. Jagdish G. Aradwad (Reddy) for Respondent Nos.1 and 2.

Mr. Cherag Balsara i/by. Mr. Milind Nar, for Respondent No.3.

Ms. Uroosa Shaikh i/by. Mr. Anup Patil for AGRC, Respondent No.4.

Mr. Amogh Singh with Ms. Priya Chaturvedi i/by. Mr. Nimish Lotlikar for Applicant in IAL-15499 of 2024.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 9 MAY 2024.

Pronounced On : 10 MAY 2024.

JUDGMENT:

1) Petitioner-Developer has filed this petition challenging the Order dated 8 April 2024 passed by the Apex Grievance Redressal Committee (**AGRC**), rejecting Petitioner's Application No. 228 of 2023 and upholding the Order dated 28 August 2023 passed by Chief Executive Officer, SRA (**CEO/SRA**) terminating Petitioner's appointment as Developer under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**Slum Act**).

2) The petition concerns implementation of Slum Rehabilitation Scheme (SRS) in respect of Plot bearing Survey No. 41, CTS No.1 (Pt.) of Village-Oshiwara, Taluka-Andheri, Anand Nagar, Jogeshwari West, Mumbai- 400 012. It appears that one M/s. Hridaya Constructions Pvt. Ltd. (**Hridaya**) was appointed by the slum dwellers, through their Society named Sarvodaya Residence SRA CHS (Proposed), as Developer for implementation of SRS on the plot. It appears, Society also adopted a Resolution in its General Body on 25 March 2018 resolving to cancel the appointment of Hridaya and to appoint Petitioner as new Developer to implement the subject SRA. Accordingly, on Society's application, CEO/SRA initiated action for termination of appointment of Hridaya under provisions of Section 13(2) of the Slum Act and passed order dated 26 June 2018 terminating the appointment of Hridya and granting liberty to Society to implement the SRS through Petitioner as per provisions of prevailing law, rules and regulations.

3) Petitioner was accordingly appointed as a developer for implementation of subject SRS by letter dated 13 July 2021. Letter dated 1 August 2022 was submitted on the letterhead of Respondent No.3- Society, which was signed by 31 plus 7 persons seeking termination of appointment of Petitioner under the provisions of Section 13(2) of the Slum Act *inter-alia* on the ground that despite its appointment in the year 2018, Petitioner did not make any progress in the scheme.

4) The CEO/SRA initiated proceedings under Section 13(2) of the Slum Act in which Petitioner was heard. However, it appears that the Chief Promoter of Respondent No.3-Society submitted letter dated 6 July 2023 before CEO/SRA questioning the authority of persons to address letter dated 1 August 2022 on Society's letterhead and requested for rejection of the application. CEO/SRA, after hearing parties, passed order dated 28 August 2023 allowing the application and terminated the appointment of Petitioner as Developer to implement the subject SRS. The Joint Registrar/SRA has been directed to hold the General Body meeting for appointment of Chief Promoter and other promoters of the Society. The Society has been granted liberty to appoint new developer of its choice.

5) Aggrieved by CEO/SRA's order dated 28 August 2023, Petitioner filed Application No. 228/2023 before AGRC. During pendency of the application, AGRC stayed the order of CEO/SRA. After hearing parties, AGRC has proceeded to dismiss Petitioner's application.

6) Petitioner has accordingly filed the present petition challenging Orders passed by AGRC and CEO/SRA. By order dated 17 April 2024, this Court has continued the stay granted by AGRC.

7) I have heard Mr. Mayur Khandeparkar, the learned counsel appearing for the Petitioner. He would question the locus of signatories to the application dated 1 August 2022 to maintain an action seeking

termination of appointment of Petitioner. He would submit that Society's Chief Promoter, alone can represent it, who did not seek termination of Petitioner and infact sought dismissal of application filed by unauthorised persons. Relying on judgment of Division Bench in *Nirman Realtors and Developers Ltd. Versus Slum Rehabilitation Authority*¹, he would submit that slum dwellers in their individual capacity cannot seek termination of developer under Section 13(2) of the Slum Act.

8) He would submit that the CEO/SRA has erred in terminating the appointment of Petitioner without appreciating the fact that there has been no delay on the part of the Petitioner in implementing the subject SRS. That Petitioner's proposal came to be accepted by SRA on 13 July 2021. That the project involves rehabilitation of approximately 432 hutments divided over three parts of land. That the first part of the land belongs to MCGM, which has 210 structures and in respect of which Annexure-II has been issued on 16 March 2005 declaring 138 slum dwellers eligible and 72 ineligible. The second part of the land is owned by MHADA, on which there are 120 structures and in Annexure-II issued on 21 December 2005, 66 slum dwellers are held eligible and 54 ineligible. That the third portion of land is owned by MHADA, on which there are 97 structures and that Annexure-II in respect of that portion of the land is yet to be finalised and is at draft stage. He would invite my attention to public notice dated 25 February 2022 issued by MHADA for conduct of bio-metric survey of slum structures on the

¹ 2017 SCC OnLine Bom 9201.

third portion of the land. That it is for MHADA to finalise Annexure-II in respect of third part of land, in absence of which, Petitioner cannot file a proposal for issuance of Letter of Intent (LOI). He would rely upon order passed by this Court in *Adarsh SRA Sahakari Gruhanirman Sanstha Ltd. and Anr. V/s. Slum Rehabilitation Authority and Ors.*² holding that developer cannot be held responsible in absence of pending eligibility of slum dwellers. He would rely upon survey conducted at the instance of District Superintendent of Land Records, SRA vide letter dated 24 February 2023. He would invite my attention to Survey Map indicating overlapping requiring further permissions/approvals from Competent Authorities. That another Developer is unauthorisedly constructing structure on the DP road, about which complaints are filed by the Society. That Letter dated 23 February 2023 is challenged by M/s. Sunil Constructions in this Court to prevent conduct of survey. He would submit that if above circumstances are taken into consideration, it cannot be contended that there is any delay on the part of the Petitioner in implementing the subject SRS.

9) Mr. Khandeparkar would submit that the CEO/SRA has not applied his mind objectively to the above circumstances and has proceeded to allow application of unauthorised persons in a mechanical manner. That AGRC has failed to correct the error committed by CEO/SRA by not appreciating that non-finalisation of Annexure-II in respect of third portion of the land is not attributable to Petitioner in any manner.

² Writ Petition (Lodg.) No. 11493 of 2023 decided on 4 December 2023.

10) Respondent No.3-Society is apparently split into two parts and Mr. Cherag Balsara as well as Mr. Amogh Singh claim right to represent it. While Mr. Balsara opposes the petition, Mr. Singh supports it.

11) Mr. Balsara would submit that the CEO/SRA has rightly terminated the appointment of Petitioner, who has been simply sitting over the scheme ever since his appointment by the Society. That instead of proceeding ahead with implementation of slum scheme in respect of second portion of land comprising 120 slum structures, Petitioner has been deliberately delaying the same with a view to expand the ambit of the scheme by incorporating the first and third portions of the land in the scheme. That Petitioner was allotted only second portion of land comprising 120 slum structures and that in his quest to expand the slum scheme, it has deliberately delayed issuance of LOI till all the problems concerning first and third portions of land are sorted out. That the slum dwellers of first and third portions of land do not desire implementation of their schemes through Petitioner. That another developer named M/s. Sunil Constructions is claiming rights in respect of first portion of land and has filed petition in this Court challenging actions of the Petitioner for amalgamation of that land in the slum scheme of 120 structures. That the slum society on third portion of land comprising of 97 structures have complained to SRA about their opposition to include the third portion of land in the slum scheme allotted to Petitioner. That Petitioner has thus created complications in implementation of the slum scheme allotted to it to satisfy its greed to implement the scheme in

respect of larger portions of land. That though Hridaya was earlier granted permission to develop 433 slum structures, the scheme allotted to Petitioner is only in respect of second portion of land covering 120 slum structures. That the AGRC has rightly appreciated the fact that Petitioner has neither secured consent of slum dwellers on adjoining plots nor has made any progress towards implementation of SRS allotted to him. He would pray for dismissal of the petition.

12) Mr. Singh, the learned counsel appearing for rival part of Respondent No.3-Society represented by Mr. Salahuddin Akeen Ansari (Chief Promoter) and other co-promoters, would support the petition. They have filed Interim Application (L) No. 15499/2024 to support the petition on behalf of Respondent No.3-Society. Mr. Singh would submit that implementation of the subject SRS involves all the three portions of land comprising of 432 slum structures.

13) Mr. Aradwad (Reddy), the learned counsel appearing for Respondent Nos.1 and 2-SRA would oppose the petition and submit that the factual position as captured in the order of the CEO/SRA would undoubtedly indicate that the slum scheme allotted to Petitioner is only in respect of 120 structures and not in respect of 432 structures, as falsely claimed by Petitioner. Supporting the Order of CEO/SRA, he would therefore pray for dismissal of the petition.

14) Rival contentions of the parties now fall for my consideration.

15) It must be observed at the very outset that, the present petition is full of confusion on multiple aspects. Firstly, there is a confusion as to who can represent Respondent No.3-Society as both Mr. Balsara as well as Mr. Singh claim right of representation on its behalf. This is something which is not very uncommon in SRA societies where rival groups of slum dwellers are often formed, who are usually backed by rival developers. I am not surprised that in the present case also two rival groups claim to represent the society. The second confusion, which to my mind, goes to the root of the matter and clarification of which provides an answer to the issue involved in the present petition, relates to the exact land on which Petitioner was allotted SRS for implementation. While answer to the first confusion is useful for deciding preliminary objection of Mr. Khandeparkar about locus to maintain action under Section 13(2) of the Slum Act, clarity about second confusion leads to answer on merits of the petition.

16) Before proceeding to decide merits of the orders passed by the CEO/SRA and AGRC, it would be necessary to first deal with the objection raised by Mr. Khandeparkar about locus of signatories to the complaint dated 1 August 2022 to maintain an action for termination of developer under Section 13(2) of the Slum Act. No doubt, the law on the subject is well settled that application for seeking termination of developer under Section 13(2) of the Slum Act cannot be initiated by an individual slum dweller. This obviously is the position because the decision to choose the Developer is collectively taken by the society of slum dwellers. Once the society collectively chooses a developer, whose

proposal is accepted by SRA for implementation of SRS in question, ordinarily only that collective body viz. Society can maintain an action under Section 13(2) of the Slum Act for removal of the developer. Mr. Khandeparkar's reliance on judgment of Division Bench of this Court in *Nirman Realtors* (supra) in this regard is apposite. This Court held in para-20, 21 and 24 of the judgment as under:

20. Undisputedly, the application under Section 13(2) of the Slum Act was filed by the Respondent No. 3 in her individual capacity as a slum dweller. It is well settled that an individual slum dweller or the proposed society of the slum dwellers cannot seek removal of the developer, who was appointed by the registered society after obtaining consent of 70% of the slum dwellers. This being the case the application under Section 13(2) of the Slum Act filed by an individual slum dweller was not maintainable.

21. There is no dispute that a Developer who has been appointed by a Cooperative Society is under obligation to fulfill the mandate of DCR 33(10). When the Developer develops the land in contravention of plan or contravenes any restrictions or conditions or does not implement the scheme within the time, Section 13(2) of the Slum Act confers powers on the Competent Authority to remove the errant Developers and replace by any other competent agency.

24. It is also to be noted that the High Power Committee has observed that the Petitioner has failed to pay rent of transit accommodation to the eligible slum dwellers. Non-payment of rent was one of the grounds for removal of the Petitioner as a Developer. It is to be noted that the show cause notice issued to the Petitioner in Section 13(2) proceedings does not refer to removal on the ground of non-payment of rent. The decision to remove the Petitioner as Developer on the ground of non-payment of rent is beyond the allegations contained in the show cause notice and is therefore breach of principles of natural justice.

17) While it is well settled that application for termination of developer cannot be filed by individual slum dwellers under Section

13(2) of the Slum Act, it is equally true that initiation of action under Section 13(2) does not need a trigger of an application by the society. Infact, sub-section (2) of Section 13 is couched in such manner that, it vests jurisdiction in the Competent Authority to withdraw a slum scheme from owner or developer. All that is needed for passing an order under Section 13(2) is 'satisfaction' of the Competent Authority. Section 13 of the Slum Act provides thus:

13. Power of Competent Authority to redevelop clearance area

(1) Notwithstanding anything contained in sub-section (1) of section 12 the Competent Authority may, at any time after the land has been cleared of buildings in accordance with a clearance order, but before the work of redevelopment of that land has been commenced by the owner, by order, determine to redevelop the land at its own cost, if that Authority is satisfied that it is necessary in the public interest to do so.

(2) Where land has been cleared of the buildings in accordance with a clearance order, the Competent Authority, if it is satisfied that the land has been, or is being, redeveloped by the owner thereof in contravention of plans duly approved, or any restrictions or conditions imposed under sub-section (10) of Section 12, or has not been redeveloped within the time, if any, specified under such conditions, may, by order, determine to redevelop the land at its own cost:

Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why the order should not be passed.

18) The scope of power of Competent Authority under Section 13(2) of the Slum Act has been explained by the Apex Court in *Susme Builders Private Limited Vs. Chief Executive Officer, Slum Rehabilitation Authority*³ in which the Apex Court has held as under:

³ (2018) 2 SCC 230

45. We cannot accept such a wide submission. According to us, under Section 13(2) of the Slum Act, the SRA has the authority to take action and hand over the development of land to some other recognised agency under three circumstances:

- (i) When there is contravention of the plans duly approved;
- (ii) When there is contravention of any restriction or condition imposed under sub-section (10) of Section 12 of the Slum Act; and
- (iii) When the development has not taken place within time, if any, specified.

46. The requirement to complete the development within time may be there in the letter of intent issued by the SRA or may be in the agreement entered into between the owner/developer with the slum-dwellers. Such condition, if violated, would attract the provisions of Section 13(2) of the Slum Act. Over and above that, when a clearance order is passed, then in terms of sub-section (10) of Section 12, the competent authority can include a condition with regard to the time within which the development should be completed and, in that case, also Section 13(2) would be attracted. We are not, however, able to accept the very wide argument that in case of delay, the condition that is violated must be laid down under Section 12(10) of the Slum Act.

47. There may be cases where the slum-dwellers do not offer any resistance and willingly consent to move into transit accommodation provided by the owner/developer. Therefore, the conditions laid down under Section 12(10) will come into play only when there is a clearance order, but in case there is no clearance order, then under Section 13(2), the SRA would be empowered to take action when there is violation of any plan or when there is violation of any condition relating to developing the project within time. The time-limit can, some time, be provided in the letter of intent, in the agreement or even in the regulations.

Whether the SRA has any other power to remove the developer

51. Even if we were to assume that the SRA did not enjoy this power under Section 13(2) of the Slum Act, we are of the considered view that since it was the SRA which issued this letter of intent, it necessarily must have the power to cancel the same. The SRA can also derive this power under clauses (c) and (d) of sub-section (3) of Section 3-A of the Slum Act, which read as under:

“3-A. Slum Rehabilitation Authority for implementing Slum Rehabilitation Scheme.—(1) Notwithstanding anything contained in the foregoing provisions, the State Government may, by notification in the Official Gazette, appoint an authority to be called the Slum Rehabilitation Authority for such area or areas as may be specified in the notification; and different authorities may be appointed for different areas.

(3) The powers, duties and functions of the Slum Rehabilitation Authority shall be—

(c) to get the Slum Rehabilitation Scheme implemented;

(d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slums.”

52. A bare reading of these provisions shows that in terms of clauses (c) and (d) of sub-section (3) of Section 3-A of the Slum Act, the SRA not only has the power, but it is duty-bound to get the slum rehabilitation scheme implemented and to do all such other acts and things as will be necessary for achieving the object of rehabilitation of slums. In this case, the SRA was faced with a situation where the slum-dwellers were suffering for more than 25 years and, therefore the action taken by SRA to remove Susme for the unjustified delay was totally justified.

53. A perusal of the various provisions of the Slum Act would show that normally in a case falling under the Slum Act, it is the owner of the land, whether it be the Government, a statutory authority or a private person, who will be interested in the development work. Normally, the occupiers will be encroachers of slum land. Therefore, there will be a conflict of interest between the occupiers and the owner. The owner, in turn, will always engage a developer/builder to carry out the development work. In case the owner gives a power of attorney to the developer, as in the present case, the developer now has two identities — (i) the power-of-attorney holder of the owner, and (ii) the developer. As far as the present case is concerned, the Society is made up of the members who are occupiers and this Society has given power of attorney to the developer Susme. Therefore, the developer Susme is actually having a dual role of owner and developer. Both the letters of intent have been issued in favour of the Society, Susme and the architects of Susme. Susme could not have carried out the development work on the basis of its agreement with the Society.

It needed the permission of the SRA. Therefore, SRA can obviously revoke such permission.

19) Thus, as held by the Apex Court in *Susme Builders*, for effective implementation of SRS under Section 3A(3) of Slum Act, the Competent Authority is vested with necessary jurisdiction to take such steps as may be necessary in the facts of each case. Thus, the Competent Authority can initiate *suo-moto* action for termination of developer under Section 13(2) of the Slum Act. While Mr. Khandeparkar does not dispute this position, he would submit that in the present case, the power is not exercised *suo-moto* and is triggered by an application filed by unauthorized persons. That CEO/SRA never thought it necessary on its own to initiate *suo-moto* action and the action initiated on the basis of unauthorised application cannot be subsequently justified on the basis of permissibility to initiate *suo-moto* action. I am unable to agree with the submissions of Mr. Khandeparkar. As observed above, all that is needed for exercise of jurisdiction under Section 13(2) is recording of 'satisfaction' by CEO/SRA about existence of eventualities enumerated under the provision. Considering the objective behind conferring the power under Section 13(2), coupled with vesting of power to take 'all necessary steps' for effective implementation of SRS under Section 3A(3), I am of the view that order passed by CEO/SRA after recording his 'satisfaction' cannot be rendered invalid only on account of the fact that the initial trigger for the action was by person(s) not authorised to maintain an application under Section 13(2). I am therefore not inclined to interfere in the impugned order of the CEO/SRA on this count.

20) Coming to the merits of the decisions of CEO/SRA and of AGRC, Petitioner claims that its proposal for implementation of subject SRS is accepted in respect of larger portion of land admeasuring 6,295.30 sq. mtrs comprising of 432 odd slum structures. In para-8 of the petition, Petitioner has given following sub-division of the entire land on which it believes it has right to implement the slum scheme:

8. The Competent Authority, being the MHADA on 21st December 2005 and MCGM on 16th March 2005, the land owners had forwarded the Annexure II (list of eligible slum dwellers who would be entitled for a permanent tenement under the re-development) in respect of the very slum.

Sr. Nos.	Date of Issuance	Land Owned by	Total Slum Structure	Eligible	Non-Eligible
1	16 th March 2005	MCGM	210	138	72
2	21 st December 2005	MHADA	120	66	54
3	2022	Draft Annexure II issued by MHADA	97		

21) There is a debate amongst the parties about the exact land and the exact number of slum structures in respect of which, the slum scheme has been sanctioned. The above three portions of land are indicated by Petitioner on '*superimposed plan*' annexed at Exhibit-F to the petition which is as under:



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23) Petitioner's claim of acceptance of proposal of all three portions of land is premised on various documents such as the order passed by CEO/SRA on 26 June 2018 terminating Hridaya's appointment and accepting its appointment, Note dated 14 October 2020 of District Superintendent of Land Records giving NOC in respect of land admeasuring 6,295.33 sq.mtrs., reflection of 433 slum structures in report of Co-operative Department dated 17 January 2019, Resolution adopted by Society on 25 March 2018 etc. I have minutely considered all the documents on record and I must say that it is really unfortunate that this Court is required to institute a microscopic enquiry to find out the exact land in respect of which slum scheme has been handed over to the Petitioner. Better clarity in this respect would have saved valuable judicial time. However, since validity of orders passed by CEO/SRA and AGRC hinge squarely on this debate, I am left with no other alternative but to embark upon such enquiry.

24) It appears that Hridaya was allotted slum scheme in respect of 432 slum structures which is clear from following observations made by CEO/SRA in order dated 26 June 2018 :

Proposal for preparing Annexure-II was forwarded by MHADA on 19/8/2005. Chief Officer, Mumbai Road, MHADA informed SRA by its letter dated 21/12/2005 that 122 out of 432 slums structures are on MHADA land and that therefore Annexure-II will be issued for the same, whereas remaining slum structures out of 432 are on MCGM land and therefore Annexure-II should be obtained from MCGM for the same..."

25) It thus appears that Hridaya was apparently allotted slum scheme in respect of much larger portion comprising of 432 slum structures which could possibly cover all the three portions of land described above. Hridaya's appointment was terminated by CEO/SRA by order dated 26 June 2018, which also refers to General Body Meeting of Society held on 25 March 2018 resolving to cancel appointment of Hridaya and proposing to appoint Petitioner as Developer. It appears that Hridaya had given NOC for appointment of Petitioner as developer as Hridaya was unable to process the subject SRS due to its personal reasons. CEO/SRA terminated appointment of Hridaya and granted liberty to Society to implement the SRS through their new developer as per the provisions of prevailing law, rules and regulations. Para-2 of the operative portion of the order of CEO/SRA dated 26 June 2018 reads thus:

2. The slum dwellers society viz. Sarvodaya Residence SRA CHS is at liberty to implement the SR Scheme. Further through their new developer M/s. Lashkaria Housing & Infrastructure Pvt. Ltd. as per the provisions of prevailing law, rules and regulations.'

26) Though it is sought to be contended by Mr. Khandeparkar and Mr. Singh that the entire scheme got transferred from Hridaya to Petitioner by Order dated 26 June 2018, I am unable to accept the said contention. The CEO/SRA merely granted liberty to the Society to implement SRS through Petitioner '*as per provisions of prevailing law, rules and regulations*'. The actions initiated after passing of order dated 26 June 2018 makes this position clearer. After termination of Hridaya's appointment by order dated 26 June 2018, one Anand Nagar Sarvoday

Residence SRA Co-operative Housing Society addressed letter dated 4 July 2018 to the Co-operative Department of SRA requesting convening of General Body Meeting of the Society for appointment of Developer. Accordingly, the Co-operative Department convened meeting of General Body of the Society on 26 October 2018 by nominating Assistant Registrar to oversee the same. Notices were published in local newspapers for holding the meeting. Due to objection raised by Respondent No.3-Society, the meeting convened at the instance of Anand Nagar Sarvoday Residence SRA CHS was cancelled and a fresh meeting was scheduled to be held on 31 October 2018 by publishing notices in newspaper. In the meeting held on 31 October 2018, Subject No.1 was for appointment of developer, in which slum dwellers were supposed to cast their votes in respect of two developers viz. Petitioner and M/s. Sitara Realities Pvt. Ltd. The meeting was held only in respect of 120 slum structures and only 66 slum dwellers who were held eligible in Annexure-II certified on 21 December 2005 were permitted to vote. Thus, the meeting held on 31 October 2018 was only in respect of 120 slum structures located on second portion of the land. Out of the 66 eligible slum dwellers, 44 remained present for the meeting and Petitioner secured 24 votes whereas M/s. Sitara Realtors received 20 votes. Accordingly, Petitioner was declared successful in the voting process. The second subject was about appointment of Managing Committee in which Mr. Ansari Salahuddin Akid was declared as Chief Promoter of the society in addition to other promoters. Report of the minutes of the Meeting was prepared by Co-operative Officer, SRA

which was approved by Joint Registrar, Secretary SRA and finally by CEO/SRA.

27) Appointment of the Petitioner for implementation of the slum scheme is processed on the basis of the above report of the Co-operative Department as approved by CEO/SRA. It is thus apparently clear that though Hridaya's appointment was in respect of larger portion of slum scheme comprising 432 slum structures, after liberty was granted to the Society for appointment of new developer, appointment of Petitioner is made only in respect of second portion of land comprising of 120 slum structures.

28) Though Mr. Khandeparkar and Mr. Singh have sought to rely upon Resolution adopted in General Body Meeting held on 25 March 2018, in my view, the said Resolution is meaningless as fresh process was required to be implemented for appointment of developer after Hridaya's appointment was terminated. Appreciating this position, Respondent No.3-Society held meeting on 31 October 2018 and adopted Resolution for appointment of Petitioner after conducting voting by secret ballot between two developers. Interestingly, the Chief Promoter and other promoters to whom Mr. Singh represents and who support the Petitioner not just participated in that meeting but their election as Chief Promoter and Co-promoters is an outcome of Resolutions adopted in the said meeting. Having passed a Resolution for appointment of Developer to implement slum scheme for only 120 slum structures, it is highly objectionable on the part of clients of Mr. Singh to turn around and

contend that Petitioner is appointed for implementation of slum scheme for 432 structures. The conduct of clients of Mr. Singh in taking a stand contrary to the Resolutions adopted in the General Body Meeting held on 31 October 2018 is deprecated. In fact, the entire confusion about the land and the number of structures in respect of which Petitioner is appointed got created on account of such irresponsible stand taken by Petitioner and by clients of Mr. Singh leading to wastage of judicial time.

29) Petitioner's reliance on File Note dated 14 October 2020 of District Superintendent of Land Records-SRA does not cut any ice. True it is that, the said authority has granted NOC from ownership point of view for implementation of slum scheme in respect of land admeasuring 6,295.33 sq.mtrs. However, the said document does not and cannot be read to mean as if acceptance of proposal of Petitioner by letter dated 13 July 2021 is in respect of the said portion of land or 432 slum structures. When only 120 slum structures were considered for determining majority for appointment of developer, the scheme cannot be for rehabilitation of 432 slum structures. This is because the majority is calculated only in respect of 66 eligible slum dwellers out of 120 slum structures. If Petitioner contends that it is entitled to implement slum scheme for 432 slum structures, its appointment would be rendered *ab-initio* void. I am therefore of the view that Petitioner's appointment is only in respect of second portion of the land comprising 120 slum structures.

30) Once the clarity is achieved about the exact number of slum structures for which Petitioner is appointed to implement the scheme, appreciation of reasons recorded by CEO/SRA and AGRC for termination of Petitioner's appointment becomes easy. It is an admitted position that Petitioner wants to implement slum scheme in respect of all three portions of land. However, record indicates that there is not just stiff opposition for execution of SRS in respect of first and third portions of land through Petitioner, but Petitioner has also not been able to secure necessary clearances/approvals in respect of first and third portions of land. M/s. Sunil Constructions apparently claims rights in respect of first portion of land comprising of 210 structures and is opposing implementation of SRS by Petitioners. It has filed Writ Petition (St.) No. 9361 of 2023 in this Court challenging letter dated 24 February 2023 by which District Superintendent of Land Records has directed conduct of survey of overlap area of SRS of M/s. Sunil Constructions and SRS of Petitioner for verification of actual number of slum structures. It appears that another society named Hindu Muslim Ekta CHS (Proposed) is formed in respect of first portion of the land. Thus, Sunil Constructions not just claims rights in respect of first portion of the land but is clearly opposed to amalgamation of the two SRS.

31) Similarly in respect of slum structures located in the third portion of the land, another society is formed which is opposed to Petitioner implementing SRS in respect of 97 slum structures located thereon. The record thus clearly indicates that far from Petitioner securing consent as well as approvals for integration/amalgamation of

slum scheme relating to first and third portions of land, he is facing stiff opposition from various quarters from persons/entities interested in those schemes/slum structures.

32) Thus, instead of concentrating on implementing the slum scheme of 120 slum structures in respect of which Petitioner is appointed as developer, it appears to be more interested in expanding the scope of its appointment by securing rights in respect of first and third portions of the land. Both CEO/SRA and AGRC have rightly appreciated this position that Petitioner is more interested in amalgamating the subject SRS with adjoining slum schemes without the consent of the slum dwellers.

33) Petitioner's appointment as developer is made in General Body Meeting held on 31 October 2018. By now, period of about six long years has elapsed. Even if period upto CEO's order of 28 August 2023 is considered time of five long years had elapsed and Petitioner had not even secured LOI for commencing construction at the site by clearing the slums. One of the pretexts raised by Petitioner to explain delay was COVID-19 pandemic. However, Petitioner's appointment was made on 31 October 2018 much before the advent of COVID-19 pandemic. Despite passage of five/six years after its appointment, Petitioner has made no progress in implementation of the subject SRS. Petitioner appears to be more interested in securing rights in respect of adjoining slums for higher profitability. Useful reference in this regard can be made to the observation of Single judge of this Court (*G. S. Kulkarni J.*)

in *Galaxy Enterprises Vs. State of Maharashtra*⁴ has held that delay even prior to issuance of LOI can be taken into consideration for exercise of power of termination of developer under Section 13(2) of Slum Act. This Court has highlighted the effect of delay in implementation of slum scheme by developers who sit over their proposals for years without making any progress at the site. This Court has held:

56. On the above clear backdrop, I am not persuaded to accept any of the submissions of Mr. Dhakephalkar learned Senior Counsel for the petitioner. The contention that the LOI was ultimately granted on 30 May 2016, and hence there is no requirement to change the developer as the delay stood condoned, cannot be accepted in the clear facts and circumstances of the case. In fact, this is a clear admission on the part of the petitioner that there was not only delay but it was inordinate. In any case LOI sought to be obtained after about ten years of the petitioner's appointment, would not in any manner condone the conduct of the petitioner in delaying the scheme and the inherent lack of diligence, rigour and earnestness which was expected. There is another reason as to why this argument cannot be accepted, namely that the society's application under Section 13(2) for change of developer was prior in time, and the petitioner clearly appears to have awakened from a deep slumber and started taking actions, with the engineering department purporting to show of having achieved another step, now of a LOI being obtained. These actions of the petitioners as rightly held in both the impugned orders could not have frustrated the society's application for change of the developer. Even the payments which are stated to be made by the petitioner to the SRA towards part of the land premium, would also not assist the petitioner in the facts of the case. Such payments cannot create any equity much less a legal right with the petitioner to continue with the scheme in the facts as they stand. These amounts as partly being paid are in any case being refunded to the petitioner.

57. There cannot be a myopic approach to these issues of a delay in implementation of a slum rehabilitation scheme. Things as they stand are required to be seen in their entirety. The only mantra for the slum schemes to be implemented is it's time bound completion and a machinery to be evolved by the authorities, to have effective measures in that direction to monitor the schemes as a part of their statutory

⁴ (2019) 5 SCC 43

obligation to avoid delays. Non-commencement of the slum scheme for long years and substantial delay in completion of the slum schemes should be a thing of the past. In the present case, looked from any angle there is no plausible explanation forthcoming for the delay of so many years at the hands of the petitioner to take bare minimum steps to commence construction.

58. The authorities should weed away and reprimand persons who are not genuine developers and who are merely agents and dealers in slum schemes. These persons after get themselves appointed as developers, to ultimately deal/sell the slum schemes, as if it is a commodity. Any loopholes in the rules to this effect, therefore, are required to be sealed.

60. In any case, the developer cannot be said to possess a vested right which would mandate the SRA to continue its 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 a 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 S.R.A. under law is to further the interest of the slum scheme by exercise of its powers in the best interest of the slum redevelopment and pass such appropriate orders to achieve the said object, in exercising its powers inter alia under Section 13(2) of the Slums Act.

34) I have therefore no hesitation in my mind in holding that Petitioner has deliberately delayed implementation of subject SRS in its quest to secure additional rights in respect of adjoining slums lands. Petitioner's appointment as developer has rightly been terminated by CEO/SRA. AGRC has rightly rejected Petitioner's application. I find the orders of the CEO/SRA and AGRC to be unexceptional.

35) The Writ Petition must fail. As observed above apart from conduct of Petitioner in not making any progress in implementation of slum scheme for 5/6 years, its conduct in representing before this Court

that it has been allotted slum scheme for rehabilitation of all three portions of land comprising 432 structures has been found to be fallacious after undertaking an inquiry by this Court. This resulted in wastage of substantial and valuable judicial time. Therefore, dismissal of the Petition cannot be without consequences. Writ Petition is accordingly **dismissed** with costs of Rs. 5,00,000/- to be paid to the Tata Memorial Hospital within 8 weeks by producing receipt thereof before the Prothonotary and Senior Master of this Court.

36) With the dismissal of the petition, nothing survives in the Interim Application (L) No. 15499/2024 and the same also accordingly stands disposed of.

SANDEEP V. MARNE, J.

37) After the judgment is pronounced, Mr. Khandeparkar would pray for continuation of interim order passed in the petition. The prayer is opposed by Mr. Balsara, the learned counsel appearing for Respondent No.3. Considering the reasons recorded in the judgment, I am not inclined to continue the interim relief. The prayer for continuation of the interim order is accordingly rejected.

SANDEEP V. MARNE, J.