



SLUM REHABILITATION AUTHORITY

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

SUO MOTU PROCEEDINGS

Slum Rehabilitation Authority
SRA Administrative Building, Bandra (E) Mumbai

Applicant

v/s.

1. M/s. Vinayak Realtors,
705/ 706, Krushal Commercial Towers,
Above Shopper's Stop, G. M. Road,
Chembur (West), Mumbai - 400 089
2. Architect Mr. Hemant Parikh & Associates,
703, Krushal Commercial Towers,
Above Shopper's Stop, G. M. Road,
Chembur (West), Mumbai - 400 089
3. Shivaji Nagar SRA CHS,
CTS No. 121 (Part), village Hariyali,
Tagore Nagar, Near Group 5 A,
Santoshi Mata Mandir Marg,
Vikhroli (East), Mumbai - 400 083

... Respondents



ORDER

(Passed on- 29/11 /2017)

The present Suo-Motu proceeding is initiated by the Slum Rehabilitation Authority (SRA) against M/s. Vinayak Realtors under Section 13 (2) of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ["Slum Act"], pursuant to the law laid down in order dated 07/02/2013 passed by the Hon'ble High Court in Appeal From Order bearing No.1019 of 2010. In the said Petition the Hon'ble High Court expressed the view that, when the Slum Rehabilitation Projects which are undertaken by Statutory Authority

with enormous Statutory Powers, they must ensure timely completion of project by appropriate intervention. This Suo Motu proceeding is initiated against the Developer viz. M/s. Vinayak Realtors, on account of his non - performance and inordinate delay in implementation of Slum Rehabilitation Scheme on plot of land bearing CTS No. 121 (Part), village Hariyali, Tagore Nagar, Near Group 5 A, Santoshi Mata Mandir Marg, Vikhroli (East), Mumbai - 400 083 for Shivaji Nagar SRA CHS, Vikhroli [hereinafter referred to as "the subject S.R. Scheme"].

FACTS IN BRIEF :-

The Respondent developer had submitted proposal for implementation of S.R. Scheme under Regulation 33(10) of DCR - 1991 to Slum Rehabilitation Authority (SRA) and the same was accepted on 30/12/2005 in respect of plot of land bearing CTS No. 121 (Part), village Hariyali, Tagore Nagar, Near Group 5 A, Santoshi Mata Mandir Marg, Vikhroli (East), Mumbai - 400 083 for Shivaji Nagar SRA CHS, Vikhroli admeasuring 5242 sq. mtrs. for rehabilitation of 186 numbers of slum dwellers, through their Architect M/s. Hemant Parky & Associates. The land under the subject Slum Rehabilitation Scheme is owned by Maharashtra Housing and Area Development Authority (MHADA) and therefore the draft Annexure - II was sent to the Chief Officer, Mumbai Board, MHADA and Competent Authority. Accordingly, the Competent Authority has issued certified Annexure - II on 24/08/2006 with regard to the subject S. R. Scheme of total 186 numbers of slum dwellers, out of which 149 slum dwellers are held eligible for permanent alternate accommodations. On the basis of the certified Annexure - II issued by the Competent Authority, the SRA has approved the subject S.R. Scheme and issued Letter of Intent (LOI) in favour of the aforesaid developer on 05/11/2007 and Intent of Approval (IOA) for Rehab Building was issued on 11/04/2008. Moreover, revised LOI was issued on 21/03/2009 and Plinth C.C for Rehab Building was issued on 31/08/2009. Though the Scheme is accepted in the year 2005 and LOI has been issued in the year 2007 and IOA & Plinth C. C. have been issued in the year 2009, however the aforesaid developer has not

carried out any constructions on site till date. One of the slum dwellers, viz. Mr. Ramsagar Jagnarayan Mishra filed a complaint in the office of Slum Rehabilitation Authority on 19/11/2015 about non-payment of rent. Therefore, Joint Registrar/ has issued a Notice dated 28/12/2015 calling upon the Respondent No. 1 Developer to comply with Circular No. 153 dated 06/06/2015 of SRA and to take steps to make payment of arrears of rent in the account of the aforesaid Complainant and file declaration within 15 days in this regard. Otherwise further action shall be initiated against him, i.e. the aforesaid developer.

Likewise, society, viz. Shivaljinagar CHS Ltd. submitted a complaint dated 29/04/2016 in the office of Slum Rehabilitation Authority complaining that the Respondent developer M/s. Vinayak Realtors has not started the work for implementation of subject S.R. Scheme since year 2007. He has not paid rent of slum dwellers whose tenements have been vacated since year 2014 for the purpose of implementation of subject S.R. Scheme. Therefore, they have decided to terminate the appointment of Respondent developer M/s. Vinayak Realtors and wish to appoint new developer in his place. Hence, SRA has issued a Show Cause Notice dated 10/06/2016 calling upon the Respondents to attend the hearing on 16/06/2016 and show cause as to why action should not be taken for inordinate delay in implementing the Scheme and for non-payment of rent to slum dwellers.

The notices were issued to Developer, Society & Architect thereby giving them opportunities to remain present at the office of SRA in the aforesaid hearing on date and time mentioned therein and submit their say / written reply on their behalf. Hearing was conducted on 29/08/2016 before the then CEO / SRA wherein Mr. Jayesgh Tanna for Respondent developer M/s. Vinayak Realtors and Mr. Ketan Belsare for Architect were present. Mr. Dashrath Lad and Vinod Bhosale for society were also present. In the said hearing the representatives of

Society alleged that there is inordinate delay in implementation of subject S.R. Scheme and the rent has not been paid to the slum dwellers of said society. Representative of developer submitted that rent has been paid and due to non co-operation of 3-4 slum dwellers in subject S.R. Scheme the work is pending. After hearing the concerned parties, CEO / SRA gave direction to the aforesaid developer to pay rent to the slum dwellers and speed up the work of implementation of subject S.R. Scheme failing which strict action under Section 13 (2) of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 will be initiated against him. Thereafter, letter dated 12/09/2016, was issued to the aforesaid developer directing to pay rent and submit a "Self-Declaration" certificate in that regard in the office SRA. However, since the aforesaid developer did not comply with the direction, Notice of Hearing dated 24/03/2017 was issued requesting the concerned parties to remain present for the hearing on 11/04/2017. The society members were present in the hearing on 11/04/2017 but the aforesaid developer remained absent. Since the said developer did not comply with the direction and he was not present in the hearing on 11/04/2017, it was concluded that he is not interested in the implementation of subject S.R. Scheme. Therefore, the matter was closed for order.

However, the Hon'ble then CEO / SRA retired from service in June 2017. Due to his retirement, the order in the aforesaid matter could not be passed. Therefore, fresh Notice of Hearing dated 05/08/2017 was issued to the concerned parties including the aforesaid developer requesting them to attend the hearing on 08/08/2017.

HEARING :-

After issuance of fresh Notice dated 05/08/2017, the hearings were held on 08/08/2017, 18/08/2017 and 04/09/2017. Smt. Prachi Shetey and Surekha Shinde, i.e. Chairman and Secretary respectively of the aforesaid society were present,

Mr. Hemant Parikh on behalf of the developer was present. After hearing the concerned parties, the matter was closed for order on 24/09/2017.

ARGUMENTS OF MEMBERS OF SOCIETY, VIZ. SHIVAJINAGAR CHS (P)

The members of society, viz. Shivajinagar CHS (P) had submitted representations dated 29/04/2016, 22/11/2016 and 30/11/2016 in the office of SRA. In the said representations, the members of the said Society put their grievances repeatedly that the Respondent developer M/s. Vinayak Realtors has not started the work for implementation of subject S.R. Scheme since year 2007. He has not paid till date the rent of slum dwellers whose tenements have been vacated since year 2014. The society further pointed out that the said developer is not complying with the directions of SRA which are issued to him from time to time. The society members also pointed out that the respondent Developer is misguiding this Authority by making wrong statements that Annexure - II is false and he has filed an appeal before the Competent Authority in this regard. However, this statement of developer is false as he not produced any documentary proof in respect of the said Annexure - II and appeal.

In view of the aforesaid facts, the members of the Society have again requested by its letter dated 27/02/2017 addressed to SRA to cancel the appointment of Respondent Developer and permission be granted to the said Society to appoint developer of their choice subject to approval of SRA.

ARGUMENTS OF DEVELOPER, VIZ. M/s. VINAYAK REALTORS

The Respondent Developer had filed written submissions dated 16/09/2016 & 20/09/2016 and stated that he has paid rent to the slum dwellers of subject S.R. Scheme. The Respondent developer also enclosed list of slum dwellers to whom the rents have been paid. The developer also made written submission dated 22/08/2017 alongwith rent chart showing details of payment made to slum dwellers of subject S.R. Scheme and bank statement in this regard from

beginning till date. He also submitted that he is not allowed to work on site of the subject S.R. Scheme. He promised that he would start the construction work immediately if he gets police protection.

ISSUES AND DISCUSSIONS:

After issuance of notice dated 05/08/2017, final opportunity was given to the Respondent developer M/s. Vinoyak Realtors and the concerned party to remain present for the hearing. The parties present at the hearing were heard. From the facts on record, the only issue for consideration is as to whether there is "non-performance" and "in-ordinate delay" on the part of the Respondent Developer in implementation of the subject S.R. Scheme and whether he was lethargic in paying the rent to the slum dwellers of subject S.R. Scheme in time?

Looking into the facts on record of S.R.A., it appears that the land under subject S.R. Scheme is owned by MHADA. The Respondent Developer had submitted subject S.R. Scheme to SRA and the same was accepted on 30/12/2005. Further, the Competent Authority has issued certified Annexure - II on 24/08/2006. There are total 186 numbers of slum dwellers, out of which 149 slum dwellers are held eligible. LOI was issued in the year 2007. IOA for composite building was issued on 11/04/2008 and Plinth C.C. for Rehabilitation was issued on 31/08/2009. Even after lapse of 9 years, the Respondent Developer has failed to complete the subject S.R. Scheme.

The Respondent Developer further submitted that he has paid rent to all slum dwellers of subject S.R. Scheme. But the Society alleges that the Respondent developer has paid the rent partly but there is still outstanding rent of huge amount.

During the hearing, it is brought to the notice that Respondent Developer has not paid rent of Rs. 72,36,000/- to the slum dwellers of subject S.R. Scheme since year 2014. Alongwith his written submissions dated 16/09/2016 and

20/09/2016, the Respondent developer has produced a chart showing the rent paid by him to some of the slum dwellers (only 68 slum dwellers). Even the payment of such rents to the said slum dwellers is also irregular and some slum dwellers are not paid rent since 2014. Moreover, from the record, it also appears that in the written submission filed by the Respondent Developer, it is alleged that since 3-4 slum dwellers are not co-operating with him for implementation of the subject S.R. Scheme, it could not be complete. However, he has not given any proper explanation regarding inordinate delay neither he has mentioned the names of slum dwellers against whom he has alleged that they are obstructing the subject S.R. Scheme. He has also not taken any steps for removing those obstructions of such slum dwellers.

Therefore the SRA being the planning and Project implementation Authority cannot keep the said proposal pending for long time in view of the Order dated 07/02/2013 by the Hon'ble High Court at Bombay in Appeal form order No. 1019 of 2010 [M/s. Ravi Ashish Land Developers Ltd. v/s. Prakash Pandurang Kamble & Ors.] In the said order the Hon'ble High Court has made following observations.

"When the slum rehabilitation projects which are undertaken by the statutory authority enjoying enormous statutory power, are incomplete even the offer twenty years of their commencement, then it speaks volume of the competency 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, offer issuance of letter of intent or renewals thereof fold their hands and will for developer to complete the project. They are not helpless in either removing the slum dwellers or the developer. The speed with which they remove the slum dwellers from 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, ".....".

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The Slum Rehabilitation Authority has been conferred with the powers and each one of them copied with a duty. If the slum dwellers are eligible to be entitled to be rehabilitated of site and within a reasonable period, they cannot be left at the mercy of developer and buildings. ".....".

The slum dwellers expect that the authorities like SRA should take note of their grievances without any fear, favour and affection forwards any set of developer. An independent and impartial implementation and supervision so also monitoring of the projects is the purpose for which the authority has been set up".

As per the aforesaid observation of Hon'ble High Court, it is necessary to take appropriate steps for speedy implementation of the subject S.R.Scheme in the interest of larger slum dwellers and to ensure that the rehabilitation of the slum dwellers is completed in a reasonable time.

From the aforesaid facts of the case, prima facie it appears that there is inordinate delay on the part of Respondent Developer in implementation of the S.R. Scheme. The Scheme had been submitted and accepted in the year 2005 and the certified Annexure-II was issued in the year 2006 by the Competent Authority, the LOI was issued in the year 2007 and other subsequent approvals, such as IOA and GC has been issued in the year 2008 & 2009. Even after 10 years of about more than 9 years, the respondent developer failed to obtain subsequent approvals from SRA and also failed to rehabilitate the eligible slum dwellers in the S.R. Scheme.

Further, keeping trust on the respondent developer, the slum dwellers vacated their structures and since last 10 years, there is absolutely no progress and the work is stand-still. It is apparent from order dated 29/08/2016 passed by CEO / SRA that direction was issued to developer to pay rent which was outstanding against him. However, the slum dwellers and society are still making grievances of non-payment of rent. The developer has not also produced the convincing evidence to show that rent upto date has been paid. The bank

statement and the statement submitted by the developer are not indicating that each of slum dwellers are duly paid their rent as per their entitlement.

In view of the aforesaid facts and in view of aforesaid observations of Hon'ble High Court, the following order is passed:

ORDER

- (1) The appointment of M/s. Vinayak Regitlors for implementation of the subject S.R. Scheme on plot of land bearing C.T. S. No. 121 (Part), village Hariyali, Tagore Nagar, Near Group 5 A, Santoshi Mata Mandir Marg, Vikhroli (East), Mumbai - 400 083 for Shivaji Nagar SRA CHS, Vikhroli stands terminated.
- (2) The slum dwellers Society viz. Shivaji Nagar SRA CHS, Vikhroli is at liberty to implement the S.R. Scheme further through their new developer as per the provisions of prevailing law, Rules and Regulations within 90 (ninety) days.
- (3) The newly appointed developer shall pay the actual expenses legally incurred, if any, till the date of this order by the Respondent No. 1 while implementing the subject S.R. Scheme.

Place:- Mumbai

Date:-


Chief Executive Officer
Slum Rehabilitation Authority

No. जा.क्र.मुंबई/स.नि./सो.मु.जा/८४३२२०९७

Date: २६/११/१७
(सहकार कक्ष)

Copy to:

- 1) Chief Promoter/Secretary, Shivajinagar CHS (P)
- 2) Developer M/s, Vinayak Realtors.
- 3) Architect M/s. Hemant Parikh & Associates.
- 4) Deputy Chief Engineer /SRA.
- 5) Deputy Collector/ SRA.
- 6) Joint Registrar/SRA.

- 7) Finance Controller/SRA,
- 8) Chief Legal Consultant/SRA,
- 9) Asstt. Town Planner /SRA
- 10) Administrative Officer/SRA
- 11) IT Officer - To update the fact sheet and computer record,