Andreza

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 18022 OF 2021
WITH
INTERIM APPLICATION NO. 4297 OF 2022

WRIT PETITION (L) NO. 18022 OF 2021

Yash Developers,
A registered Partnership Firm having its Registered Office at 402 to 407, "Traffic-Lite Business Park", Next to Bank of Baroda, M. G. Road, Ghatkopar (W), Mumbai – 400 086.

… Petitioner

V e r s u s

1. **Harihar Krupa Co-operative Housing Society Ltd.,**
A Co-op. Society, duly registered under Maharashtra Co-operative Societies Act, 1960, having its office at Harihar Krupa SRA CHS LTD, Sukarwadi, M. G. Road, Borivali East, Mumbai – 400 066.

2. Apex Grievance Redressal Committee,
The State of Maharashtra, Having it's office at 4th Floor, Administrative Bldg., Anant Kanekar Marg, Bandra (E), Mumbai 400 051.

3. **The Chief Executive Officer (CEO)**, Slum Rehabilitation Authority, having its office at 3rd Floor, Administrative Bldg. Anant Kanekar Marg, Bandra East, Mumbai 400 051.

4. **The Deputy Collector (ENC/WS)**,
Slum Rehabilitation Authority, having it's office at 5th Floor, Administrative Bldg., Anant Kanekar Marg, Bandra East, Mumbai – 400 051.

5. **The Deputy Registrar, SRA**
Slum Rehabilitation Authority having it's office at Ground Floor, Administrative Bldg., Anant Kanekar Marg, Bandra East, Mumbai – 400 051.

6. **Veena Developers,**
A registered Partnership Firm having its Registered office at A/901, Kaledonia, Sahar Road, Antheri (East), Mumbai – 400069. …Respondents

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Dr. Birendra Saraf, Senior Advocate *a/w. Mr. Yadunath Chaudhari, Mr. Kevin Pereira, Mr. Kushal Amin, Mr. Makarand Raut i/b Mr. Chinmay Acharya, Advocate for the petitioner.*

Mr. Pravin Samdhani, Senior Advocate *a/w. Ms. Sharmila Deshmukh, Ms. Anchita Nair, i/b Ms. Jaya Bagwe, Advocate for the respondent no. 1.*

Mr. Jagdish G. Aradwad (Reddy) *for respondent no. 2 (AGRC)*

Mr. Vijay D. Patil, Advocate *for respondent nos. 3 to 5.*

Mr. Hassan Khan *a/w Nikhil Vijay Adkine i/b. Mr. Viraj Jadhav, Advocate for the respondent no.6.*

CORAM: G. S. KULKARNI, J.
RESERVED ON : 21 December, 2021
FURTHER RESERVED ON: 30 September, 2022
PRONOUNCED ON : 14 October, 2022

JUDGMENT

1. The judgment has been divided into the following sections to facilitate analysis:-

SECTIONS	HEADING	PARA NOS.
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A. Prelude :

2. A developer being removed on the non-fulfillment of the basic requirement to commence construction of a slum rehabilitation building for a long period of 18 years, whether is not fatal to the object and intention of a statutory intent behind a Slum Rehabilitation Scheme, is an issue which falls for consideration of the Court in the present proceedings. Another crucial question would be as to whether the right to shelter which is part of the slum dwellers' right to

livelihood guaranteed under Article 21 of the Constitution, can be continued to be nullified by such actions of unconscionable delay on the part of the developer, in not commencing construction of the slum project even by an inch more particularly when the nature of such work awarded to a developer for him is purely a commercial venture, for profit.

3. The petitioner, who was appointed in the year 2003 by respondent no.1-Slum Society, as a 'developer' to undertake its Slum Rehabilitation Scheme, under which not a single brick was laid by the petitioner for about 18 years, resulting in the petitioner's removal by the impugned order dated 4 August, 2021 passed by the Apex Grievance Redressal Committee (for short, '**the *AGRC')*,** in exercise of powers under Section 13(2) of The Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short *'***the *Slums Act'***), is before the Court in the present proceedings under Article 226 of the Constitution of India, assailing such order, passed by of the AGRC.

4. By the impugned order dated 4 August, 2021 passed by the Apex Grievance Redressal Committee (AGRC), an appeal filed by respondent no. 1-society against the decision of the Chief Execution Officer of the Slum Rehabilitation Authority declining to remove the

petitioner under Section 13(2) of the Slums Act, has been allowed by the following order :

> (i) *Appointment of Respondent no. 2 M/s. Yash Developers in respect of S. R. Scheme on plot of land bearing CTS No. 515 (Pt.), 515B(Pt.) and 509 of Village Kanheri, Taluka Borivali corresponding to F.P. No. 14-AB(Pt) of TPS-II, Borivali (East) for Harihar Krupa CHS Ltd. stands terminated.*
>
> *(ii) Liberty is granted to the slum dwellers of applicant Harihar Krupa CHS Ltd. to appoint new developer of their own choice in presence of Assistant Registrar Cooperative Society/SRA as per Rules, Regulation and Prevailing Policy of SRA to complete the further implementation of subject S.R. Scheme.*
>
> ***(iii) The newly appointed developer should reimburse the actual expenses legally incurred by Respondent no.2 M/s. Yash Developer for implementation of subject S R Scheme till the date of this Order.***
>
> *On 28.05.2021 this Committee had stayed the impugned order dated 16.03.2021 passed by CEO/SRA under Section 13(2) of Maharashtra Slum Areas (I.C & R) Act 1971 till next date* ***stands vacated.***
>
> *With the aforesaid directions the present Application No. 89 of 2021 filed by Harihar Krupa CHS Ltd. through Chairman Vinod Kanta Rai stands disposed off.* (emphasis supplied)

B. Facts :

5. The factual antecedents as set out in the memo of the writ petition are required to be noted:

A slum rehabilitation scheme set into motion by slum dwellers co-operative housing society, namely the Harihar Krupa Co-operative Housing Society (for short "**the Society**") on land bearing CTS No. 515A(Part), 515B(Part) and 509 of Village Kanheri, Taluka Borivali, Mumbai corresponding to Final Plot No. 14-AB (Part) of TPS II, Borivali (East), Mumbai – 400 066 (for short "**the slum land**") is the subject matter of the present proceedings. The land is of the ownership of the Municipal Corporation of Greater Mumbai (for short, **MCGM**). The Slum Rehabilitation Scheme (for short "**the slum scheme**") was to be undertaken under the provisions of the Maharashtra Slums Areas (Improvement, Clearance and Re-development) Act, 1971 (for short "**the Slums Act**") read with the provisions of Regulation 33(10) of the Development Control Regulations for Greater Mumbai as applicable at the relevant time.

6. About 500 slum dwellers having their hutments on the subject land, which was declared as a 'slum area' under the Slums Act, decided to form the respondent no.1-Cooperative Housing Society. The Society appointed the petitioner as a '*developer*' to undertake redevelopment of the said slum, by implementing a "slum rehabilitation scheme". Accordingly, a Development Agreement dated 20 August, 2003 came to be entered between the petitioner and the

Society. On 11 December, 2003, the petitioner submitted a proposal for development of the said slum, which came to be approved by the Slum Rehabilitation Authority (for short **"SRA**").

7. It is the petitioner's case that the SRA forwarded the Draft Annexure-II (list of eligible slum dwellers who would be entitled for a permanent tenement under the re-development) to the MCGM, for its verification and finalization. The petitioner contends that in the meanwhile another rival society namely one "Omkareshwar Cooperative Housing Society (for short "**Omkareshwar**") supported by a rival developer, M/s. Siddhivinayak Developers, without submitting its proposal to the SRA, forwarded a separate Draft Annexure-II to the MCGM in respect of the very slum. The MCGM in these circumstances without conducting any survey and verification of the proposal, returned the petitioner's proposal to the SRA. At the same time, an Annexure -II was issued in the name of Omkareshwar.

8. The petitioner being aggrieved by such actions of Omkareshwar approached the Principal Secretary, Housing, of the State Government, who granted a stay on Omkareshwar taking further steps in regard to the slums scheme in question. Assailing such order passed by the Principal Secretary Housing, Omkareshwar approached this Court in

Writ Petition No. 2924 of 2006, against the petitioner, *inter alia* assailing the slums scheme as proposed by the Society. The said Writ Petition was pending for almost one year which came to be disposed of in terms of Consent Terms dated 23 July, 2007 as entered between the parties, by an order dated 7 August, 2007 passed by this Court.

9. Although the dispute between the petitioner and Omkareshwar stood settled, Omkareshwar filed Notice of Motion No. 80 of 2008 in the disposed of Writ Petition praying for setting aside of the Consent terms dated 23 July, 2007. It is contended that the said Notice of Motion was disposed of by an order dated 18 October, 2008, whereby , liberty was granted to Omkareshwar to approach the High Power Committee (HPC) and seek appropriate orders.

10. Accordingly, on 16 December, 2008, Omkareshwar filed an appeal (Appeal No. 144 of 2008) before the HPC, inter alia, praying that Omkareshwar be permitted to implement the slum rehabilitation scheme through 'Siddhivinayak Developers'. The petitioner contends that such appeal filed by Omkareshwar remained pending for almost one year. By an order dated 20 June, 2009 the HPC dismissed Omkareshwar's appeal. It is stated that Omkareshwar being aggrieved by such order passed by the HPC approached this Court in Writ

Petition No. 1556 of 2009, which came to be disposed of by an order dated 18 August, 2009 passed by this Court, by which the Court remanded the matter to the HPC, for a fresh hearing. On remand, the HPC re-heard the proceedings and by an order dated 27 November, 2009 again dismissed Omkareshwar's appeal (Appeal No. 144 of 2008). Again, Omkareshwar being aggrieved by the order dated 27 November, 2009 of the HPC approached this Court in Writ Petition (L) No. 286 of 2010 (later on numbered as Writ Petition No. 310 of 2011). On 30 March, 2010, this Court passed an interim order on such petition directing the parties to maintain status quo. This interim order passed by this Court on Omkareshwar's Writ Petition was assailed by the petitioner before the Supreme Court in proceedings of SLP (Civil) No. 13045-13046 of 2010. The Supreme Court by its order dated 10 May, 2010 disposed of the SLP directing this Court to expedite hearing of Omkareshwar's Writ Petition. In pursuance of the orders passed by the Supreme Court, this Court heard the parties on Omkareshwar's Writ Petition, which came to be disposed of by an order dated 23 February, 2011 whereby the parties were directed to pursue the disputes before the HPC.

11. Accordingly, Omkareshwar approached the HPC in an appeal (Appeal No. 7 of 2011). By an order dated 30 April, 2011 the HPC remanded the matter to the Chief Executive Officer of the SRA

(respondent no. 3) for reconsideration of the matter and to take action in accordance with law. In pursuance of such orders passed by the HPC, the Chief Executive Officer of the SRA conducted a hearing and passed an order dated 7 June, 2011 thereby Omkareshwar's proposal came to be rejected. In such order, the Chief Executive Officer observed that the petitioner had consent of 70% slum dwellers as ascertained by following the process of verification. The Chief Executive Officer accordingly held the petitioner to be qualified to be appointed as developer for implementation of the slum scheme. It was also observed that Omkareshwar has no locus standi, as its proposal was submitted subsequent to the proposal as submitted by respondent no. 1-Society. Although at the relevant time the petitioner had the support of 70% of the total number of slum dwellers as also a development agreement was executed by the society with the petitioner. The dispute between Omkareshwar and the petitioner was on the entitlement of the parties to undertake the slum rehabilitation scheme based on the majority support of the slum dwellers.

12. It is hence the petitioner's case that although the Development Agreement was entered between the petitioner and the Society on 20 August, 2003, the scheme could not be implemented effectively almost for a period of eight years that is between the year 2003 to 2011 on account of the above stated litigations which also involved the status

quo order passed by this Court. It is the petitioner's case that such delay caused in implementing the slums scheme during such period thus was neither deliberate nor intentional and was purely on account of the objections filed by Society, namely, Omkareshwar, which is rival to the respondent no. 1-Society, and the rival builder Siddhivinayak. The petitioner accordingly states that the slum scheme as submitted by the petitioner in 2003 could be set into motion only in the year 2011.

13. On such backdrop, the petitioner contends that the SRA issued a Letter of Intent (LOI) dated 29 June, 2011. On 15 July, 2011, a corrigendum was issued to the LOI. The LOI set out the terms and conditions on which the petitioner would undertake implementation of the slum scheme. It is stated that as per the terms of the LOI, the petitioner also deposited an amount of Rs.83,35,000/- towards first instalment of the land premium as per a demand letter issued to the petitioner. On deposit of such amount of the land premium, on 24 January, 2012 the SRA issued an Intimation of Approval (IOA) in respect of rehabilitation Building no. 1. Thereafter on 13 March, 2012, the petitioner deposited Rs.1,38,90,600/- towards second instalment of the land premium. Thus, a total land premium of Rs. 2,22,25,600/- came to be made by the petitioner. After the LOI and IOA being issued by the SRA, the petitioner commenced shifting of the slum dwellers

from the slum land for which petitioner offered monthly rent/compensation to the slum dwellers to enable them to obtain temporary alternate accommodation so as to enable the petitioner to commence construction. The petitioner, however, contends that as the rival society, namely, Omkareshwar was issued Annexure-II on 12 March, 2004 and a rectification of the same as per a condition of the LOI was necessary to be endorsed in the name of respondent no. 1 (Harihar Society), an application was made by the petitioner to the MCGM for the rectification of Annexure-II. Such application came to be granted by the MCGM on 20 September, 2013 by issuance of a rectified Annexure-II.

14. It is the petitioner's case that in the meanwhile, as the slum dwellers were to be shifted to temporary alternate premises, the slum dwellers kept on submitting additional documents asserting their eligibility. In pursuance thereto, the Society requested petitioner to make sure that maximum number of slum dwellers become eligible under this slums scheme. This culminated into supplementary Annexure-II being issued on 20 May, 2014. A second supplementary Annexure-II also came to be issued on 16 October, 2015.

15. Insofar as the number of slums dwellers were concerned, it is

the petitioner's case that as per provisions of Annexure-II issued in the year 2004, only 318 slum dwellers were held eligible, however, over the period of years, such numbers increased from 318 to 470 and further, as per final Annexure-II issued by MCGM, the position remained that out of 580 slum dwellers situated on the land, 470 slum dwellers were held to be eligible and 110 slum dwellers were held to be not eligible. According to the petitioner, a period of three years, i.e., between the year from 2012 till 2015 was consumed, as the slum rehabilitation scheme remained pending for finalizing Annexure-II.

16. The petitioner contends that further steps were taken by the petitioner in order to progress the slum scheme and accordingly, on 28 April, 2014 the petitioner obtained an 'Environmental Clearance' from the Government of Maharashtra. Thereafter on 14 July, 2014, the Competent Authority issued a Commencement Certificate for construction of rehabilitation Building no. 1 as per the plans approved on 24 January, 2012. Also on 9 October, 2014, the MCGM issued a High Rise Clearance which was a milestone to begin with the development of the subject scheme.

17. The petitioner has stated that after obtaining the Commencement Certificate (CC) as also the Environmental Clearance,

at the end of the year 2014, the petitioner offered and requested the Slum dwellers to accept monthly rent, in lieu of temporary alternate accommodation and vacate their structures, so as to facilitate smooth development of the slum land. It is stated that few slum dwellers accepted monthly rent and vacated their respective structures which were demolished by the petitioner. However, some of the slum dwellers continued to obstruct the smooth development process, as they refused to vacate their structures at the instance of the rival society, namely, Omkareshwar and the rival developer Siddhivinayak. The petitioner contends that this necessitated the petitioner to file an application before the Chief Executive Officer of the SRA to initiate proceedings under section 33 read with section 38 of the Slums Act for eviction of the non-cooperative slum dwellers. Such application was filed by the petitioner on 5 November, 2014. However, the SRA directed the petitioner to file such application before the MCGM being the owner of the land and competent authority. The petitioner has stated that on 11 November, 2014 the petitioner filed an application before the Assistant Municipal Commissioner to initiate appropriate proceedings under section 33 read with section 38 of the Slums Act. It is stated that however no action was taken on such application, despite the petitioner following up and pursuing such application, as no notice was issued to the obstructing slum dwellers. Hence, subsequent

applications came to be filed by the petitioner on 9 January, 2015 and 17 January, 2015. Although such applications were heard, however, no orders were passed.

18. The petitioner contends that vide circular dated 10 July 2018, the powers to execute and implement the proceedings under section 33 and 38 of the Slums Act were delegated to the Deputy Collector-SRA western suburbs (Respondent no.4) and hence were not required to be exercised by the MCGM. Hence, once again in November 2019, the petitioner filed an application and requested Deputy Collector to initiate proceedings against the slum dwellers under Section 33/38 of the Slums Act. The case of the petitioner that for a period of five years i.e. between 2014 to 2019, petitioner's application for initiation of action under section 33/38 of the Slums Act for demolition of structures of dissenting slum dwellers on the subject property was still pending and not concluded.

19. The petitioner contends that in the meanwhile on 25 February 2015, the MCGM published a Revised Development Plan (DP) for the city of Mumbai, under which, a Development Plan road was introduced passing through the subject property, which was resulting in the sub-division of the part of the plot on which the sale building was

to be constructed, which was likely to make the slum scheme non-viable. Hence, the petitioner on 3 April 2015, filed its objection to the draft Revised Development Plan proposed by the MCGM. Such objection as filed by the petitioner was pending before the MCGM for a period of more than two years between 2015 to 2017. In the year 2017, the reservation for the DP road was not confirmed therefore, according to the petitioner, redevelopment of the subject property became possible and viable.

20. The petitioner contends that the first Letter of Intent (LOI) was although issued on 29 June 2011, however, thereafter a re-verified Annexure-II came to be issued on 20 September 2013 and the first supplementary Annexure-II came to be issued on 20 May 2014. It is stated that the second supplemental Annexure-II came to be issued on 16 October 2015, according to which, number of eligible slum dwellers had been increased from 318 to 470. It was hence necessary for the petitioner to obtain the revised Letter of Intent (LOI). Also, as per sanctioned modification in clause no. 3.12 of appendix-IV of Regulation 33(10) of amended DCR-1991 and as per Gazette notification dated 20 May 2016 and 1 October 2016 provision for non-eligible tenants as Project Affected Persons (PAP) was allowed. The petitioner has contended that about 110 slum dwellers were non-

eligible under the SR Scheme and they were likely to be dis-housed while implementing SR Scheme. It is stated that for taking benefit of the said notification for construction of the Project Affected Persons (PAP) tenements for such non-eligible tenants, petitioner obtained revised Letter of Intent (LOI) dated 27 April 2017. It is stated that as per the original sanctioned plan, the area of a rehabilitation tenement to be constructed in a Rehab building was of 269 square feet per tenement, however, with the issuance of revised DCPR in the year 2018, the area per tenement was increased to 300 square feet. It is stated that for giving benefit of the additional area to the slum dwellers, the petitioner obtained a second revised Letter of Intent (LOI) which was issued on 23 December 2019. This according to the petitioner would show that the LOI was revised first in the year 2017 and for the second time in the year 2019 which was purely in the interest of the slum dwellers.

21. The petitioner contends that consequent thereto, the petitioner restarted the process to speedily implement the slum scheme by making payment of instalments of land premium and deposits. It is stated that on 10 November 2017, a lay out plan was approved by the competent authority and an amended IOA (Intimation of Approval) for Rehabilitation building no.1 came to be issued. The petitioner contends

that a commencement certificate also came to be re-endorsed on 13 November 2017, and simultaneously, IOA in respect of Rehabilitation building no.2 and sale building no.3 also came to be issued on 9 November 2017.

22. The petitioner thus contends that most of the approvals including re-endorsed commencement certificate were obtained. It is the petitioner's case that till date, the petitioner has spent more than Rs.30 Crores on the project, a chart of which is annexed at Exhibit D.

23. The petitioner has contended that when the project had reached such stage, few slum dwellers under the influence of rival society and developer namely "Omkareshwar" and "Siddhivinayak" started objecting implementation of the slum scheme. On 20 September 2018, respondent no.1-society, called a General Body Meeting for change of developer. According to the petitioner in such meeting, majority of the slum dwellers were opposed to the change of developer. However, the Chairman of the society, Mr. Vinod Kanta Rai, in the name of respondent no.1-society kept on filing several false complaints and objections with SRA regarding implementation of the slum scheme by the petitioner. It is stated that such objections and applications were filed at the instance of few minuscule members of the society without

consent and approval of other slum dwellers. These objections and complaints subsequently came to be withdrawn from time to time, the details of which, according to the petitioner, were placed on the record of the Apex Grievance Redressal Committee.

24. The petitioner contends that the petitioner had obtained consent of more than 70 percent eligible members as also had obtained requisite approvals and permissions, however, few slum dwellers kept on creating nuisance and obstruction one way or the other. It is contended that for a period of almost three years between 2018 and 2021, the slum scheme could not be implemented smoothly and the petitioner in these circumstances as the petitioner had to approach the competent authority time and again requesting for assistance to pass necessary orders for evicting the non-co-operating members of the society. It is stated that on 15 November 2019, petitioner had filed an application before the Deputy Collector, SRA to issue notice under Section 33 read with Section 38 of the Slums Act for evicting dissenting members. On such application, a hearing was held and by an order dated 5 November 2020 and 4 February 2021, approximately 36 non co-operating slum dwellers were directed to vacate their respective structures and accept monthly rent from the petitioner.

25. It is contended by the petitioner that in or about the same time, Mr. Vinod Kanta Rai, Chairman of respondent no.1-society, filed false and bogus complaints before respondent no.3-the Chief Executive Officer of the SRA, for removing petitioner as a developer to implement the slum rehabilitation scheme. In pursuance of such complaint of Mr. Vinod Kanta Rai, respondent no.3 issued a show cause notice to the petitioner under Section 13(2) of the Slums Act calling upon the petitioner to submit its explanation. It is contended that the society made a representation to respondent no.3 (Chief Executive Officer SRA), that the society has no objection for the petitioner to implement the slum rehabilitation scheme. It is stated that in fact the society by its letters dated 31 December 2019, 14 January 2020 and 1 March 2021, withdrew all complaints filed against the petitioner.

26. It is the petitioner's case that despite the purported complaints having been withdrawn by respondent no.1-(Harihar society), Mr. Vinod Kanta Rai continued to misuse the letter head of the respondent no.1-society and for such reason, the society by its resolution dated 28 February 2021 unanimously resolved that Mr. Vinod Kanta Rai had no authority to make any representation to any authority or Court on behalf of the society. It is contended that the society brought such fact

to the notice of the Chief Executive Officer of the SRA, by its letter dated 23 March 2021.

27. It is contended by the petitioner that during the hearing of the show cause notice dated 4 December 2020, as issued by respondent no.3-Chief Executive Officer-SRA, the petitioner was directed to show its bonafides by depositing 15 months advance rent for all balance eligible slum dwellers who had not vacated their respective structures. It was made clear by the Chief Executive Officer that even after deposit of the advance rent, if slum dwellers do not vacate their structures, in that event, the slum rehabilitation authority will initiate action against the said slum dwellers. The Deputy Collector SRA by its letter dated 13 December 2020 directed the petitioner to deposit 15 months advance rent. In compliance of such directions, petitioner in the very next week i.e. on 7 January 2021, deposited a sum of Rs.7,41,54,000/- in the Axis Bank, Worli Branch. It is stated that out of which an approximate amount of Rs.4,52,27,600/- still remains deposited with the Axis Bank. It is contended that despite the said orders, the non-co-operating slum dwellers still have not vacated their respective structures. The proceedings of the show cause notice were accordingly closed for orders.

28. The Petitioner has contended that about 16 dissenting slum dwellers out of the 36 complainants filed 16 different appeals before respondent no.2-the AGRC praying for setting aside of the orders dated 5 November 2020 and 4 February 2021 passed by respondent no.4-(Deputy Collector SRA/WS), directing the slum dwellers to vacate their premises. These slum dwellers in their proceedings before the AGRC contended that proceedings under Section 13(2) of the Slums Act were filed against the petitioner which were pending and hence till such proceedings were disposed of, the order passed by the Deputy Collector SRA, ought not to be implemented. The said 16 appeals were identical. The AGRC by an order dated 12 March 2021, directed respondent no.3-(Chief Executive Officer SRA), to pass appropriate orders on the application filed under Section 13(2) of the Slums Act within five days. It is contended that in compliance of such orders of the AGRC, respondent no.3-(Chief Executive Officer SRA), by an order dated 16 March 2021 dropped the proceedings under Section 13(2) initiated against the petitioner. In the said order, respondent no.3-(Chief Executive Officer SRA) observed that although there is a delay in implementing the slum scheme, the delay is not deliberate or attributable to the petitioner.

29. Against such decision of respondent no.3-(Chief Executive

Officer SRA), one Chandrakant Gopinath Pore and 15 others filed Writ Petition (L) No. 8585 of 2021 in this Court praying for an order and direction for setting aside of the said order dated 16 March 2021 passed by the Chief Executive Officer SRA. In such writ petition, the petitioner-(Chandrakant Gopinath Pore & Ors.) applied for stay of the order dated 16 March 2021 passed by respondent no.3-(Chief Executive Officer SRA). This Court at the hearing of the said Writ Petition on interim reliefs, directed the petitioner to file a short affidavit, setting out in brief the steps taken and proposed to be taken by the petitioner for implementation of the slums scheme. Accordingly, an affidavit was filed by the petitioner, inter alia, stating that the petitioner shall commence the construction of rehabilitation building within sixty days from the date the dissenting slum dwellers and the other slum dwellers vacate their respective structures and within 36 months, thereafter, the petitioner shall complete the construction of the Rehabilitation building. It is the petitioner's case that this Court considering such affidavit and looking into the larger interest of the slum dwellers, refused to grant any stay on the implementation of the order dated 16 March 2021 of the respondent no.3-(Chief Executive Officer SRA).

30. It is contended by the petitioner that the society being aggrieved

by the order dated 16 March 2021 passed by the respondent no.3-(Chief Executive Officer SRA), filed an application/appeal no.89 of 2021 before the Apex Grievance Redressal Committee (AGRC) alleging that the petitioner had caused inordinate delay in implementing SR scheme and that the petitioner had no financial capacity which had caused delay in payment of rent to the slum dwellers. It was also alleged that the petitioner had engaged in a trade of the slum scheme by mortgaging the slum scheme. An application for stay was also filed in the said proceedings as filed by the Society. Such application was objected by the petitioner by filing a reply dated 12 May 2021. The AGRC passed an order dated 28 May 2021 and granted interim stay till the hearing of the appeal. The petitioner filed a detailed affidavit dated 10 June 2021 opposing grant of any relief to the Society by placing on record facts which, according to the petitioner, were suppressed by the Society in putting up a case of the delay in implementation being attributed to the petitioner. On 18 June 2021, AGRC conducted a hearing when the parties were heard and the society's application/appeal was closed for orders. Also written submissions were filed on 28 June 2021. On 30 June 2021, respondent no.1-Society filed its written submissions.

31. Thereafter, the AGRC pronounced the impugned order dated 4

August, 2021 on the said proceedings as initiated by the Society under Section 13(2) of the Slums Act whereby the appointment of the petitioner as a developer for implementation of the slum scheme was terminated and respondent no.1-Society was granted liberty for appointment of a new developer for implementation of the slum scheme.

32. By the impugned order, the AGRC terminated the petitioner's appointment as a developer primarily on three counts, **firstly,** that there was inordinate delay attributable to the petitioner in implementation of the slum rehabilitation scheme. **Secondly,** that the petitioner had defaulted in payment of rent to the eligible slum dwellers whose structures were demolished and **thirdly,** petitioner had no financial capacity to implement the Slum Rehabilitation Scheme and therefore the petitioner has traded in the slum scheme.

33. In the circumstances, the petitioner has approached this Court in the present proceedings praying for the following reliefs :

> *"a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or the Writ in the nature of Certiorari or any other Writ or order or direction as this Hon'ble Court may deemed fit and quash and set aside the Impugned Order dated 4th August 2021 passed in Application No.89 of 2021 by Respondent No.2 (AGRC) (hereto Exhibit "A" hereto);*

b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or the Writ in the nature of Mandamus or any other Writ or order or direction as this Hon'ble Court may deemed fit and direct Respondent Nos.3 and 4 to effectively implement the Orders dated 5th November 2020 and 4th February 2021 passed by Respondent No.4 (Dy Collector, ENC/WS) by demolishing the structures occupied by obstructing slum dwellers on the property bearing C.T.S. No. 515A (Part), 515B (Part) and 509 of Village Kanheri, Taluka Borivali, corresponding to Final Plot No. 14-AB (Part) of TPS II, Borivali (East), Mumbai - 400 066;

c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or the Writ in the nature of Mandamus or any other Writ or order or direction as this Hon'ble Court may deemed fit and direct Respondent No.3 and 4 to take immediate steps expeditiously in a time bound manner pursuant to Petitioner/s letter/application dated 8th February 2021 filed U/s.33/38 of Slum Act for demolition of structures occupied by non-cooperating slum dwellers situated on the property bearing C.T.S. No. 515A (Part), 515B (Part) and 509 of Village Kanheri, Taluka Borivali, corresponding to Final Plot No.14-AB (Part) of TPS II, Borivali (East), Mumbai - 400 066.

d) That this Hon'ble Court be pleased to pass an appropriate order directing Respondent No.5 (Dy. Registrar, SRA) to initiate appropriate proceedings against the committee members of the Respondent No. 1 (Harihar Society) for misguiding SRA and obstructing smooth implementation of S R Scheme on the subject property.

e) That pending the hearing and final disposal of the present Petition, the operation and implementation of Impugned Order dated 4th August 2021 passed in Application No.89 of 2021 by Respondent No.2 (AGRC) be stayed (hereto

Exhibit "A');

f) For ad-interim relief in terms of prayer (e) above;

g) Cost of this Petition be provided for;

h) Such other and further reliefs as the nature and circumstances of the case may require be granted;"

34. The respondents have appeared however as recorded in the order dated 30 September, 2022 passed by this Court, they have made a statement that none of the respondents intended to file a reply affidavit. On behalf of respondent no.1, written submissions are placed on record. It needs to be observed that all the records before the AGRC which includes the society's case in the appeal along with the documents as also the petitioner's say/reply along with the documents is part of the voluminous record of the present proceedings. Also considering the nature of the proceedings, it cannot be expected that merely because no reply affidavit is filed to the present proceedings, a technical view be taken against the society. This, more particularly, when extensive written submissions are already part of the record.

C. Submissions on behalf of the Petitioner :

35. On behalf of the petitioner, Dr. Saraf, learned Senior Counsel, has made the following submissions :

(i) At the outset, it is submitted that the complaint dated 18 November 2019 and the reminder letter dated 9 December 2019 and 18 December 2019, as made before the CEO-SRA purportedly on behalf of respondent no.1, on the basis of which the show cause notice dated 4 December 2020 was issued to the petitioner itself, was withdrawn by respondent no.1 by its letters dated 31 December 2019, 14 January 2020, 1 March 2021 and 8 March 2021. It is submitted that in fact the complaint was purported to be made on behalf of the society, however, the same was signed by Mr. Vinod Kanta Rai and few other members who were purporting to act on behalf of the society. It is submitted that also there was no general body resolution authorising the issuance of any such complaint. Also, majority of the signatories to the original complaint and majority of the managing committee members were signatories to the withdrawal letter. There was no question of any authority acting on complaint which stood withdrawn.

(ii) It is submitted that on one hand the complaint having stood categorically withdrawn by the society's letter dated 31 December 2019 and 14 January 2020, however, surprisingly, on 2 February 2020,

the managing committee without a general body resolution of the society purported to terminate the development agreement as entered with the petitioner. It is submitted that the society, as a whole, did not accept such act of the managing committee which were in fact the wrong doings of Mr. Vinod Kanta Rai and others. Accordingly, the society in a general body resolution dated 28 February 2021, resolved that Mr. Vinod Kanta Rai had no authority to use the letterhead of the society and to make any representation to any authority or Court on behalf of the society. Also, the purported termination of the development agreement and the power of attorney was revoked. The General Body Resolution recorded that Mr. Vinod Kanta Rai had acted without taking the society in confidence and without any discussion had misused the letterhead of the society to address various correspondence. It is submitted that the society accordingly acknowledged that all the earlier correspondence addressed at the behest of Mr. Vinod Kanta Rai, were illegal and without authority. The society also communicated these facts to the Chief Executive Officer of the SRA by its letter dated 8 March 2021. It is then submitted that the entire basis of the show cause notice being the complaint dated 18 November 2019 itself having been withdrawn, the show cause notice itself did not survive. The society also confirmed this position before the Chief Executive Officer. The society also

confirmed that a delay, if any, had occurred due to these circumstances which was beyond the control of the petitioner. This was also confirmed and accepted by other slum dwellers who had made submissions.

(iii) It is submitted that although the appeal against the orders of the Chief Executive Officer-SRA were filed by the society before the AGRC, the position before the AGRC was not different insofar as the said complaints made before the Chief Executive Officer-SRA being withdrawn. It is submitted that neither any affidavit in rejoinder was filed before the AGRC nor any reply is filed to the present petition. Thus, the repeated stand of the petitioner is that the complaint stood withdrawn and the stand taken by the society before the CEO has remained uncontroverted and undisputed. It is submitted that even the stand that by resolution dated 28 February 2021, the purported termination of development agreement stood withdrawn and revoked and that the society accepted the position that Mr. Vinod Kanta Rai had abused the letterheads of the society and was prohibited from acting further was not controverted or denied.

(iv) It is submitted that in the above circumstances, the society having withdrawn its complaint and having accepted that the delay was not attributable to the petitioner, the Chief Executive Officer-

SRA, nonetheless in discharge of his duties did an independent assessment of facts and arrived at a conclusion that there was no delay caused by the petitioner and hence dropped the proceedings under Section 13(2) of the Slums Act. It is hence submitted that having withdrawn its complaints and having taken such a stand before the Chief Executive Officer, it was not open to the society to make any grievance before either the AGRC or even before this Court, for such reason, that the order of the Chief Executive Officer-SRA was in accordance with law and such decision was taken after considering the stand taken by all concerned parties as well as an independent assessment.

(v) It is submitted that for the above reasons, the appeal of the society before the AGRC itself was not maintainable and was an abuse of the process of law. This also for the reason that Mr. Vinod Kanta Rai had no authority to file the appeal inasmuch as the complaint dated 18 November 2019 itself was withdrawn, the purported termination was also withdrawn and there were resolutions of the society to that effect to show that Mr. Vinod Kanta Rai had no authority to singularly pursue the proceedings in connivance with some members of the managing committee.

(vi) It is submitted that the petitioner had filed reply affidavits

before the AGRC placing on record all documents which supported the decision of the Chief Executive Officer-SRA that the petitioner had taken substantial steps and that the project had progressed. It is submitted that the reply affidavits had remained uncontroverted as no rejoinder affidavits were filed. It is submitted that there was no material before the AGRC to believe the case of the respondent no.1-society.

(vii) It is submitted that the AGRC has not dealt with any of the contentions as urged on behalf of the petitioner. In fact, the AGRC has entertained an appeal which itself was not maintainable.

(viii) It is submitted that in any event once respondent no.1-society had taken a position before the Chief Executive Officer-SRA that there was no delay on the part of the petitioner, certainly, there was no jurisdiction with the AGRC to examine as to what was given up before the Chief Executive Officer-SRA by Mr. Vinod Kanta Rai. In fact the challenge to the orders of the Chief Executive Officer-SRA were not maintainable in this view of the matter.

(ix) It is submitted that it is not permissible for any party to carry an appeal against orders where the party itself has conceded or had withdrawn the cause. Permitting such party to challenge the order

in appeal would defeat the entire process of law.

(x) In any event, it was not the case that the Chief Executive Officer-SRA had not examined and/or had not undertaken an independent assessment to arrive at a conclusion that there was no fault whatsoever on the part of the petitioner. The inquiry before the Chief Executive Officer-SRA was fair and in accordance with law.

(xi) It is submitted that the AGRC has completely overlooked the purport of the provisions of Section 13(2) of the Slums Act which involves the examination of the discharge of duties and responsibilities or the dereliction thereof by each of the stake holders namely the slum dwellers, the developer and the statutory authorities and the society at large. The developer cannot be removed at the *ipse dixit* of a few slum dwellers or even the managing committee or a general body resolution. It is not unknown that handful of motivated slum dwellers with ulterior motives seeks removal of a developer. He can be removed if there are materials to show that delay had been caused for reasons attributable to the developer. In the event it is found that the developer did take effective steps and that the delay was due to reasons beyond the control of the developer or was attributable to the slum dwellers/authorities, there would be no justification for removal of the developer.

(xii) The AGRC has not applied its mind to the detailed analysis of the various obstructions and impediment faced in the project and the steps taken in that regard by the petitioner of which a detailed analysis was undertaken by the Chief Executive Officer-SRA. The Chief Executive Officer-SRA had categorically recorded that both the society and the slum dwellers appearing before him did not dispute that delay had occurred due to circumstances beyond the control of the petitioner and only after due consideration of these facts, the Chief Executive Officer-SRA had dropped the proceedings. Thus there was abundant material that the case of the society that the petitioner had delayed the project since 2003, was false.

(xiii) The AGRC has not considered the various impediments and obstructions faced by the petitioner and by narrating only one side of the facts has reached to a conclusion that the project was delayed by brushing aside the contention of the petitioner that the delay was beyond the petitioner's control as accepted by the CEO-SRA.

(xiv) The contention of the petitioner that the delay was beyond the petitioner's control, has been overlooked by the AGRC whereby valuable efforts put in by the petitioner in the project could not have been undone and negated in such manner.

(xv) It is submitted that the AGRC however held that for the period between 2015 to 12 November 2018, the delay could be justified because of a proposed passing of a DP road through the subject property. It is submitted that if all the events and happenings are taken into consideration between the period 2003 to 2011, 2012 to 2014, 2015 to 2017 and 2018 to 2021, it is crystal clear that there was no delay whatsoever on the part of the petitioner in undertaking the project much less any such conduct which would foist on the petitioner the consequence of its removal as a developer. It is submitted that in the written submissions the petitioner has demonstrated all the steps taken which have remained uncontroverted.

(xvi) It is submitted that another important facet as overlooked by the AGRC was lack of cooperation and obstruction by certain slum dwellers. In such context, it is submitted that the petitioner had offered rent to the slum dwellers and requested them to vacate right from the year 2014. It is submitted that while certain slum dwellers vacated, various other slum dwellers refused to vacate. The petitioner had pointed out that about 199 slum dwellers have vacated so far and have regularly been paid rent in lieu of transit accommodation. Also, from the very inception, the petitioner pursued the eviction of the obstructing slum dwellers by filing complaints and initiating actions

under Section 33 read with Section 38 of the Slums Act. Such complaints were filed on 5 November 2014, 11 November 2014 and 9 January 2015. It is the petitioner's submission that such applications were heard from time to time however orders were not passed although petitioner repeatedly followed up with the authorities in that regard. It is only in the year 2018 under Section 33 and Section 38 proceedings were transferred to the Deputy Collector and after continuous follow up for the first time on 5 November 2020, certain orders were passed for eviction of the slum dwellers which were also further carried in appeal and writ petitions before this Court.

(xvii) It is next submitted that the allegations regarding petitioner trading in the scheme and lack of financial ability, are totally unfounded. The submission is that in the impugned order, the AGRC has held that the Agreements for Joint Development entered by the petitioner from time to time demonstrate that the petitioner has no financial capacity to implement the scheme and have traded the subject SR Scheme. In this context, it is submitted that the petitioner having entered into the joint development agreements demonstrate neither lack of financial ability nor that the petitioner has traded in the scheme.

(xviii) It is submitted that the concept of a trading in scheme would be in circumstances where an entity after having got a scheme

approved in its favour substitutes itself with someone else. This is not a case of the society. It is submitted that the petitioner is fully involved in the project and is implementing the project and the Petitioner is fully responsible to execute and complete the project and is answerable to the authorities in this regard. It is also clear from the record that any consequence or penalty of any action in the course of such development is also on the petitioner. Thus, it was not open to the society to make an allegation that by entering into an agreement with respondent No.6-(M/s. Veena), the petitioner has traded in the scheme. It is submitted that by a General Body Resolution (GBR) dated 3 March 2019, the society approved the Joint Development Agreement between the petitioner and respondent No.6 and also authorised raising of funds against the sale component. The General Body being fully cognizant of the agreement having confirmed the same, it was not open to the society and/or anybody else under the society to allege that the same in any manner amounted to a trading in the scheme.

(xix) It is submitted that in any event, there is nothing demonstrated to show that there is any prohibition to enter into any agreement for the purposes of raising finance or a joint development agreement so long as the main project proponent continues. Even the SRA has not taken a stand that there is any such prohibition. This apart, various policies and circulars also expressly permit even change

of partners and shareholders. It is submitted that this Court has held that even if 100% holding of a company were transferred, that would not tantamount to a transfer of scheme.

(xx) It is submitted that on 17 February, 2017, the petitioner entered into a Joint Development Agreement with Rajesh Habitat Pvt. Ltd, and under which the entire responsibility towards the slum society and all obligations thereunder continued to be that of the petitioner and the responsibility of Rajesh Habitat Pvt. Ltd was to construct and hand over the rehab buildings to the petitioner after which all costs including O.C. and dealing with the authorities was to be done by the Petitioner. The Petitioner's obligation *inter alia* to secure all the approvals and permissions, to demolish slum structures, to provide transit accommodation to the slum dwellers and to have them vacated, subsists throughout. Insofar as the construction to be carried out by Rajesh Habitat Pvt. Ltd. was concerned, certain free sale components were to be handed over to them, and such an agreement can by no stretch of imagination be said to be a trading in the scheme. It is submitted that the involvement of another entity for smooth execution of a project can never be said to be a trading of the scheme. Even the Society could not point out any such prohibition in this regard. Also Rajesh Habitat Pvt. Ltd. mortgaging its entitlement under the Development Agreement in favour of Vistra ITCL on 22 March 2017,

was not in any manner prohibited as the mortgage deed was only in respect of the rights of Rajesh Habitat Pvt. Ltd. in the free sale component and the petitioner was never a party to the said agreement. It is submitted that ultimately the mortgage deed dated 22 March 2017 and the Joint Development Agreement dated 17 February 2017 stood cancelled on 8 February 2019 and thus, were of no consequence as the petitioner continued to undertake the project.

(xxi) It is submitted that on 21 February 2019, a Deed of Mortgage, was entered by the Petitioner in favour of Sanghvi Associates, under which the right, title and interest of the petitioner in the said property, including the allotted area and committed area (as defined in recital 'H' as free sale areas allotted /committed to third parties) and all right, title, and interest of the petitioner on the same, were assigned. It is submitted that even under such document, it was only the Petitioner's right which was mortgaged which is to enjoy the free sale which it will be entitled to once the project is completed, and there was no embargo at all from doing so. It is submitted that on the General Body Resolution of the society approving joint development between petitioner and respondent No.6, the petitioner had entered into an agreement dated 18 October 2019 whereunder in Clause 4 of the said agreement, an obligation on the petitioner subsisted namely to obtain all approvals from all authorities, bear all costs of the project,

appoint various consultants and contractors, handle all litigations, handle all slum dwellers including full responsibility for vacating them, payment of transit rent, etc., which clearly indicated that the petitioner was fully in-charge of and in control of the project having all liabilities and responsibilities. It is submitted that respondent No.6 has to discharge certain roles as set out therein, without any manner absolving the petitioner of its main role as the developer and the entity implementing the project. There was no prohibition either in the Act or any circular of the SRA for arriving at such an arrangement and this in no manner was any trading in the scheme.

(xxii) It is submitted that insofar as the financial ability and alleged non-payment of rent being issues asserted by the society, the findings of the AGRC in that regard are perverse. It is submitted that the AGRC while holding that the petitioner does not have the financial ability to implement the project, lost sight of the fact that till as late as on 21 December 2019, the revised Annexure III was certified by the SRA in favour of the petitioner, thus confirming the petitioner's ability to implement the project and that such Annexure III was never challenged by anyone. It is submitted that once the authority had certified the Annexure III as on 21 December 2019, the financial ability of the petitioner could not have been be questioned.

(xxiii) It is submitted that so far the petitioner has invested an amount of Rs.30,16,83,496/- on the project which includes Rs.14,81,61,450/- paid by the petitioner by way of rent. In this context, it is submitted that in the course of the hearing of the show cause notice, the CEO by an order dated 30 December 2020, passed, to test the bonafides of the petitioner, directed the petitioner to deposit fifteen months advance rent. It is submitted that an amount of Rs. 7,41,54,000/- was instantly available with the petitioner and was deposited in a designated Axis Bank account towards the advance rent for fifteen months. This according to the petitioner clearly demonstrates the financial strength of the petitioner. It is thus submitted that the petitioner has complied with directions issued to it by depositing fifteen months advance rent, but neither the non-cooperative members vacated their respective structures nor the Deputy Collector took action against such slum dwellers. This itself indicates that at every stage, the project was obstructed at the hands of few dissenting members and at the same time, the Competent Authority failed to take action against the said dissenting members under Section 33/38 of the Slums Act inspite of the order passed by the CEO, SRA.

(xxiv) It is submitted that the contention as urged on behalf of the society at the hearing of this petition that the amounts have been

siphoned away and removed from the Axis Bank account, is totally false. To satisfy the Courts conscience, a compilation of documents is demonstrating that all amounts from the account were utilized for this project. The bank statements together with the letters of mandate to the bank were produced from which it was clearly seen that from the amount of Rs. 7,41,54,000/-, an amount of Rs, 1,97,54,000/- was paid towards rent to various slum dwellers. An amount of Rs.1,42,54,000/- had been paid towards SRA premium for the project. This was done on advice received by the petitioner that the petitioner had deposited an excess amount since the order was to deposit fifteen months rent only towards those slum dwellers who are still at the site. It is submitted that such grievance was raised before this Court for the first time, and hence, to avoid any controversy and to demonstrate its financial strength, the petitioner immediately deposited back an amount of Rs. 1,42,00,000/- towards premium from the Axis bank account. It is submitted that the demand draft for the same was also shown before the Court and the proof of the amount being deposited, was also placed on record. It is thus, submitted that there could not be any doubt as regards the financial ability of the petitioner.

(xxv) In regard to the allegations of non-payment of rent and the allegation that even as on date, there were defaults in payment of rent, the petitioner has annexed to the petition a statement with the names of

the slum dwellers who have vacated and have been paid rent. It is submitted that the details of the rent paid and the period upto which the rent has been paid is clearly seen in such statement. Also a chart is placed on record in respect of 199 tenants who have vacated and have paid rent. A separate chart is placed on record setting out that 54 slum dwellers who despite receiving rent, have not vacated. This includes seven committee members who have accepted rent out of which three committee members have vacated and four committee members despite receiving rent have not vacated. It is submitted that there is no denial to these statements nor any affidavit is filed to challenge the correctness of this statement. Thus, the society cannot be permitted to argue a case of default in payment of rent. It is submitted that also the Competent Authority has informed in response to an RTI inquiry by its communication dated 8 June 2021 that no rent complaint except one is pending before the Competent Authority. This, according to the petitioner, demonstrates that the petitioner is having the financial ability and the contention of the society on any default in payment of rent, was clearly baseless.

(xxvi) It is next submitted that the Society's contention that the scope of interference in writ jurisdiction is extremely limited and the judgments in this regard as cited, would not assist the society, for the reason that considering that the CEO dropped the proceedings

under Section 13(2), the appeal itself was not maintainable. It is submitted that the order of AGRC cannot be allowed to stand, as irreparable prejudice is being caused to the petitioner and that can be protected only by an interference by this Court. In support of this submission, reliance has been placed on the decision of this Court in ***New Janta SRA CHS Ltd Vs. State of Maharashtra***[1].

(xxvii) Lastly relying on the facts/event which have taken place in the particular years, it is submitted that there was no delay in the implementation of the slum scheme by the petitioner.

D. Submissions on behalf of Respondent No.1 - (Harihar Krupa Co-operative Housing Society Society)

36. Mr. Samdhani, learned Senior Counsel appearing on behalf of Respondent No.1-Society has made the following submissions:

(i) It is submitted that the project in question is a slum redevelopment project on municipal land admeasuring about 9834 square meters, on which there were 580 existing slum structures, out of which 470 slum dwellers were found to be eligible over a period of time through Annexure-II and Supplemental Annexure-II. It is submitted that the petitioner was appointed as a Developer under an Agreement dated 20 August 2003 under which the Development work

1 2019(6) ABR 679

had to be completed within a period of two years of obtaining the commencement certificate. It is submitted that the petitioner had more than 70% consent from the members of the society. It is submitted that Annexure-II was issued on 6 May 2004. Admittedly 199 slum dwellers vacated their structures and handed over the same to the petitioner for demolition, however, from the year 2003 till the year March, 2021, the petitioner did not construct a single rehab tenement/building. The observations of the CEO/SRA that the delay on the party of the petitioner was not intentional, are not correct and therefore, were rightly interfered by the AGRC in the impugned order.

(ii) The petitioner's contention that the petitioner was contesting the claim of the rival society/ developer between 2003 and 2011, and after the stay was vacated, the petitioner obtained the LOI and IOA in the period between 2011 and 2014, is misconceived. It is submitted that the further contention of the petitioner that between 2015 and 2018 on account of Development Plan road passing through the land in question until the reservation of DP was removed, no development could take place, is also not correct. It is submitted that during pandemic petitioner sought to obtain permissions to commence the work, however, neither the SRA nor the members of the Society co-operated with the petitioner by granting permissions and by vacating structures respectively and such delay is not attributable to

the petitioner, is also not a correct fact/case of the petitioner.

(iii) In countering the above submissions, reliance is placed on the decision in the case of ***Galaxy Enterprises v/s. State of Maharashtra***[2] and the decision in ***M/s. Ravi Ashish Land Developers Ltd. v/s. Prakash Pandurang Kamble and Anr.***[3], to submit that the Court had emphasized the need of a pro-active and an aggressive developer undertaking expeditious implementation and redevelopment of slum schemes. It is thus submitted that none of the contentions of the petitioner are based on materials and relevant facts. It is further submitted that from the period broken down namely 2003 to 2011, 2011 to 2014, 2015 to 2017 and 2018 to 2021, it was established that the petitioner neither had the desire nor was eager or pro-active in taking concrete steps to develop and complete the slum project. It is submitted that the events indicate that the petitioner did not have the capacity or capability and was always looking for a co-developer who would fund the project and the petitioner could churn out profit.

(iv) It is submitted that for the period from 2003 to 2011, although Annexure-II was issued on 6 May 2004, no steps were taken by the petitioner whatsoever for obtaining an LOI despite it having consent of more than 70% of slum dwellers. It is submitted that unless

2 2019 SCC OnLine Bom 897

3 AO No. 1019 of 2010 decided on 7 February, 2013

it obtained an LOI, the IOA (Intimation of Approval) and CC could never be issued. The submission is that the attempt on part of the petitioner to explain the delay from the year 2003 to 2011 by contending that a rival society/ developer had initiated litigations and therefore no steps could be taken, was totally untenable for the reason that the name of any society on Annexure-II does not prevent the proponent of the slum scheme from obtaining an LOI which is evident from the fact that petitioner obtained the LOI on 29 June 2011 and the IOA was obtained on 21 April 2012 before the rectification of the Annexure-II on 20 September 2013. Also there was never any stay in favour of the rival Society/developer save and except during the period of 2010-2011 for about one year. Thus, the petitioner's submissions that there has been status quo between 2003 to 2011 in various proceedings is not substantiated by production of any order. It is submitted that no attempt has been made to obtain the LOI or even initiate proceedings for issuance of LOI. It is submitted that for the period 2011-2014 no steps were taken by the petitioner to expeditiously obtain the Commencement Certificate. Although, the LOI was issued on 29 June 2011 and the IOA was issued on 21 April 2012 on a condition that a C.C will be issued after the affected slum dwellers are vacated. However, after the part of the slum dwellers vacated, a C.C was issued on 14 July 2014 for Rehab Building No.1.

This is fortified by letter dated 14 October 2013 addressed by the petitioner's architect as also Environment Clearance as per the requirement in Item No.32 of LOD was not required upto construction of 20,000 sq. meters as is clear from Circular No. 136 dated 5 July 2012 issued by SRA and letter dated 14 October 2013 addressed by the petitioner's architect to the SRA. Although the High Rise Clearance referred to was only for the sale building and hence, nothing prevented the petitioner from commencing the development from 14 July 2014.

(v) It is submitted that issuance of the Commencement Certificate based on the letter dated 14 October 2013 of the petitioner's architect submitting that the work of demolition is in progress postulates that there were no offending structures coming in the way of construction of rehab building No. 1. Therefore the petitioner's contention that the slum dwellers were not co-operating by vacating their structures was far from truth.

(vi) It is submitted that in so far as the period between 2015 to 2017 is concerned, the contention of the petitioner that the AGRC has upheld the period of delay for these two years on account of draft Development Plan (DP) and such findings of AGRC are not challenged by the Society, is also of no consequence for the petitioner.

In this context, it is submitted that on 25 February 2015, there was a DP reservation in the draft DP. The State Government vide Notification dated 23 April 2015 had directed MCGM to publish a revised draft DP for inviting objections/ suggestions after carrying out in-depth investigation into the mistakes of the draft DP dated 25 February 2015 published by MCGM on the basis of ground reality, merits, planning point of view and legal issues. On 27 May 2016, the MCGM published revised draft DP in which the proposed DP road passing through the above slum project was not shown which was obviously dropped. It is thus submitted that except for a period of two months that is between 25 February 2015 and 23 April 2015 there was no proposed DP road in any of the plans. This is further fortified by the fact that since there was no DP road passing in any of the drafts, the petitioner could get the layout plan approved and amended IOA for rehab building No. 1 on 9 November 2017. It is submitted that during this period further IOA was issued on 9 November 2017 for Rehab Building No. 2 and the Commencement Certificate was re-endorsed on 13 November 2017. It is next submitted that on 7 August 2017, the MCGM submitted a revised DP to the Government for sanction. On 8 May 2018, sanction to Development Control and Promotion Regulation 2034 (DCPR 2034) was granted. It is thus submitted that, hence, in any event, the proposed DP road affected only the proposed

sale building, and the construction of the proposed sale building could not be commenced until substantial progress of rehab building was made. It is submitted that the petitioner was unable to fully exploit the free sale component/ FSI, and it does not still come in the way of implementation of a slum project in as much as the petitioner would be entitled to Transferable Development Rights (TDR) in respect of unconsumed FSI. It is submitted that since the AGRC order was in favour of the society, there was neither a question of assailing the finding on one point nor was there a procedural requirement in Writ Petition to file cross objection. It is thus submitted that the issue is clearly determinable from the notifications and republished draft development plan which would indicate that the AGRC fell in error by not looking into the notifications and the draft development plans before rendering the said finding.

(vii) In so far as the petitioner's contention in regard to the period between 2018 to 2021 is concerned, that such delay committed by the petitioner prior to the year 2019 got wiped out by Resolution dated 3 March 2019 and by petitioner taking steps in the year 2020-2021, is also untenable. In this regard, it is submitted that apart from the fact that the petitioner continued with the delay, it failed again on the trust and faith which was shown by the society by way of a last chance as is clear from the following:

a) On a plain reading of the General Body Resolution (GBR) dated 3 March 2019, it was clear that it was the petitioner who introduced respondent No.6 as an experienced and prestigious developer and represented that joining hands with respondent No.6 will be profitable for the re-development. It is submitted that the representation contains a tacit admission of the petitioner and that the petitioner was neither an expert nor experienced nor capable of single handedly handling the slum re-development scheme. It is submitted that the resolution further exposes petitioner's financial incapacity. On such backdrop, it is submitted that the society with a view to see that the slum re-development project proceeds expeditiously under an expert and a financially capable entity passed a resolution dated 3 March 2019. The sole consideration for passing such resolution was that respondent No.6 would come in as a co-developer and can be held liable and responsible as a developer of the slum scheme. However, the petitioner's conduct clearly indicated breach of the trust and faith as reposed by the society and failure of consideration for passing such resolution by not obtaining requisite permissions incorporating respondent no.6 as co-developer. It is submitted that the resolution dated 3 March 2019 in these circumstances, is of no assistance to the petitioner in as much as there was a breach of trust and failure of consideration

towards the needs of the slum dwellers. It is further submitted that one cannot look at the resolution to take benefit of exculpatory part while excluding the portions which are inculpatory. The resolution is required to be read as a whole in its entirety which indicates the background, the consideration and the representation made while passing such resolution. The petitioner thus continues with the baggage of delay and the delay has to be seen thus continuously from 2003 till 2021.

b) The petitioner's contention that despite the joint development agreement with respondent No.6, it is solely responsible to the SRA and the society is plainly contrary to the representation and consideration for the resolution dated 3 March 2019, contrary to the terms of the joint development agreement. This is one more incident to indicate the blatant breach and violation of the resolution dated 3 March 2019.

c) On such backdrop it is submitted that the implicit supersession of 2018 General Body Resolution does not take place. The petitioner had failed to take steps to amend/revise the Letter of Intent by including the name of respondent No.6 and obtaining an independent Annexure-III in name of respondent no.6. Thus, the petitioner's contention that the General Body Resolution of

2019 was a kind of quid pro quo is fallacious in as much as on the introduction of DCPR 2034 and since the work of construction had not commenced, the slum dwellers in law were entitled to 300 square feet and the petitioner was not doing any charity.

d) It is submitted that even if the petitioner purported to obtain new approvals in the year 2021, the same were irrelevant in the absence of inclusion of respondent No.6 as a co-developer. Thus the contention that respondent No.6 was not required to be joined in the approvals and that the society or the SRA was not required to look at respondent No.6 and that the petitioner was solely responsible to the SRA was a clear admission of breach of trust and failure of consideration of the Resolution dated 3 March 2019. It is submitted that the reverse cascading effect on the delay was required to be looked into right from the year 2003 till the year 2021.

e) It is submitted that even after the General Body Resolution of 3 March 2019, after a period of three months, on 20 June 2019, an application for revised LOI was made and obtained on 23 December 2019, resultantly the process was delayed by another nine months only to obtain the revised LOI. It is submitted that the petitioner's attempt to explain the delay for the period between

2020-2021 on account of pandemic from March 2020 and the bonafides of such plea can be seen from the fact that it moved an Interim Application (I.A.(St) No. 94157 of 2020) in October, 2020 in a Suo Motu Writ Petition No. 2 of 2020 before this Court, cannot be accepted. It is submitted that on closer scrutiny it is seen that the interim application sought relief of modification of the earlier orders passed in the Writ Petition to allow orders to be passed and implemented on its application under Section 33/38 of the Slum Act. It is submitted that this Court by its order dated 29 October 2020 directed the CEO/SRA to pass order on the Section 33/38 proceedings and thereafter the matter was again required to be moved before this Court. Accordingly, the CEO/SRA passed order on 5 November 2020 but the petitioner still did not move this Court for implementing the order, and accordingly, the Show Cause Notice dated 4 December 2020 was issued after the order of the CEO/SRA.

f) It is submitted that even during the period from 2018 to 2021, no prompt steps for commencement of the construction was taken. In support of the submissions on delay, reliance is placed on the decision of this Court in (i) ***Galaxy Enterprises V/s. State of Maharashtra*** (supra); (ii) ***Susme Builders Pvt. Ltd. V/s. Chief Executive Officer, Slum Rehabilitation***

Authority & Ors.,[4] (iii) ***K. S. Chamankar Enterprises & Anr. V/s. State of Maharashtra & Ors.***[5].

(viii) In so far as the petitioner's case on withdrawal of complaints is concerned, the following submissions are made:

a) It is submitted that as on the date of hearing of the show cause notice dated 4 December 2020 and 21 December 2020, complaints dated 9 December 2019, 18 December 2019, 14 January 2020, 27 January 2020, 29 January 2020 and 12 March 2020 were not withdrawn. It is submitted that during the period between 2018 to 2021, no steps for commencement of the construction were taken. The Society initially passed a General Body Resolution on 20 September 2018 for removal of the petitioner pursuant to which the complaints were written. It is submitted that during the hearing of the show cause notice before the CEO/SRA intervention of 62 slum dwellers was permitted and that there were in all 10 numbers of complaints by the society from 2017 to 2020 including one complaint by one slum dweller and 132 complaints by individual slum dwellers during the period between January, 2021 to February, 2021. It is submitted that importantly, the main complaint dated 18 November 2019 was

4 2018 (2) SCC 230

5 2018 SCC OnLine Bom 6591

signed by ten committee members. The reminders dated 9 December 2019 and 18 December 2019 were both signed by Mr. Vinod Kanta Rai. The withdrawals as alleged by the petitioner dated 31 December 2019 and 8 March 2021 were not signed by Mr.Vinod Rai. The complaint of Mr.Vinod Rai continued to exist during the hearing of the show cause notice and it cannot be argued that the show cause notice based on the complaint dated 18 November 2019 could not have proceeded since the complaint was withdrawn. It is submitted that on the hearing held on 27 January 2020 and 3 March 2020 before the Dy. Collector / SRA in the Section 33/38 proceedings (eviction proceedings), the stand of the society was that rent had not been paid, the construction had not started, hence, the society wanted to appoint a new developer. It is submitted that the same is recorded in the order dated 5 November 2020.

b) It is submitted that even if the Secretary of the society accepted that complaint was withdrawn, there were 132 complaints by individual slum dwellers for removal of developer. It is submitted that though the CEO/SRA noticed withdrawal of complaints by letters dated 31 December 2019 and 14 January 2020, he did not drop the proceedings on the ground of withdrawal of complaints and admittedly continued the

proceedings suo motu as part of duty and obligation in the implementation of the slum scheme. It is submitted that however, the CEO/SRA though found delay but rendered an erroneous, unsustainable finding that there is no deliberate or intentional delay and that the petitioner has shown bonafides by depositing rent.

(c) It is submitted that the petitioner's contention in reply affidavit before the AGRC that Vinod Kanta Rai had no authority to file an appeal by reason of resolution dated 28 February 2021 is itself answered by the petitioner, by annexing the Society's Resolution dated 25 March 2021 restoring the authority of Vinod Kanta Rai. It is submitted that the maintainability of the appeal was not a plea in the petitioner's reply affidavit as filed before AGRC. It is submitted that the number of complaints and withdrawals of some of them was not against the society but against the petitioner in as much as these events only indicate that the members of the society, namely slum dwellers are the most vulnerable section of the society and are easily influenced by the persons with adverse interests.

(d) It is submitted that even if one finds that the complaints are withdrawn, the SRA is not divested of its own power either to initiate suo-motu proceedings or to continue the initiated

proceedings. The submission is that it is the duty and obligation of the SRA to ensure speedy implementation of the slum projects and thus, proceedings even suo-motu under Section 13(2) of the Slum Act or allied powers under the Slum Act can be initiated. In support of this submission, reliance is placed on the decisions in (i) ***M/s. Ravi Ashish Land Developers Ltd. v. Prakash Pandurang Kamble&Anr***. (supra) and ***Susme Builders Pvt. Ltd. v. Chief Executive Officer, Slum Rehabilitation Authority & Ors.*** (supra).

(ix) In so far as the petitioner's submissions on the order of AGRC are concerned, it is submitted that the petitioner's contention that the arguments of rent, trading in the scheme/financial incapacity were not the arguments raised before the CEO/SRA and were raised for the first time before the AGRC, is not a correct contention of the petitioner for the reason that all such grievances were expressly raised in the main complaint dated 18 November 2019 by Vinod Kanta Rai as his capacity as the Chairman of the Society and were not withdrawn. He was also not a signatory to the alleged withdrawal letters. It is submitted that the issue of arrears of rent was expressly raised before the CEO/SRA which led to the direction for payment of arrears of rent and advance rent on 21 December 2020. It is submitted that the trading in the slum rehabilitation scheme is one of the species

and is a cause of delay in implementing the slum rehabilitation project. It is thus covered within the ground of delay if one looks at the reason for delay. It is submitted that trading in slum rehabilitation scheme and financial incapacity is one of the reasons and ingredients of delay.

(x) It is submitted that arguments in this regard was also raised by intervening 62 slum dwellers. In regard to the case against the petitioner on failure to pay rent, it is submitted that the petitioner's contention that at all material times, they had paid rent to the slum dwellers cannot be accepted. It is submitted that the petitioner got about 199 tenants vacated from the slum property from the period 2012 onwards. It is submitted that it is not in dispute that the petitioner was in arrears of payment of rent and during the hearing of the show cause notice on 21 December 2020, the CEO/SRA issued direction to the petitioner to make the payment of the arrears of rent and to deposit the amount of advance rent of fifteen months. It is submitted that it was admitted by the petitioner while handing over a table to this Court that the rent was worked out on the basis of General Body Resolution dated 20 September 2018 i.e. Rs.12000/- for residential premises and Rs.14,000/- for non-residential premises. The society has submitted that prior to 20 September 2018, the rent required revision of 5% increase yearly as per the SRA circular which

was applicable even post 2018. It is submitted that the directions in the roznama of CEO/SRA dated 21 December 2020 shows that the petitioner was in arrears of rent and order dated 30 December 2020 directed the petitioner to deposit fifteen months advance rent. It was thus clear that the petitioner was in arrears of rent. It is next submitted that there is no challenge to the circular of SRA and the petitioner has acted on the Circular No.166 by opening Axis Bank escrow account. The petitioner has also not disputed either the existence or binding nature or knowledge of the circulars. In fact, the petitioner has accepted that there is breach of escrow accounts and had made an offer to bring back Rs.1.42 crores which is too late in the day. It is submitted that the petitioner only deposited Rs.7.20 crores which did not cover the arrears in terms of the circular or in terms of the General Body Resolution or as per the directions of the CEO/SRA.

(xi) In regard to the case on financial incapacity/trading of the Slum Rehabilitation Scheme, the petitioner's contention that raising of finance does not amount to trading of slum rehabilitation scheme relying on the decision of this Court in **New Janta SRA CHS Ltd.** (supra), cannot be accepted in the present facts of the case. In this consent, the submission is that in the year 2017 the petitioner had entered into a Joint Development Agreement ("JDA") with Rajesh Habitat Pvt. Ltd. for Rs. 50 Crore without the society's consent. In turn

Rajesh Habitat Pvt. Ltd executed a Deed of Mortgage with Vistra ITCL (India) Ltd. mortgaging its rights and interest under the JDA for Rs. 50 Crores, and after a lapse of about two years in the year 2019, the JDA with Rajesh Habitat Pvt. Ltd. was cancelled and Deed of Re-conveyance of the mortgage property executed with Vistra ITCL (India) Ltd. It is submitted that after redeeming the mortgage, the petitioner was still financially incapable of implementing the slum scheme and in the year 2019, the petitioner executed an Indenture of Mortgage dated 21 February 2019 with M/s. Sanghavi Associates for sum of Rs. 50 Crores secured by first ranking exclusive charge on 100% rights of the petitioner in the said property. It is submitted that there is no material to show that Sanghavi's mortgage has been redeemed by the petitioner. The petitioner's contention that the Indenture of Mortgage executed on 21 February 2019 was not a mortgage was clearly contrary to the plain reading of the document. It is submitted that the petitioner has freely mortgaged the slum project without informing the society much less taking the consent of the society. The petitioner has also not taken consent of the owner of the land-MCGM. Thus, the petitioner's action is plainly adventurous wherein without even becoming entitled to construct any part of free sale component, an attempt is made to encumber the entire property in the scheme. It is submitted that the events of the petitioner not taking

concrete steps for implementing the slum scheme by constructing rehab component from the year 2003 by waiting for joint/co-developer partner, inducing the society into agreeing to consent for a co-developer, clearly establish that the petitioner was not itself capable but was only looking to palm off the scheme to a co-developer to churn off the profits. It is submitted that thus, the finding of the Appellate Authority of financial incapacity and trading in SRA scheme cannot be faulted. The petitioner's argument that there was no challenge to Annexure-III is contrary to the material on record as the Society had filed a complaint with SRA seeking cancellation of the Annexure-III.

(xii) It is next contended that this is a case where there is loss of faith/trust. The submission is that the society has no faith or trust in the petitioner and it is willing to appoint a developer whom the land owning Authority invites by tenders or is willing to appoint a developer by holding a General Body resolution under the supervision and/or guidance of the MCGM and/or SRA with the co-operative section of the SRA to hold a fresh General Body Resolution to show that it has no faith in the petitioner and the petitioner should be removed.

(xiii) It is submitted that no interference under Article 226/227

of the Constitution is called for in the present proceedings. This submission is supported by contending that the AGRC is a quasi-judicial fact finding Appellate Authority under the Slum Act and it has rendered categorical findings against the petitioner on delay, financial incapacity, non-payment of rent and trading of the slum rehabilitation project. Thus, unless these findings of the Appellate Authority are found to be perverse or de-hors the jurisdiction or power of adjudication, the findings are not liable to be disturbed and hence, no case is made out for interference in exercise of powers under Article 226/227 of the Constitution of India. In supporting this submission, reliance is placed on the decision of this Court in (i) ***Hi-Tech India Construction Vs. Chief Executive Officer, SRA***[6]*;* (ii) ***K.S Chamankar Enterprises Vs. State of Maharashtra*** (supra) and (iii) ***New Janta SRA CHS Ltd Vs. State of Maharashtra*** (supra).

E. Analysis and Conclusion :-

37. I have heard learned counsel for the parties. I have also perused the record and the written submissions as filed on behalf of the parties.

38. At the outset, it is required to be considered whether in the facts and circumstances of the present case the delay of 17 to 18 years in

6 2013 (3) Mh.L.J. 707

executing the Slum Rehabilitation Scheme in question, as entrusted to the petitioner by respondent no.1 society, can at all be said to be justified when tested on facts and in law. Also whether such a delay ought not to be regarded as fatal so as to denude any contractual right which the petitioner has with the society, for the petitioner-developer having failed to comply within a reasonable time, redevelopment of the slum scheme by discharging its role as a developer under the statutory scheme of redevelopment of slum lands.

39. On the conspectus of what has been noted above, it is required to be noted that the jurisdiction of the Court in the present proceedings would not be to re-appreciate the facts and the evidence which were on record before the authorities below, but to examine as to whether there is any perversity in the decision making process and/or any gross illegality in the Apex Grievance Redressal Committee (AGRC) coming to a conclusion as a prudent body of persons would reach such conclusions, as arrived by it in the impugned order.

40. The intention and the purpose to conceive a Slum Rehabilitation Scheme was to eradicate the existing slums and provide for better living conditions to the slum dwellers namely to liberate them from the unhygienic and dirty surroundings, so as to provide them permanent

and respectable dwelling units. In the case in hand, primarily there was no concern whatsoever of the landlord raising any objection, for the obvious reason that the landlord is the Municipal Corporation of Greater Mumbai, whose land stood encroached by the slum dwellers who have formed respondent no.1 society. In these circumstances, it was declared to be a slum. Consequent to the said land being declared a slum, the petitioner formed respondent no.1-society exercising its right as the rules would recognise [DCR 33(10)], so as to appoint a developer to undertake a Slum Rehabilitation Scheme. The choice to select a developer was solely with the society, which the society had exercised in favour of the petitioner in the year 2003, as noted above.

41. Under the scheme for redevelopment of the slums, the developer who is appointed by a slum society, becomes entitled to construct a slum rehabilitation building(s) and free-sale building(s) by taking advantage of additional floor space index (FSI), which would be made available to the developer. The scheme is to the effect that the cost of constructing a slum rehabilitation building and the profits of the developers would be recovered from the sale of tenement/commercial spaces, if any, in the free sale building. This is broadly the nature of the scheme. The trigger to all this is the society reposing confidence in a developer as initially reposed in the petitioner in the year 2003 by

entering into the development agreement dated 20 August, 2003.

42. It is nobody's case that the jurisdiction of Chief Executive Officer of the SRA or that of the higher forum namely, the AGRC which considers an appeal against the decision of the Chief Executive Officer-SRA, would be to examine any issues on specific performance of the terms and conditions of the contract entered between the society and the developer namely, the development agreement as entered between the slum society (respondent no.1) and the developer (the Petitioner).

43. The jurisdiction of the Slums Rehabilitation Authority under section 13(2) is limited and intended to pass appropriate orders in the paramount interest of the Slum Rehabilitation Scheme. Section 13(2) provides that on a declaration of any area as a Slum Rehabilitation Area, the Slum Rehabilitation Authority, if is satisfied that the land under the slum rehabilitation area has been or is being developed by the owner in contravention of the plans duly approved, or any restrictions or conditions imposed under sub-section (10) of section 12, or has not been developed within the time if any, specified under such conditions, it may, by an order, determine to develop the land by entrusting it to any agency recognised by it for the purpose. Such an

order can be passed after the owner is given reasonable opportunity to show cause as to why such orders should not be passed. Section 13 of the Slums Act reads 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 he 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 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." (emphasis supplied)*

44. Thus, the concern in regard to the applicability of Section 13 in the present context would be that when the petitioner-developer, was not undertaking the scheme and/or was not achieving the slum redevelopment "within time" and the delay was inordinate, for reasons which were seen to be attributable to the petitioner-developer then, as to why the obvious consequence of change of developer ought not to take place ?

45. It may be observed that when the said provision speaks about time relevancy, necessarily it has to be construed to be the time as agreed between the parties under the contract namely the "Development Agreement" and/or reasonable time or in a given case, if not so provided between the parties, it would be required to be construed as a reasonable time, that the facts and circumstances of the case may go to show.

46. As noted above, the question before the court in the present proceedings is as to whether a delay of about 17 to 18 years, can at all be accepted to be in any manner a reasonable period, in the facts and circumstances of the case more particularly considering whether the reasons as set out by the petitioner can at all in any manner be a justification for such delay.

47. The facts are noted in extenso which demonstrate that a decision to undertake redevelopment of the slum dwellers was taken by the society in the year 2003, when the development agreement dated 20 August 2003 came to be executed between the society and the petitioner, which was on the basis that the society by a majority of 70% of the slum dwellers had appointed the petitioner to undertake the

redevelopment.

48. It is seen from the record that the first few years from the date of the development agreement, were entangled in some litigation as brought about by a rival society namely Omkareshwar and its developer Siddhivinayak. In my opinion, the case projected by the petitioner based on any such dispute with Omkareshwar, on a deeper scrutiny cannot condone the petitioner's inaction of not taking appropriate steps to progress with the scheme despite the fact that it had consent of more than 70% of the slum dwellers at all material times. In fact, on the petitioners having a consent of 70% of the slum dwellers was also the observation even of the Chief Executive Officer-SRA in the proceeding pertaining to Omkareshwar, for the reason that the said litigation was merely on Annexure-II being claimed by Omkareshwar. The development agreement entered between the petitioner and the society had remained undisturbed. The LOI itself came to be obtained by the petitioner after 8 years i.e. on 29 June 2011, from the date the petitioner entered into a development agreement with the society. It may be observed that even assuming that the delay for period of eight years is not to be made fully attributable to the petitioner, however it needs to be seen whether for the further period can it at all be said, that the petitioner was diligent?

49. The IOA (Intimation of Approval) was thereafter obtained on 21 April 2012. It is clear from the petitioner's own case that the stay in favour of the rival society (Omkareshwar) was only for a limited period of about one year, as clear from the reading of the orders dated 13 March 2010 passed by the Division Bench of this Court in Writ Petition (L) no.286/2010 (Omkareshwar Housing Society Proposed vs State of Maharashtra) and the subsequent order dated 23 February 2011 passed by the Division Bench and consequent minutes of the meeting of the decision of High Power Committee dated 30 April 2011.

50. This apart, the petitioner itself by its inactions created a further delay, inasmuch as, during the period 2011 to 2014 no steps were taken by the petitioner to obtain a commencement certificate and commence construction, although an LOI was issued on 29 June 2011 and an IOA being issued on 21 April 2012. Admittedly, the IOA having being issued on 21 April 2012 on a condition that commencement certificate shall be issued after affected slum dwellers would vacate being condition no.10 of IOA. Only those persons where the rehabilitation building was to be constructed were the immediate affected slum dwellers. It is not in dispute that about 130 slum structures were

already demolished and vacated which is the petitioner's own case, as also rent was offered to these slum dwellers for alternate accommodation.

51. After these slum dwellers vacated, commencement certificate was issued on 14 July 2014 for rehabilitation building no.1. The commencement certificate was issued admittedly on the petitioner's architect so certifying that the work of demolition is in progress and for the rehabilitation building to be constructed, there was no hurdle of any structures affecting the construction to be commenced. Also it appears that in undertaking construction of the rehabilitation building no.1 the construction was not to exceed 20,000 sq. mts and hence, the environmental clearance to confine construction below 20,000 sq. mts was not necessary, which itself was the policy of the SRA as contained in circular no.136 dated 5 July 2012. This position is also clear from the petitioner's architect letter dated 14 October 2013. It is thus clear that despite the LOI, IOA and Commencement Certificate being granted, the petitioner did not proceed to start with the basic work of constructing rehabilitation building no.1. It may be observed that the petitioner's case on some issues on a final annexure-II to be issued by the MCGM was not relevant for the reasons that any amended annexure II could not have affected the petitioner to act upon the

commencement certificate as issued to the petitioner on 14 July, 2014.

52. In so far as petitioner's contention that the petitioner had raised an objection to the development plan reservation which was introduced by the draft development plan published by MCGM on 23 April 2015, it is seen that despite such reservation being proposed, there was no impediment for the petitioner in any manner to halt and/or not to undertake the construction of the rehabilitation building as the proposed DP road would have affected to some extent only the proposed "*sale building*", the construction of which was to be undertaken only after rehabilitation building no.1 was substantially completed. It can hardly be accepted that the petitioner pursuing its application for removal of the proposed DP road reservation, albeit its commercial interest, could be any legitimate reason in the petitioner not commencing the construction of the rehabilitation building no.1 and more particularly, when a substantial number of slum dwellers were already rendered homeless, their slum structures being demolished. The petitioner acted as if the DP Road reservation amounted to a stay on the slum scheme upto the year 2017, and for reasons not bonafide did not achieve any progress.

53. Insofar as the period subsequent, to the development plan issues being resolved in the year 2017 as noted above, it can be seen that for

the petitioner, the things could still not improve. Undoubtedly, about 15 years having lapsed after the development rights were conferred on the petitioner and about 199 slum dwellers having vacated/dishoused and the remaining slum dwellers awaiting rehabilitation, it was but for natural, for an unrest brewing amongst the slum dwellers. In fact the society/slum dwellers had filed complaints in regard to non-payment of rents to the CEO-SRA/Deputy Collector and were continuously agitated on such issue. This would go to show on the financial position of the petitioner which would be discussed hereafter. More particularly as per the development agreement, even the transit rent was not being paid to the slum dwellers for the temporary accommodation although they were dishoused.

54. The approach of the petitioner of having filed selective applications against particular slum dwellers under Section 33/38 of the Slum Act purporting to seek their eviction, in no manner inspires any confidence. Although hair splitting contentions are raised by the petitioner on these issues, a perusal of the record would clearly indicate that there was no wholehearted attempt which would demonstrate any concrete steps being taken to commence the construction of the building after the commencement certificate was obtained on 14 July 2014. It is also seen that after the Section 33/38 applications were filed, on 5 November 2014, 9 January 2015 and 17

January 2015, as to what happened for a period of five years namely, when in November 2019, the petitioner moved the Deputy Collector-SRA on the pending applications, there is no explanation whatsoever. The petitioner has conveniently made a statement in the petition that between the period of five years i.e. from 2014 to 2019, the petitioner's applications for initiation of eviction action under Section 33/38 of the Slums Act, were kept pending and were not concluded, could not be any justification for the petitioner not to bring about commencement of construction. This, as if the petitioner had no remedy whatsoever but to remain frozen for a long period of five years, while the slum dwellers keep suffering at the petitioner's hands.

55. It appears that although some how Annexure-III was obtained by the petitioner, which would purport to reflect on its financial position to be satisfactory, things at the ground level were totally different nay astonishing. This for the reason that the petitioner being in a precarious financial position, had made desperate attempts to introduce a third party in the project namely Rajesh Habitat Private Limited by entering into a joint development agreement dated 17 February 2017, under which, Rajesh Habitat Private Ltd., was to infuse an amount of Rs. 50 Crores, as also Rajesh Habitat was to construct and hand over the Rehab buildings to the petitioner. Such agreement was not specifically consented by the society. Things did not stop at

this, as Rajesh Habitat Pvt.Ltd., in turn executed a Deed of Mortgage with one Vistra ITCL India Ltd., mortgaging its rights and interest under the joint development agreement for Rs. 50 Crores and ultimately both these agreements were required to be cancelled by the petitioner in the year 2019, as stated by the petitioner. Consequently, Vistra ITCL India Ltd. executed a Deed of Re-conveyance of the Deed of Mortgage. It appears that the petitioner is to blame itself of the delay on its part, and to make the slum dwellers its victims. Thus, the petitioner clearly appears to have ceased to be financially viable when it came to infusing third party finance on the project. Again on 21 February, 2019, the petitioner executed an Indenture of mortgage with one M/s. Sanghvi Associates for a sum of Rs. 50 Crores which was secured by the first ranking exclusive charge of hundred percent rights of the petitioner in the said property.

56. A perusal of the term loan sanction letter issued by Sanghavi Associates to M/s. Yash Developers, dated 20 October 2018, as relied upon by the petitioner, would clearly indicate that the amounts to be received by the petitioner from Sanghavi Associates, were not purely for the project but for settlement of *inter se* disputes in a suit which had arisen between the partners of the petitioner and which was an amount of Rs.2,50,00,000/-, the second instalment of Rs.10,50,00,000/- was for payment to be made to Rajesh Habitat Pvt.

Ltd. for and on behalf of Rajesh Habitat Pvt. Ltd., for redeeming NCDs and obtaining a re-conveyance of the Mortgaged Property and for execution and registration of Deed of Cancellation of JDA and POA, and the third instalment of Rs.5,35,00,000/- to be paid to the Society and Slum Dwellers, towards the due rent and shifting charges. Thus, there is nothing put on record to show that the petitioner had sufficient finance to undertake the entire slum project. This apart, the Petitioner had not pointed out any specific resolution where the petitioner had taken the consent of the society for such mortgage or for that matter the owner of the land namely the Municipal Corporation of Greater, Mumbai (MCGM). Such a mortgage although could be only on the free sale component of the building, however, the encumbrance was sought to be created on the entire property. This itself was peculiar as such action is unknown not only to the basic tenants of the law applicable to the Slum Rehabilitation Schemes but fundamentally opposed to the principles of law as would become applicable to mortgages. This for the reason that the law in regard to Slum Rehabilitation Scheme as it would stand, would not create a situation that the ownership of the land which at all material times stood vested with the MCGM by virtue of which the land continues to vest even today, would stand transferred to the petitioner developer. If this be the legal position, then, certainly, a mortgage in respect of the entire

property was an absolute overreach on the part of the petitioner nay an abuse of the limited contractual rights being available to the petitioner, under the terms and conditions of the Development Agreement.

57. In any case, the petitioner struggled to avail finance and was facing severe financial crisis, this itself was material for the Chief Executive Officer of the SRA to come to a conclusion that it may not be possible for the petitioner to execute the scheme. The Chief Executive Officer however did not call upon the petitioner to satisfy that it had the appropriate finances to undertake the "*entire scheme".* The Chief Executive Officer merely asking the petitioner to deposit the arrears of rent, can in no manner, whatsoever, be accepted as a certificate to the petitioner possessing a financial capacity to complete the project.

58. It is crystal clear from the petitioner's own showing that the petitioner was required to take the crutches/financial assistance initially from Rajesh Habitat Pvt. Ltd.,who in turn looked at Vistra ITCL India Ltd. and thereafter having failed with both these entities, with one M/s. Sanghvi Associates, which is not for a small amount but for a substantial amount of Rs. 50 Crores. Things however would not stop at this and subsequently it appears that now respondent no.6-Veena Developers was roped in, to provide working capital for the

entire project described to be the business partners/joint developers of the petitioner as in para 1 of the petition.

59. The petitioner time and again having approached third parties for financial requirements in the manner as discussed above, in fact was quite fatal and counter productive to the implementation of the slum scheme, for the reason that if any of the financers were to withdraw from their financial support and the commitments as made to the petitioner, the same would leave the petitioner with no remedy but to wander further hunting for fresh finance. Such financial instability of a developer certainly would have a devastating effect on the implementation of the slum scheme which could also result in the total collapse of the slum scheme being implemented and in fact a death knell for the slum scheme. It is for such reason, the real wherewithal and financial stability of a developer plays an extremely pivotal role, as finance is the very lifeline for successful implementation and completion of the slum scheme. The present case is a classic case of how the petitioner is running helter-skelter to secure finance, that too without taking the society into confidence much less the authorities. This on the basis of a solitary clause in the Development Agreement which is being discussed hereafter.

60. In the above context, it may be observed that although to a legitimate extent, there cannot be any objection for finance to be borrowed for completing the scheme by a developer however, it cannot be countenanced that a developer is totally dependent for all his financial and/or technical requirements on third parties. The nature of such dependency would unfold the genuineness of a developer on such front. In the present case**,** Clause 24 of the development agreement between the society and the petitioner is relied upon by the petitioner as a carte blanche to induct third parties in the slum project. However, Clause 24 cannot be permitted to operate and/or construed so as to mean that the petitioner can successively indulge with third parties not only to procure finance but technical expertise including achieving construction of the buildings as the petitioner has resorted to do so. If for everything except the paperwork of obtaining permissions, etc., it is the third party which would be looked at by the petitioner, in that case, can it be said that it was wrong for the slum dwellers in assuming that the petitioner is itself not executing the scheme but through a third party ? For the society and the slum dwellers, it is the petitioner who is to be looked at, they may not know about the masked and unrevealed deal with such third party. This would be too much to be expected from the slum dwellers. For them unknown would be the complex dealings the developer may have with such third parties.

This is clear from the nature of agreements the petitioner had entered firstly with Rajesh Habitat, who brings Vistra ITCL India Ltd., than M/s. Sanghavi Associates and lastly, Ms. Veena Developers. Clause 24 of the development agreement is required to be noted which reads thus :

> *(Official translation of a photocopy of Clause 24, typewritten in Marathi)*
>
> *"(24) The said Developer shall have full liberty to sell the salable F.S.I. and other transferable rights that would be available under this agreement in respect of the said scheme to any third party or appointed heir at the price and on the terms and conditions as the said developer may deem it proper and the said Society hereby agrees to approve such third party and/ or their appointed heirs,* ***without any consideration*** *therefor and further agrees to sign appropriate agreements, documents and writings, if required, in this regard."*

61. The Chief Executive Officer has not noticed the real effect of such clause to the extent that in fact the said clause has purportedly created rights in favour of the petitioner to sell the scheme. The petitioner appears to be under an erroneous belief that under such clause, it had the tacit approval of the society to enter into such successive agreements with third parties like Rajesh Habitat Pvt. Ltd., Vistra ITCL India Ltd., M/s. Sanghvi Associates and Veena Developers-respondent no.6, which was used to create substantive

rights in favour of third parties in the scheme, that too without the approval of the authorities. The respondents may be correct in their contention that a party who is financially sound, would not repeatedly knock the doors of third parties for finance and even technical expertise to undertake constructions and so far as its role is concerned, only remain on paper. This was a crucial aspect which was required to be deeply examined and in its entirety by the Chief Executive Officer and more particularly when the scheme for multiple reasons was being unconscionably delayed at the hands of the petitioner.

62. It needs to be stated that in the circumstances as noted above, certainly, there was legitimate expectation of the slum dwellers that once they had entered into a development agreement with a developer in 2003, the developer would not delay the re-development and the process of rehabilitation would take place as per the commitment made by a developer in the Development Agreement. Certainly, this would presume a reasonable allowance for a bonafide, legitimate and an unaccountable delay and not a gross delay of about 18 years as in the present case. The commitment/obligations of the petitioner under the development agreement were already rendered meaningless nay trashed by the petitioner, nonetheless the petitioner wants to hang on to the scheme playing with the right to livelihood of the slum dwellers.

63. In the present case, reasons for the petitioner delaying commencement of construction are certainly gross, they are beyond any condonation. In fact as noted above, the different reasons as set out by the petitioner to contend that delay was not attributable to the petitioner are seen to be totally flawed and preposterous apart from being totally unacceptable. It is high time that the authorities take a strict view of such matters and on a holistic consideration of materials, come to a well considered conclusion as to whether genuinely a developer has wherewithal and a real capacity to undertake re-development when it concerns a matter of re-development of a slum. This more particularly considering the fact that a society has no real expertise to judge the expertise of a developer and on what considerations the society selects a developer, or whether the developer hunts such slums to undertake the work is a murky affair to be looked into.

64. For the developer, it is a commercial project but for the slum dwellers, it is their very livelihood, a roof over their head and an entitlement to have a living of dignity and respect which is the very object and intention of the slum legislation and the slums scheme. It is non-negotiable and/or there cannot be any compromise on the developer to achieve rehabilitation of the slum dwellers as committed by him in the development agreement and comply with the terms and

conditions therein whatsoever, when the legislation itself has given such a free hand to the developer to achieve the object to bring about an expeditious rehabilitation of the slum dwellers by completing the rehabilitation, as it cannot be that the development agreement as entered between the society and the developer only remains a farce and a tool in the hands of a developer to foist himself on the slum dwellers without a fear of removal.

65. It is not a case that it is some charity being made to the slum dwellers by the developer when the developer undertakes a slum scheme. There is a free sale component provided to the developer, from the sale of which the developer would recover not only the cost of rehabilitation of the slum dwellers but also earn profits. It thus is purely a commercial proposition for the developer. Once it is a commercial venture for the developer to undertake re-development which also involves a human element namely a right to shelter of the slum dwellers, the work on the scheme has to be undertaken in strict commercial terms as prescribed in the development agreement and any breach of the terms and conditions of such commercial agreement, necessarily, is required to be perceived in the context of not only as a breach of a commercial contract but also a breach of a social welfare legislation as applicable once it comes to undertaking such schemes.

66. The facts of the present case demonstrate that the petitioner has grossly failed to have inspired any confidence with the society/slum dwellers, in regard to the real intention of the petitioner in undertaking the project. In fact, the petitioner by bringing in third party financers and by creating rights in them over the slum project, created an adverse impact on the society to legitimately assume that the petitioner has no finances/wherewithal to complete the project.

67. For the innocent slum dwellers, it is impossible to comprehend as to what will be the nature of the commercial dealings when a developer like the petitioner received the involvement of the third parties and what is the true nature of any such business relations behind the veil. It would be too much to expect the slum dwellers to know the nitty-gritties of such underlying transactions and commercial dealings of the developers. Thus, it is of utmost importance and of necessity, that an overall view of the matter is required to be taken to examine whether timely completion of a slum scheme was at all a bonafide intention of the petitioner.

68. The present case, in my opinion, has all the pointers only in one direction, namely, that there was no genuine and inherent intention of the petitioner to complete the project. On the finance front, keeping certain amounts in an escrow account to show that the petitioner is

capable of discharging the liability of arrears of rent, is of no consequence when it related to the actual finance required for the project. If the petitioner was to have an ease of finance, it would not have kept arrears of rent to be paid to the dishoused slum dwellers. The real test in the present case was to satisfy the slum dwellers and the AGRC that substantial financial and technical expertise, at all material times was available with the petitioner to undertake the project. Significantly, it needs to be noted that apart from the petitioner lacking funds/finances, the petitioner has no technical expertise inasmuch as it can be seen that it is M/s. Veena, a third party developer, who would be providing not only the working capital but also the technical expertise as clearly seen from Clause 5.3 of the Joint Development Agreement dated 18 October, 2019 entered between the petitioner and M/s. Veena. Clause 5.3 (a) reads thus :

> *"(a) Veena shall prepare the design including master planning, preparation of detailed architectural and engineering designs and drawings, EDC etc., through the architect appointed jointly appointed by Veena and Yash (hereinafter referred to as "Architect"), for the layout and for each building (Including building, drawings, elevations, facade, etc.) in the Project (hereinafter referred to as "Design"). Veena shall coordinate with the Architect for the purpose of preparation and development of the Design. Veena shall ensure that the Contractors construct the Project as per the Design and the plans approved by the statutory authorities and Veena shall supervise the same:*

> *(b) The Design shall be developed by Veena in such a manner so as to procure a complete detailed design of the Project and of each and every part thereof such that the Project and each and every part thereof will jointly and severally be in all respects fit for its or their purpose and such that the Project as a whole and as appropriate, shall be in accordance with the Business Plan and Master Plan."*

In fact, such agreement entered by the petitioner with M/s. Veena is of such nature, which would make one wonder as to whether it is really the petitioner who is undertaking the project or whether it is only the name of the petitioner which is at the forefront and it is in fact M/s. Veena who would be undertaking the project. All these issues are glossed over by the Chief Executive Officer-SRA. These observations are required to be made as the petitioner has placed the said agreement on record and the parties have advanced submissions on such agreement.

69. Another fundamental question which may ponder a prudent thinking would be to the effect that when in the year 2003 the petitioner decided to enter into the development agreement and obligated itself to complete the project within a period of 2 years, (clause 11 of the development agreement), whether the petitioner had not pre-estimated the requirements of the scheme being a commercial player or such terms and conditions were intended to be a travesty and

a mere burlesque. Now the delay is being covered up on several reasons to make life further difficult and miserable nay impossible for the slum dwellers.

70. It is for such reasons, the Court has echoed in its decisions that there needs to be a concrete mechanism with the SRA to test the bonafides of a genuine developer and to come to a conclusion that the developer is a genuine developer who has in fullest all ability, financial and technical to undertake and complete the SRA project. The SRA certainly cannot depend on the wisdom of the society and which is possibly on a developer being selected at the *ipse dixit* of the Managing Committee members who follow a most non-commercial and a peculiar method to appoint a developer. As to what can be the expertise of the poor slum dwellers to appoint a developer who would be dealing with a project of hundred of crores, can only be imagined. If such credentials are not carefully and empirically examined at the stage of appointment by an appropriately devised mechanism, the situation as it persists in the present case can never happen. Thus, the need of the hour is to have a rigorous scrutiny, technical and financial, at the level of the SRA to verify/scrutinise the selection of a developer by members of a slum society by a scientific mechanism, before the SRA Scheme is being taken up by a developer, and only after such scrutiny, permit such a developer to enter into a Development

Agreement with the society on being satisfied of such credentials of the developers.

71. However, what is happening in reality is just the reverse, namely, the society enters into a development agreement and thereafter the developer runs the show and sometimes as to what is the reality nobody knows, neither the slum dwellers nor the authorities only to be realised before the Courts by which time the things are too late. This is a grey area which is required to be plugged in by a statutory mechanism and which appears to be a grave shortcoming, of which judicial notice can be taken from the large number of matters reaching this Court on such issues. Be that as it may, this discussion if applied to the facts of the present case clearly would go to show that the petitioner has grossly failed in its commitment under the development agreement to complete the scheme.

72. It is significant to note Clause no. 11 of the Development Agreement, whereby the petitioner in terms agreed that the petitioner would complete the construction within two years of the issuance of the commencement certificate. The said clause reads thus :

"(Translation of a photocopy of Clause No.11, typewritten in Marathi).

> *11. The said Developer shall complete construction of said building within a period of two years from the date of receipt of Certificate of Commencement of work after an approval is granted to the said scheme. If the said Developer fails to complete the construction work within this stipulated time period, the said Society shall have right to lawfully revoke the irrevocable power of attorney given for said re-development and re-construction agreement and the works incidental thereto and shall also have right to take back possession of the said property. Moreover, the said Society shall be eligible to get compensation from the said Developer for the delay caused. However, there is unanimity between all parties on the point that, if a delay is caused on account of some unforeseen circumstances, force majeure which include strike, civil war, riot, war, earthquake etc. as well as if such delay is caused due to any slum-dweller, any altogether third party and/or on account of any Injunction /Order passed by any Court of Law or amendment in statutory law, then this period shall be excluded from the period of said three years. Further, if such situation arises, a period of 6 more months will be given to the said Developer as concessional period to once again commence with the work and to complete the same."*
>
> (emphasis supplied)

The question also is whether no sanctity at all is attached to such clear agreement where the society has an unequivocal right under the above clause to terminate the agreement for a breach of the timelines as agreed between the parties. It is for this reason, the legislature has thought it appropriate to provide a provision in the nature of Section 13(2) so that the Slum Rehabilitation Authority would step in and for reasons which may be apparent in a given case would pass an order permitting the society to change a developer. One can imagine as to what would be the consequence in the absence of such provision. The

parties would be required to take recourse to the normal procedure in law namely, of enforcing their respective rights under the terms and conditions of the contract before a Civil Court and entangling themselves into unending litigation which would have the effect of a slum rehabilitation scheme never to see the light of the day. It cannot be overlooked that it is not a normal development which the developer undertakes in undertaking a slum rehabilitation scheme. The scheme is under a special procedure with special features under Regulation 33(10) of the Development Control Regulations as there is an extra benefit in the form of additional floor space index (FSI), which would be available to a developer to be utilised in the free sale building to be constructed in undertaking a slum rehabilitation scheme. Thus, when the Chief Executive Officer-SRA or the AGRC considers an issue on the change of a developer, exercising powers under Section 13(2) of the Slums Act, a duty is cast on such authority to take an overall and a substantive view of the matter keeping in focus the paramount interest of the slum dwellers and the early rehabilitation of the slum dwellers. Insofar as the developer is concerned, even if he is changed, there is unlikely to be any prejudice whatsoever to the developer considering the safeguards as provided which automatically trigger on the removal of the developer, namely the newly appointed developer is duty bound to compensate the removed developer of the expenses incurred by him,

without the removed developer requiring to file any proceedings for recovery of such amounts as expended by him. Even otherwise, the developer has his contractual rights to recover any damages so also the society can claim damages against the developer under the contract. Insofar as the present proceedings are concerned, already a provision has been made in the impugned order that the petitioner would be compensated on the petitioner's removal. Thus, the interest of the slum dwellers being adversely affected by the inactions of the petitioner was the vital consideration for the Chief Executive Officer-SRA and the AGRC to consider.

73. Certainly, the period of two years as contractually agreed, under the development agreement cannot be stretched to such a long period of almost 17 to 18 years as in the present case, despite these circumstances, an attempt on the part of the petitioner to justify that such delay was not attributable to the petitioner, at least in the facts of the case, is wholly untenable. The AGRC examined the case of the petitioner and of the society and the situation persisting at the ground level. The AGRC however not agreeing with the findings of the Chief Executive Officer-SRA, has reached a conclusion that the petitioner could not take the project forward for reasons which were borne out by the record.

74. In these circumstances to upset the decision of the AGRC would amount to rewarding the petitioner of its defaults and the breaches committed by it, not only of the very terms and conditions of the Development Agreement, but also, the clear statutory mandate in undertaking Slums Rehabilitation Schemes. In fact, the petitioner has betrayed the trust of the society/slum dwellers. Even otherwise, a closer scrutiny of the petitioner's actions clearly hint of the petitioner's interest not in the rehabilitation of the slum dwellers but in its own private interest, solely in relation to the sale component. There cannot be a space for a pure commercial greed in taking up such project which involves the basic rights of the slum dwellers.

75. Insofar as the petitioner's case is concerned, that there was no cause of action whatsoever for the society before the Chief Executive Officer inasmuch as the complaint dated 18 November 2019 on which the Chief Executive Officer-SRA had passed the order dated 16 March 2021, itself was withdrawn, at the first blush appeared to be an attractive argument. However, on a deeper and careful scrutiny, the case of the petitioner on this count needs to fall to the ground. It is clear from the record that 18 November 2019 was not the only complaint but there were several other complaints made to the Chief Executive Officer of the SRA prior thereto. This apart, as noted above, there was also a General Body Resolution passed that the petitioner as

a developer needs to be changed for all such reasons. Apart from the representation dated 18 November 2019, there were representations dated 9 December 2019, 19 December 2019, 14 January 2020, 27 January, 2020 and 12 March 2020. Also, the society in its Managing Committee passed a resolution dated 22 February 2020, terminating the Development Agreement as entered with the petitioner and the same was duly informed to the office of the Slum Rehabilitation Authority vide the society's letter dated 5 February 2020. Also, when the matter was before the Chief Executive Officer, the Chairman of the Society Mr. Vinod Kanta Rai had made submissions dated 1 January 2021, 1 March, 2021, 9 March, 2021 and 10 March, 2021. However, the Chief Executive Officer-SRA appears to have not appreciated to the concerns in these representations. Thus, the case of the petitioner on withdrawal of the society's complaints cannot be believed. It is seen that although along with Mr. Vinod Kanta Rai, there were other slum dwellers who were signatories to the application of the society dated 18 November 2019 for change of the developer, Mr. Vinod Kanta Rai never withdrew his complaint for change of the developer.

76. It is not unknown to this branch of jurisprudence that once a complaint of removal of a developer is made by the slum dwellers or their society to the CEO-SRA, the developers wake up from deep slumber and then a game of hide and seek starts, which includes the

developer winning over the members of the managing committee, or a group of slum dwellers and often they are made to withdraw complaints. When this happens, the documents of withdrawal of complaint come from the developer. However, the ground level reality remains the same. This case is no exception.

77. After such complaint dated 18 November, 2019 was made, some of these slum dwellers purportedly addressed letters to withdraw their complaint against the petitioner. However, it is significant, that it is the petitioner who produced copies of such withdrawal letters and placed the same on record of the Chief Executive Officer of the SRA. Nonetheless, the fact remains that Mr. Vinod Kanta Rai, who was pursuing the complaint in the capacity as Chairman of the society along with the support of some Managing Committee members, at the relevant time, never withdrew the complaint dated 18 November 2019, as Mr. Vinod Kanta Rai's signature is not to be seen in the purported withdrawal letters being relied upon by the petitioner. Peculiarly, the petitioner has produced "copies" of documents purport to be a General Body Resolution of the society to contend that the General Body has withdrawn its decision to terminate the Development Agreement which was a decision taken in that regard in the General Body Meeting dated 28 February, 2021. Such resolution also purportedly states that the letterheads of the society be not used by any person other than the

Chairman. Such resolution has rightly not been accepted by the AGRC in passing the impugned order and for acceptable and cogent reasons. A perusal of the copies of these documents which have come on record from the petitioner and not from the society, so that it can be taken into consideration to be an undisputed document.

78. This apart, when the petitioner in projecting a case that the complaint dated 18 November, 2019 was made to the Chief Executive Officer-SRA was withdrawn, and therefore, there was nothing left for consideration before the Chief Executive Officer, the petitioner intends to demonstrate that there is a legitimate decision of the society to do so and it was a complaint which was being prosecuted only by Mr. Vinod Kanta Rai, who had no authority from the society. The documents on record *per se* as rightly pointed out on behalf of the society, do not project such factual position so as to hold the decision of the AGRC to be perverse.

79. If the petitioner is to be believed, Mr. Vinod Kanta Rai, under the garb of the respondent no.1-society, was pursuing the proceedings and not the society, in that case, certainly the society would have come forward to support what the petitioner was canvassing. Most significantly, the society has not come forward to support any of the contentions of the petitioner if their resolutions purported to undo

whatever the Chairman was pursuing for change of a developer nor there is any document as placed on record that the society has withdrawn its letter dated 5 March, 2021 addressed to the Chief Executive Officer of the SRA informing the Chief Executive Officer that the termination of the agreement is withdrawn. There was no application filed before the AGRC in a manner known to law by the petitioner that the appeal as filed by the society was not by the society but was an appeal filed by Mr. Vinod Kanta Rai. In fact the reply as filed by the petitioner to the society's appeal clearly demonstrates the tacit acceptance by the petitioner, that the proceedings of the appeal being pursued by Mr. Vinod Kanta Rai are proceedings pursued by the society. Moreover, the society in its General Body Resolution dated 5 March, 2021, reposed full confidence in the actions taken by Mr. Vinod Kanta Rai in the welfare and interest of the society. In these circumstances, it is untenable for the petitioner to canvas a case that it was not the society which was pursuing the proceedings.

80. Even otherwise, there were 132 individual complaints made to the Chief Executive Officer-SRA against the petitioner on the inordinate delay of the petitioner in commencing the work, out of which 62 slum dwellers represented themselves before the Chief Executive Officer-SRA through their Advocate Mr. Mukesh Gupta. Thus, certainly it cannot be said that the petitioner had no complaint

against it to be removed as a developer. Thus, the petitioner's contention that there is a small brunch of motivated slum dwellers with ulterior motives, is totally unacceptable and untenable.

81. Even otherwise, irrespective as to who was pursuing the proceedings before the Chief Executive Officer-SRA, whether it was Mr. Vinod Kanta Rai along with the other co-members of the society or it was the society itself, it was always within the jurisdiction of the Chief Executive Officer to entertain legitimate complaints on behalf of any member of the society or suo-motu, that the development has been delayed at the hands of the petitioner for such a long number of years. It is seen that irrespective of such complaints, the Chief Executive Officer has in fact attempted to undertake an inquiry, albeit the complaints. The petitioner hence certainly cannot have a grievance in the peculiar facts to prevent the Chief Executive Officer-SRA or the AGRC in not examining the glaring and gross delay on the part of the petitioner to commence the slum scheme. However, for reasons which are certainly not acceptable either on facts or in law, the Chief Executive Officer had come to a wrong conclusion that the delay was not attributable to the petitioner, when there was substantial material on record, depicting the unconscionable dereliction of the petitioner, to commence construction as could be seen if the scrutiny of the financial position of the petitioner, was to be undertaken, which was

overlooked by the Chief Executive Officer, in reaching his conclusion. It is for such reason, an appeal was required to be filed by the society. The Chief Executive Officer in fact overlooked that the petitioner was grossly guilty of betraying the trust and confidence of the society, and in fact had taken about 470 slum dwellers to a ransom.

82. Now, there is something very peculiar before the proceedings filed before the Chief Executive Officer, the petitioner has not filed any substantive reply but had filed its written submissions. Thus, the case of the society is that the successive representations and the representation dated 18 November 2019, of the society were not dealt on merits, hence, there was no substantive denial of the case of the petitioner. The society could not succeed before the Chief Executive Officer as by an order dated 16 March, 2021, the Chief Executive Officer turned down the plea of the society for change of developer on the ground that the delay was not attributable to the petitioner, thereby requiring the society to file an appeal. A perusal of the society's appeal as filed before the AGRC, shows that it is an exhaustive and a substantive appeal. It was contested by the petitioner by filing a reply as already noted above. Although, no rejoinder to the reply affidavit was filed, however, in my considered opinion, the AGRC has taken a correct view of the matter, when the AGRC comes to a conclusion that

the society is correct in its contentions in regard to the inordinate delay in undertaking the scheme.

83. When the proceedings reached this Court, certainly the petitioner has come out with all ammunition to contend before this Court by projecting a super microscopic view of the matter when the petitioner tries to explain the delay of each year, as if this Court would be a fact finding Court. Such endeavour is also made in the written submissions. The petitioner in doing so, is certainly oblivious to the law laid down and the observations in that regard in the decision of this Court in ***Hi-Tech India Construction vs. Chief Executive Officer, SRA*** (supra) and the relevant observations in ***New Janta SRA CHS Ltd. vs. State of Maharashtra*** (supra), when the Court has taken a consistent view that when the decision reflects a possible view, there is no question of the writ court interfering in the decision of an authority.

84. Moreover, accepting the petitioner's contention would tantamount to the Court re-appreciating the evidence and coming to a different conclusion then what has been arrived by the AGRC on the basis of relevant materials before it. This more particularly, as noted above, is not a case where the Court is required to come to a conclusion that the findings as recorded by the AGRC was not a plausible view and/or the findings are absolutely perverse so as to call

for an interference. In fact, the situation is contrary. It is surprising that merely for hidden commercial interests the petitioner has still an inclination to hang on to the project after having delayed the same over 18 years. In this context, it would be appropriate to note some of the findings of the AGRC in the impugned order, which read thus :

> *".....*
>
> *(1) From the above aforesaid facts it is clear that the proposal submitted by M/s. Yash Developers under Regulation 33(10) of DCR 1991 was accepted by SRA on 12.12.2003, LOI was issued on 29.06.2011 thereafter Revised LOI was issued on 27.04.2017 and lastly revised LOI was issued on 27.12.2019 as per DCPR 2034. IOA in respect of rehab Building NO. 1 was issued on 21.04.2012 and amended IOA issued on 19.11.2017 and 17.01.2020 Plinth CC was issued on 14.07.2014. 180 eligible Slum Dwellers have vacated their respective structures in the year 2013-2014.*
>
> *As per Clause 11 of Development Agreement dated 20.08.2003 between M/s. Yash Developers and society wherein the developer has agreed to rehabilitated all members of Applicant's society/occupants of suit property within 3 years on issuance of Commencement Certificate. Admittedly CEO/SRA has issued Plinth Commencement Certificate dated 14.07.2014, however M/s. Yash developer has failed to start construction activity on site and has not constructed even a single tenement of rehab building.*
>
> *CEO/SRA during hearing on 21.12.2020 directed Respondent No. 2 M/s. Yash Developers to deposit arrears of rent due & payable to the Slum*

dwellers and further advance 15 months' rent within 1 week with co-operative societies/SRA. Pursuant to the said directions M/s. Yash Developers by letter dated 08.01.2021 addressed to CEO/SRA informed that the Developers have deposited amount of Rs. 7,73,88,000/- (Seven Crore Seventy-Three Lakhs Eighty-Eight Thousand) in Axix Bank Worli Branch on 07.01.2021. Alongwith the said letter the developer annexed bank balance certificate dated 08.01.2021 reflecting the deposited amount of Rs. 7,73,88,000/- (Seven Crore Seventy-Three Lakhs Eighty-Eight Thousand).

Asst. Registrar by letter dated 05.03.2021 informed Dy. Collector (WS) /SRA that as per the account statement of Axix Bank Worli Branch shows balance amount of Rs. 5,52,63,600/- (Five Crore Fifty-Two Lakhs Sixty-Three Thousand Six Hundred) in M/s. Yash Developers account.

From the above facts it is established that the eligible Slum Dwellers whose structures have been demolished in the year 2013-2014 have not been paid rent as claimed by the Applicant Society. During hearing of proceedings under section 13(2) of Maharashtra Slum Areas (I. C & R) Act 1971 CEO/SRA on 21.12.2020 directed the developer to deposit arrears of rent plus 15 months advance rent within l week. The developer has deposited amount of Rs. 7,73,88,000/- (Seven Crore Seventy-Three Lakhs Eighty-Eight Thousand).

From the aforesaid facts it is clear that admittedly the Project has been inordinately delayed. However, the Developer has claimed that the delay is not attributable to him and delay is beyond his control. However, on perusal of the material on the record including submission of developer as well as the fact sheet compiled by Concerned departments, the contentions of the developer is not sustainable. Contrary to the

claims and contention of developer it is observed that the delay caused by amendments sought by the developer time to time and failure of the the developer to pursue the Applications of approvals with due diligence and failure and neglect of the developer to take any steps to mitigate the delays.

.....

Considering the facts that commencement certificate upto Plinth level was grated on 14.07.2014 respect of subject S R Scheme, however till date the said developer has not carried out any construction. Some of the eligible slum dwellers have vacated their structures and the said developer has failed to pay the rent in lieu of Transit Accommodation to the eligible Slum Dwellers. Thus, there is in-ordinate delay in implementing subject R Scheme.

Considering the aforesaid facts, the in-ordinate delay caused by the Respondent No. 2 M/s. Yash Developer in implementation of subject S R Scheme on plot of land bearing CTS No. 515 (Pt), 515B (Pt) and 509 of Village Kanheri, Taluka Borivali Corresponding to F.P. No. 14- AB (Pt) of TPS-II, Borivali (East) for Harihar Krupa CHS Ltd cannot be justified as the Slum Dwellers of the subject S R Scheme are languishing in inhuman condition and have been awaiting decent Permanent Alternate Accommodation for last 18 years. It is duty of the Slum Rehabilitation Authority to see the S R Scheme are implemented in time bound manner and Slum Dwellers are rehabilitated within reasonable period.

This Committee is of the view that main object of implementation Slum Rehabilitation Scheme is to uplift/improve the standard of living of Slum Dwellers, who are staying in Slum for years together. If the proposal of the development is kept pending for years together then naturally the

valuable rights of the Slum Dweller for improvement of their dwelling condition, would be defeated and the very purpose of the Slum Act would fail and get defeated. Therefore, it is power, duty and function of SRA to implement the Slum Schemes and to do all other acts, deeds and things which are necessary for achieving the object of rehabilitation of Slum Dwellers.

This Committee after considering the judgments of the Hon'ble High Court of Judicature at Bombay as enumerated hereinabove & the fact that there is ordinate delay attributable to M/s. Yash Developer in implementation of subject SR Scheme. Non-payment of rent to eligible Slum Dwellers whose structures have been demolished in the year 2013-2014. Further the fact that M/s Yash Developers does not have financial capacity to implement subject S R Scheme, therefore, have traded subject S, R Scheme for consideration."

(emphasis supplied)

85. It is thus clear from the above findings as recorded by the AGRC, that these are findings which are borne out from the materials on record and they cannot be called to be perverse by accepting a case being twisted by the petitioner on the same facts so as to persuade this Court to come to a different conclusion on the same materials.

86. The society would be correct in placing reliance on the decision in ***Susme Builders Pvt. Ltd. V/s. Chief Executive Officer, Slum Rehabilitation Authority & Ors***. (supra), wherein the Supreme Court has categorically held that under Section 13(2) of the Slums Act, the

SRA has an authority to take an action and hand over land developed to some other agency under three circumstances, one of them being when the development has not taken place within time, if any specified. The Supreme Court in such case had upheld the contention of the slums society, that the petitioner therein had not completed the project within time and hence an action was taken under Section 13(2) of the Slums Act. The Court observed that the action taken by the SRA to remove the petitioner as a developer by cancelling the Letter of Intent (LOI) issued in favour of the petitioner was justified. The relevant observations of the Supreme Court are required to be noted, which reads thus :

> "*49. Otherwise, there would be an anomalous situation where the Society would have terminated its contract with Susme but the letter of intent issued by the SRA would continue to hold the field and it would be entitled to develop the land. The Society approached the SRA, in fact, asking it to take action against Susme. Since the SRA is the authority which issued the letter of intent, it will definitely have the power to cancel the letter of intent.....*"
>
> *...*
>
> *52. A bare reading of these provisions shows that in terms of clause (c) and (d) of sub-section (3) of Section 3A 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."

87. In ***K. S. Chamankar Enterprises & Anr. vs. State of Maharashtra & Ors.*** (supra), the Division Bench of this Court was considering a similar situation. This was a case concerning a slum scheme which was planned and conceived for total 911 tenements out of which only 155 tenements for slum dwellers were constructed and which had taken about 13 years from the grant of the Letter of Intent (LOI) and 20 years after acceptance of the scheme. The Court accepted the decision of the authorities that in such circumstances the petitioner had caused inordinate delay including the Slum Rehabilitation Scheme and that there was nothing in the findings as recorded by the authorities to be of any perversity and upheld such decision.

88. In the present case, the petitioner having grossly failed to commence the project and the first and foremost obligation to commence construction of the rehabilitation building, itself could not be achieved despite a commencement certificate having being issued on 14 July, 2014, the petitioner cannot be heard to put up excuses and justifications to paint a picture that the petitioner was diligent. The AGRC has rightly appreciated the entire *modus operandi* of the petitioner and that having failed on several counts, including the gross

inaction of not making payment of the transit rent to almost 199 slum dwellers, who had vacated their structures and/or were demolished, itself amounts to a patent abuse of the authority vested in the petitioner by the society. Such position being a responsible position involving the right of rehabilitation and/or a right of shelter, cannot be abused and continued to be abused by developers like the petitioner. Such rampant abuse of the powers and failure of rehabilitation in the manner as agreed in the Development Agreement was a reason sufficient for removal of the petitioner which has been completely overlooked by the Chief Executive Officer-SRA. The petitioners could not have been under a wrong impression that once the development was assigned to the petitioners by the society, the petitioner would forever possess such development rights and could try to evade law to the prejudice of the slum dwellers and on a day to day basis continue to violate their basic fundamental rights.

89. In ***Galaxy Enterprises vs. State of Maharashtra*** (supra), proximate issues were considered by the Court which are relevant in the present context when the land in question in the present proceedings is of the ownership of MCGM. It however appears that the observations of this Court are being overlooked by the authorities. The relevant observations, of the Court in such decision are required to be noted which reads thus :

"3. There is a wealth of decisions of the Supreme Court and this Court emphasizing on the expeditious and effective rehabilitation of slum dwellers, who live in inhuman conditions, so as to achieve in letter and spirit, the object and intention of a fairly old State legislation namely the "Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971". Nonetheless, considering the volumes of disputes still reaching the Courts, it can certainly be said that time is ripe, if not too late, to ponder, whether things are realistically working in the right direction, to eradicate slums and rehabilitate the slum dwellers, with the desired efficacy and expedition. This not only at the hands of the authorities but also at the hands of the other stake holders. The vital issue which has often led to controversy and disputes, is on the rules permitting, the selection and appointment of developers to undertake a Slum Rehabilitation Scheme, being conferred on the slum dwellers, who are hardly expected to know the nitty-gritty of the slum redevelopment schemes. It is seen that the so called leaders of the slum dwellers who are themselves in need to be rehabilitated, are often lured by developers and their agents, and once a developer is appointed, what normally prevails is a constant fear of incertitude and skepticism amongst the slum dwellers, leading to disputes on variety of issues affecting their final rehabilitation. Such issues not only frustrate the very object of a speedy slum redevelopment but completely derail the slum schemes. It can be seen that scores of slum schemes have remained incomplete for years together and are languishing on such issues, either in litigation before Courts and/or before the authorities. These schemes need not face such ordeal, including of an unending litigation. To change the developer is no answer as even this process involves dispute resolution and ultimately lengthy litigation from one forum to another.

4. Can the Slum Rehabilitation Authority not have a robust panel of bonafide developers who have genuine business interest to redevelop slums,

of course with commercial benefits as conferred under the rules, and who can be appointed by an open and fair scheme of selection and allotment of slum projects and who would be accountable to the Authority?

5. It is high time that, learning from the past experiences, the burden on the ill equipped slum dwellers to be responsible to appoint developers and pursue the redevelopment scheme is removed and to do away the ordeal of the slum dwellers to go on knocking the doors of different authorities for years together when the developers fail to perform. Redevelopment to be undertaken professionally and in a time bound manner is the need of the day, even to fulfill the ideals, which the Government intends to achieve. What is necessary is the initiative of a redevelopment, by genuine, honest and trustworthy developers appointed through the Slum Authority or any other Special Body created for the said purpose and not to leave it to the slum dwellers to re-develop the slums. This for the reason that the slum dwellers are supposed to be merely interested in their rehabilitation and can have no other interest. All these WP 2987-18(final).doc efforts are necessary, as a step forward to achieve an object of having an ideal city free of slums. It cannot be countenanced that the slums be redeveloped only when the slum dwellers feel the need of a redevelopment and the Government Authorities cannot initiate redevelopment and cannot initiate a suo motu action in that behalf. It is hence, for the Government and the Slum Authority to give its anxious consideration to these issues and in its wisdom to device a substantial, nay a full proof mechanism, by undertaking a study and identify these grey areas, so that the helping hand as extended by the legislature in providing this beneficial law as far back in 1971 that is almost 50 years back is held strongly and firmly by all concerned. It is never too late.

……..

65. ... It needs to be noted that the land in question is a land belonging to the State Government/MHADA and if the land is under slums and the occupants are suffering, whether it would also not be the responsibility of the MHADA considering the provisions of Chapter IX of the Maharashtra Housing and Area Development Act 1976, being a chapter on "Environmental Improvement of Slums", providing for Section 104 to Section 113 of the said Act, to take time to time actions and consider with utmost priority the rehabilitation of the slum dwellers?. It clearly appears that in the present case, the entire re-development of the slums is left in the hands of the developer by the slum dwellers, who are struggling to appoint one developer after another. The MHADA appears to be an absolute alien when all these actions are being taken by the society. Already, about three developers are appointed by the Society including the present developer M/s Bindra, as noted above, despite this whether the slum dwellers will at all see the light of the day, is a factor which is required to be seriously considered by the slum rehabilitation authority and the MHADA by having a compliance and a follow up mechanism. ***It is high time that at least in regard to the slums on government lands or land belonging to a public bodies, the government needs to have a concrete and effective policy and 'which may include a panel of reputed contractors/developers, which would genuinely undertake and implement the slum rehabilitation scheme and bring a speedy and effective rehabilitation of slum dwellers.*** *This is required to be observed for the simple reason that the record in the present petition would clearly show that the MHADA or the State authorities have not utilised and/or have turned a blind eye to the provisions of the law to take effective steps in the larger interest of the society, instead things were completely left at the hands of a private developer and the helpless slum dwellers. Dealing with the Government land certainly involves dealing with the public largess. Surely the hands of the State*

> *and its authorities are not so weak. What is required is a willingness and an able and authoritative guidance from those who wield these powers for public good. As noted, it would be for the good wisdom of the State and its policy makers to deliberate on these issues which are "also" of immense importance to a city like Mumbai where large parts of the limited lands are under slums. Such approach also needs to be timely adopted for the other fast developing cities in Maharashtra, where the government land is scarce, before it is too late."*

On the above backdrop, while rejecting the petition which assailed an order passed by the AGRC, this Court upheld the decision of the Chief Executive Officer of the SRA for change of the petitioner therein as a developer. The Court also observed that there was a complete lack of concrete and real steps being taken by the petitioner to effectively seek approvals once the society had put the petitioner in the driver's seat in complete control of the project as was committed in the impugned orders. It was observed that a developer cannot shut his eyes to the ground reality that it is the right of the slum dwellers under Article 21 of the Constitution which was being affected. It was also observed that there cannot be a myopic approach to these issues of delay in implementation of the Slum Schemes and that the only mantra to be attributed for the slum schemes is time bound completion. In such context, extract of the Court observed thus :

> *"53. The record reveals that what M/s Saral could do in eight years of its appointment, was to*

get the Annexure II, namely the list of the 73 eligible occupants certified from the MHADA. It was, thus, expected from the petitioner that the revalidation of Annexure II, which was possibly not a complex formality be undertaken at the earliest. However this certainly did not happen and citing various reasons, which cannot be believed to be not attributable to the petitioner, ultimately, the petitioner could not get the Annexure II certified only on 23 December 2013, which is after about eight years of the petitioner's appointment. This fact itself raises a serious doubt as to the real intentions of the petitioner to undertake the scheme. The petitioner could not have simply blamed the authorities for the delay, as there is complete lack of concrete and/or any real steps which were to be taken by the petitioner to effectively seek different approvals, once the society had put the petitioner in the driver's seat, in complete control of the project as rightly commented, in the impugned orders. Thus, the case of the petitioner, that from time to time steps were taken to implement the slum scheme as entrusted to it by the society cannot be accepted. These are the contentions of the petitioner, merely pointing out some movement of the files with the authorities. This was certainly not sufficient and what was required and expected by the petitioner was to take real effective steps to progress the slum redevelopment. The petitioner was expected to expeditiously obtain an Annexure II, as certified by the MHADA, thereafter obtain a LOI and then obtain a Commencement Certificate to start with the constructions and before that make a provision for temporary alternate accommodation for the slum dwellers to reside till completion of the scheme. There is not an iota of material to show that any such steps much less expeditiously were taken by the petitioner which will show the real bonafides of the petitioner to undertake the scheme.

54. <u>In fact the petitioner kept the slum dwellers/society in dark on any of the steps alleged</u>

to be taken by the petitioner. There was no transparency in the petitioner's approach with the slum-dwellers whose anxious, impatient and painful wait of so many years for the slum scheme to start was continuously staring at the petitioner's right from the word go. This was not what was expected of a diligent developer. The slum schemes are expected to be taken and pursued by the developers for genuine and bonafide object and purpose to redevelop the slums as reflected in the rules which is for the mutual benefit namely the benefit of the slum dwellers of being provided a permanent alternate accommodation and so far as the developer, to exploit the free sale component, which is nothing but a business consideration for the developer. If this be the long and short of a slum scheme what can be the intention of a developer to sit tight on a slum scheme and not take expeditious measures to undertake and complete the scheme. The reasons can be innumerable, if the reasons are attributable to the authorities, the developer has certainly remedies in law to be immediately resorted. No forum competent to entertain such complaints would refuse to look into such grievances when the very right to livelihood of the slum dwellers who are living in inhuman conditions, being a concomitant of Article 21 of the Constitution, is involved and which becomes a matter of urgent concern and of utmost priority. A developer cannot shut his eyes to all these factors and attributes, once appointed by the society. For the developer, there has be relentless action on day to day basis, as any delay in not implementing the slum scheme is not only detrimental to the slum dwellers, but to the society at large. Delay in effective implementation of the slum scheme would defeat the very goal, the ideals and the purpose of the slum redevelopment scheme.

55. A perusal of the record indicates that the society is correct in contending that during the period from 2006 to 2016 i.e. for about 10 years the petitioner did not take any concrete steps

towards implementation of the slum rehabilitation scheme and the petitioner had clearly failed to obtain a LOI for such a long period. The society, thus, was constrained to file the application dated 15 March 2016, under Section 13(2) of the Slums Act, praying for change of the petitioner as the developer. It is correct that Annexure-II was originally issued by MHADA on 16 April 1998. The petitioner was appointed as developer in the month of June 2006 and it clearly took about seven to eight years for the petitioner to obtain revised Annexure-II which was obtained on 23 December 2013. Before the Chief Executive Officer and even before the appellate authority the petitioner has failed to show any justifiable reason as to why it took these many years for the petitioner to simply obtain a revised Annexure-II when as per norms issued by the Slum Rehabilitation Authority Annexure-II is required to be finalised within a period of four months when the hutment dwellers are below 500 in number. Further the record clearly indicates that even after obtaining the revised Annexure II, on 23 December 2013, the petitioner did not initiate immediate steps to obtain LOI for the next three years. There is, thus, much substance in the contention of the society that only after the society initiated proceedings under Section 13(2) of the Slums Act, the petitioner initiated steps to obtain a LOI.
...

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 entirity. 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 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.

...

64. *Thus, it is quite clear that inordinate delay is a sufficient ground for removal of a developer. There is neither any perversity nor any illegality in the findings as recorded by both authorities below, in observing that the petitioner had grossly delayed the implementation of the slum scheme in question. The findings as recorded in the impugned order passed by the Apex Grievance Redressal Committee are also sufficiently borne out by the files produced before this Court."*

(emphasis supplied)

90. In ***M/s. Ravi Ashish Land Developers Ltd. v/s. Prakash Pandurang Kamble and Anr.*** (supra), the Court expressed serious concern as to how the slum dwellers were languishing and continuing in transit accommodations for nearly two decades. In the said case, the project had remained incomplete even for twenty years. The Court made the following observations, which are significant in the present context :

"14. To my mind, in all such matters and particularly this one, an order of this nature has to be passed because of inefficient handling of the entire scheme by the Slum Rehabilitation Authority. 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 is with that end, the Full Bench of this Court has delivered their judgment in the case "Tulsiwadi Navnirman Co-op Housing Society Ltd. and another vs. State of Maharashtra and others, 2008(1) Bom.C.R. 1." The Slum Rehabilitation Authority has been conferred with the powers and each one of them is coupled with a duty. If the slum dwellers are eligible to be entitled to be rehabilitated at site and within a reasonable period, they can not be left at the mercy of developers and builders. They cannot be expected to occupy endlessly a transit accommodation which has no proper maintenance, lack in hygiene and amenities basic for human habitation. The slum dwellers expect that the authorities like S.R.A. should take note of their grievances without any fear, favour and affection towards any set of developers. An independent and impartial implementation and supervision so also

> *monitoring of the projects is the purpose for which the authority has been set up. In such circumstances and by reminding the Authorities that if the projects are left incomplete in this manner, then, even they will have to abide by the directions to pay amounts at market rate to the slum dwellers who have been held eligible but not rehabilitated by them, for the reasons which are attributable to the inefficiency and 'inept' handling of the projects by the SRA. I refrain from passing such orders against the SRA in this case, but direct that the Authority should call for a monthly progress report from the Appellant and if it finds that there is no substantial progress by 30th June, 2013, it must take all such steps including removal of the developer and replacement of the Appellant with some other agency.* *(emphasis supplied)*

91. In ***Hi-Tech India Construction Vs. Chief Executive Officer, SRA*** (supra), a Division Bench of this Court also upheld the decision of the SRA authorities to change the developer accepting that the view taken by the SRA and HPC was a possible view. The Court observed thus :

> "*17. We are unable to hold that the impugned orders are unsustainable or perverse. The view taken by the SRA and the HPC is a possible view. If the petitioner is able to establish their case on facts regarding mala fides or otherwise on the part of any person including respondent No.5 - the new developers or their partners or the society or any of its members in appropriate proceedings, that would be a different matter. Their claim for damages ought not to hold up the implementation of a scheme for redevelopment under DCR 33(10).*"

92. In ***New Janta SRA CHS Ltd vs State of Maharashtra*** (supra), the dispute in such case involved two rival societies claiming the rights over a slum scheme and it is in such context when two contesting societies were before the Chief Executive Officer as to how the position ought to have been dealt, in regard to the legal status and complexion of the developer who was appointed by the society was the subject matter of the concern in the said proceedings. In the context of the present proceedings, the observations in such decision as made in paragraphs 174 and 175 of the said decision are required to be noted as relevant to the facts of the present case :

> *"174. It thus cannot be accepted more particularly considering the provisions of Section 13(2) of the Slums Act that a slum society at its sole discretion and/or without any control and regulations by SRA can change the developer. If such a course of action is made permissible, considering the hard realities and the hundreds of developers being available to take over such schemes, it would create a chaos and it is likely that a situation is created, that the slum rehabilitation scheme never takes off and it is entangled into fights between two factions within the society and/or two rival developers. This is certainly not the object of the legislation. It would be too far-fetched to read such draconian rights available to the Managing Committee or to general body of a society without any regulation, supervision and control of the SRA to change the developer. The SRA has all the powers not only to regulate and control such situations but to take a decision as to what is in the best interest of the slum dwellers and intended to achieve the object of the legislation."*

However, in paragraph 175 of the said decision, the Court clearly recognised the position as to what would be consequence if there is an inordinate delay. The Court observed thus :

> *"175. Secondly it is not in dispute that the application of the petitioner for change of respondent no.5-developer was under Section 13(2) of the Slums Act. Having noted this provision in the foregoing paragraphs, Section 13(2) of the Slums Act would come into play only when the developer fails to adhere to the provisions of the development permissions granted by the SRA and a change of developer can be sought only when there is an inordinate delay or the construction carried on, is contrary to the sanctioned plans and/or the permissions. Considering this clear position falling under Section 13(2), in the context of this factual controversy as raised by the petitioner in regard to the consent of 70% of the slum dwellers being not available to respondent no.5, I am of the clear opinion that the view taken by both the authorities, in not accepting the petitioner's contention, is required to be held to be correct and valid."*

93. In ***New Janta SRA CHS Ltd Vs. State of Maharashtra*** (supra), the Court also considered as to what would be the scope of interference in the orders passed by the AGRC in exercising the writ jurisdiction of this Court. The Court referring to the decision of the Full Bench of this Court in ***Tulsiwadi Navnirman Coop. Housing Society Ltd. & Ors. vs. State of Maharashtra & Ors.***[7]**,** accepted the contention of the respondent that the exercise of powers by the writ court in the SRA cases must be limited to the matters which remain unresolved despite

7 2007(6) Mh.L.J. 851

the remedy of appeal being exhausted more particularly when full fledged hearing complying the principles of natural justice was granted before the AGRC on all the issues. The Court also referred to the decision of the Supreme Court in ***Union of India & anr. vs. Mustafa & Najibai Trading Co.***[8] and the decision of the Supreme Court in ***Bharat Sanchar Nigam Ltd. vs. Bhurumal***[9], in regard to the scope of interference in such matters in the writ jurisdiction of this Court. The following observations are required to be noted :

> *"258. The respondent would be correct in contending that exercise of powers by the Writ Court in the SRA matters must be limited to the matters which remain unresolved despite the remedy of an appeal being exhausted more particularly when the full fledged hearing complying the principles of natural justice was granted before AGRC on all the issues. The Full Bench of this Court in* ***Tulsiwadi Navnirman Coop. Housing Society Ltd. and Ors. vs. State of Maharashtra and Ors.*** *(supra) in this context observed as under:-*
>
> > *"115. In the result, we are of the opinion that writ jurisdiction is available in matters of Rehabilitation of Slum Dwellers but the limits of exercise of power should be confined and restricted to matters, which remain unresolved despite the remedies of Appeals etc. being exhausted. Similarly, in the illustrations given by learned Advocate General, this Court can be approached only if the decision of SRA or State is permissible for being interfered with on the settled principles in writ jurisdiction. We have given*

8 (1998) 6 SCC 79

9 (2014) 7 SCC 177

illustrations and categories of case wherein a prerogative writ may be issued so as to ensure smooth and effective implementation of Slum Rehabilitation Scheme. However, the writ jurisdiction will not be available where the dispute is essentially private or contractual and the State Government, SRA and other local bodies are impleaded as parties only to file writ petition. In other words, when the main relief is not sought against these bodies, yet, they have been impleaded as parties and the dispute is mainly and essentially between private parties involving purely private law, then, writ petition is not the remedy.

116. [...] They broadly agree with the conclusion that the intent of the Legislature is minimum obstacles and obstructions in the way of implementation of Slum Rehabilitation Scheme. All provisions and measures are intended at smooth and expeditious implementation of the scheme so as to achieve removal of encroachment and demolition of structures on pavements and public lands. Therefore, interference by the Court should be minimum and bearing in mind the above intent. *(emphasis supplied)*

Applying the above principles it can be clearly seen from the facts, there is hardly any scope for this Court to exercise its extraordinary discretionary jurisdiction to interfere in the findings of fact concurrently recorded by the authorities below. Respondent nos. 2 to 4, 5. 8 and 9 would be correct in their contentions that this is not a case where the High Court should exercise jurisdiction to disturb the concrete findings of fact as arrived by both the authorities in the impugned orders. The law in this regard being well settled can also be seen from the following decisions:-

259. In ***Union of India & Anr. VS. Mustafa & Najibai Trading Co.,*** *the Supreme Court has reiterated the principles the High Court would follow in exercising its jurisdiction under Article*

226 and 227 of the Constitution. In paragraph 21 the Supreme Court observed thus :

> *"21. While exercising its jurisdiction under Articles 226 and 227 of the Constitution it is not open to the High Court to re-appreciate the evidence produced before the subordinate tribunal and on the basis of such re-appreciation of the evidence to arrive at a finding different from that recorded by such tribunal. The finding of fact recorded by the subordinate tribunal can be interfered with by the High Court only if it is found to be based on no evidence or if such a finding can be regarded as perverse. The high Court cannot convert itself into a court of appeal. Reference, in this context, may be made to the decision of this Court in Collector of Customs. Madras & Ors. vs. D. Bhoormall, 1974 (2) SCC 544, wherein it has been said :-*
>
> > *37. Even if the Division Bench of the High Court felt that this circumstantial evidence was not adequate enough to establish the smuggled character of the goods, beyond doubt, then also, in our opinion that was not a good ground to justify interference with the Collector's order in the exercise of the writ jurisdiction under Article 226 of the Constitution. The function of weighing the evidence or considering its sufficiency was the business of the Collector or the appellate authority which was the final tribunal of fact. "For weighing evidence and drawing*

> *interference from it" said Birch, J. in R. V. Madhub Chunder "there can be canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited". It follows from this observation that so long as the Collector's appreciation of the circumstantial evidence before him was not illegal, perverse or devoid of common sense, or contrary to rules of natural justice, there would be no warrant for disturbing his finding under Article 226."*

Similarly, in Indru Ramchand Bharvani & Ors. v. Union of India & Ors., 1988 (4) SCC 1, this Court has said:-

> *'It must be reiterated that the conclusions arrived at by the fact-finding bodies, the Tribunal or the statutory authorities, on the facts, found that cannot be cumulative effect or preponderance of evidence cannot be interfered with where the fact-finding body or authority has acted reasonably upon the view which can be taken by any reasonable man, courts will be reluctant to interfere in such a situation. Where, however, the conclusions of the fact-finding authority are based on no evidence then the question of law arises and that may be looked into by the courts but in the instant case the facts are entirely different."*

> *260. In **Bharat Sanchar Nigam Ltd. vs. Bhurumal**, the Supreme Court held that only when the findings are perverse or when it is a case of no evidence the Court can interfere. In paragraph 20 the Court observed thus:*
>
> > *'20. It is apparent that the aforesaid findings are findings of fact. Such findings are not to be interfered with by the High Court under Article 226 of the Constitution or by this Court under Article 136 of the Constitution. Interference is permissible only in case these findings are totally perverse or based on no evidence. Insufficiency of evidence cannot be a ground to interdict these findings as it is not the function of this court to reappreciate the evidence. It was because of this reason that learned counsel for the appellant made frontal attack on the findings of the courts below endeavoured to demonstrate that there was perversity in the fact finding by the CGIT which was glossed over by the High Court as well."*

94. Adverting to the above well settled principles of law, it is clear that what the petitioner intends to espouse in the present petition, is a total fact finding exercise of an adversarial position it has against the society. This is certainly not the scope of the jurisdiction of the Court in the present proceedings. The petition also ought to fail on this count.

95. It also needs to be observed that the petitioner being involved in a full commercial venture, it is not the case that the petitioner in any manner whatsoever is prejudiced financially or otherwise. Whatever legitimate amounts the petitioner claims to have spent, are entitled to be reimbursed to the petitioner as seen from the directions of the AGRC, as the newly appointed developer is under an obligation to reimburse the actual expenses legally incurred by the petitioner for whatever implementation of the subject Scheme till the date of the Order passed by the AGRC. Even otherwise, the petitioner has a remedy available against the slum society by taking recourse to arbitration as per Clause 27 of the Development Agreement.

96. Before parting, another facet of the matter is required to be noted, namely, that not only 199 slum dwellers for such a long number of years are out of their houses but also they were not being paid rent regularly and consistently. A bonafide developer can never sit on the fence and on one hand keep delaying the project and on the other hand not comply with the legitimate entitlement of the slum dwellers, who have lost their houses, by not paying the transit rent to them and keep some amounts lying in an escrow account. Such an approach, in my opinion, was completely opposed to the spirit and ethos of a slum scheme.

97. For the above reasons, taking an overall view of the matter, in my opinion, no case is made out for the interference by the petitioner. The petition is accordingly rejected. No costs.

98. In view of the dismissal of the petition, the interim application would not survive and it is accordingly disposed of.

99. At this stage, a request is made on behalf of the petitioner that the ad-interim order dated 20 August, 2021 be continued for a period of six weeks.

100. On 20 August, 2021, a co-ordinate bench of this Court while adjourning the proceedings, had ordered that "till the next date, no further steps be taken by respondent no.1-society". This order has continued to operate. It shall further operate for a period of six weeks from today.

G. S. KULKARNI, J

ANDREZA PEREIRA
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