
(2014) 10 BOM CK 0095

In the Bombay High Court

Case No : Notice of Motion No. 1516 of 2011 in Suit No. 1108 of 2011

Lokhandwala Infrastructure Pvt. Ltd.

APPELLANT

Vs

Dhobghat Compound Rahiwasi Seva Sangh

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 12, 13, 13(2), 14, 22

Citation : (2014) 6 ABR 596 : (2015) 2 BomCR 399

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Veerendra Tulzapurkar, Senior Advocate, Chirag Balsara, Farid Karachiwala, Sneha Mehta, R. Nichani, Wadia Ghandy and Co., Pravin Samdani, Senior Advocate, and Amit Rao, Advocate for the Appellant; S.U. Kamdar, Senior Advocate, Zubin Behram-Kamdin, J.G. Reddy, Vivek Vashi, Alya Khan, I/b. Bharucha and Partners, Advocate for the Respondent

Judgement

S.C. Gupte, J.—This Notice of Motion is taken out by the Plaintiff for appointment of Court receiver and interim injunction against the Defendants restraining them from acting upon or giving effect to the development agreement entered into between Defendant Nos. 1 and 2 and Defendant No. 26. The Plaintiff, who is a developer and who claims to have entered into a development agreement with Defendant Nos. 1 and 2 and Defendant Nos. 7 to 25 for development of the suit property, has filed the present suit for specific performance of that development agreement. The Defendants objected to the jurisdiction of this Court to hear the suit in view of the provisions of Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Accordingly, a preliminary issue of jurisdiction was framed by this Court. That issue is being decided by this order. The short facts of the Plaintiff's case, relevant for the determination of the present controversy, may be noted as follows:

2. The suit property is a notified slum within the meaning of the Maharashtra slum (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act"). The

slum dwellers were desirous of developing the suit property under a slum rehabilitation scheme ("SRA Scheme"). On about 10 August 2003, Defendant Nos. 1 and 2, who are respectively the association of eligible slum dwellers and registered Society of slum dwellers/members, occupying the suit property, entered into a development agreement, through their representatives being Defendant Nos. 7 to 25, with the Plaintiff. Pursuant to the development agreement, Defendant Nos. 7 to 25 also executed an irrevocable power of attorney dated 10 August 2003 in favour of the Plaintiff authorizing the Plaintiff to do all acts necessary for implementation of the SRA Scheme. The Plaintiff claims to have received irrevocable written consents of 95% of the members of Defendant No. 2 Society residing on the suit property.

3. After execution of the development agreement, by a letter dated 20 September 2003, the Plaintiff submitted the SRA Scheme to the authorities under the Slum Act. It is the Plaintiff's case that despite following up the matter with Defendant Nos. 27 and 28, the issuance of Annexure - II on the SRA Scheme submitted by the Plaintiff was delayed. It is also the Plaintiff's case that the Plaintiff has duly complied with its part of the obligations under the development agreement and has also been ready and willing to comply with all its remaining obligations under the agreement.

4. By its letter dated 11 August 2009, Defendant No. 2 terminated the development agreement executed with the Plaintiff. On 20 September 2009, Defendant No. 2 called a general body meeting for appointment of a new developer in substitution of the Plaintiff.

5. The Plaintiff, in the premises, filed an arbitration petition, being Arbitration Petition No. 759 of 2009, seeking an injunction against holding of this meeting. This Court by its order dated 18 September 2009 did not grant any interim relief but observed that the decision, if any, taken in this meeting would be subject to the order that may be passed in the petition.

6. Defendant Nos. 1 and 2 proceeded to hold the meeting and appointed Defendant No. 26 as the developer for development of the suit property under any SRA Scheme. Defendant No. 26 claimed to have obtained consent of more than 70% of eligible slum dwellers for its SRA Project. A general body meeting of the members of Defendant No. 2 was convened thereupon by the Registrar of Co-operative Societies for the purpose of ascertaining whether the Plaintiff or Defendant No. 26 enjoyed the support of not less than 70% of the slum dwellers.

7. The Plaintiff challenged the decision of the Registrar calling such meeting by filing a petition, being Writ Petition No. 679 of 2010. This Court dismissed the Writ Petition. Around the same time, the Defendants moved an application before the high-powered committee seeking removal of the Plaintiff as a developer and appointment of Defendant No. 26 as the new developer. The application was dismissed by the high-powered committee as being premature.

8. Defendant No. 27 thereafter accepted the Defendant's case that the

Defendant No. 26 enjoyed the support of more than 70% of the members of Defendant No. 2 and directed its engineering department to process issuance of a letter of intent in favour of Defendant No. 26.

9. Once again this decision was challenged by the Plaintiff by filing another writ petition, being Writ Petition No. 95 of 2011. The order of Defendant No. 27 was set aside by a Division Bench of this Court. This Court, however, directed that Defendant No. 27, after giving an opportunity of being heard both to the Plaintiff and Defendant No. 26, shall arrive at a decision as to whether or not the Plaintiff continues to have the support of 70% of slum dwellers. The Plaintiff challenged this part of the order by filing a review petition. The review petition, however, was dismissed by this Court. An SLP was preferred by the Plaintiff against the dismissal of the review petition. The Supreme Court refused to set aside the order passed by this Court on the review petition and simply directed postponement of the meeting fixed for the purpose by 15 days with liberty to the parties to make appropriate applications in the pending arbitration petitions.

10. The Plaintiff subsequently withdrew the arbitration petitions and filed the present suit. In this suit, the Plaintiff claims a declaration that the development agreement between Defendant Nos. 2 and 26 is illegal, null and void. The Plaintiff also claims specific performance of the development agreement entered into between the Plaintiff and Defendant No. 2.

11. The jurisdiction of this Court is objected to by Defendant No. 2 on the ground of the bar of jurisdiction of Civil Courts under Section 42 of the Slum Act. Relying on the various provisions of the Slum Act read with DCR 33(10) of the Development Control Regulations for Greater Mumbai, and the evidence of the Plaintiff's witness, it is submitted by Mr. Kamdar, learned Senior Counsel for Defendant No. 2, that the present suit involves matters which the authorities under the Slum Act are alone empowered to determine and therefore, the jurisdiction of this Court is barred under the provisions of Section 42 of the Slum Act. Learned Counsel relies upon the decisions in the cases of Qari Mohammed Zakir Hussain and Others Vs. Municipal Corporation of Greater Mumbai and Others, , Slum Rehabilitation Authority and Another Vs. Kohinoor (SRA) Co-Op. Hsg. Society (Proposed) and Others, , Om Shree Sai Developers Vs. State of Maharashtra and Others, , Lokhandwala Infrastructure Pvt Ltd. and Aliasgar M. Lokhandwala, Indian Inhabitant, a shareholder and Director of Petitioner No. 1 Vs. State of Maharashtra and Others, and Pramila Suman Singh Vs. State of Maharashtra and Others, .

12. In reply, Dr. Tulzapurkar, learned Senior Counsel appearing for the Plaintiff, refers to the various provisions of the Slum Act and the averments in the plaint and documents annexed thereto and submits that the suit as framed does not involve determination of matters referred to in Section 42 of the Slum Act.

13. The Slum Act makes various provisions for improvement, clearance and redevelopment of slums. It enacts provisions for Slum Rehabilitation Schemes. It

creates authorities for implementing these schemes. It provides for ouster of jurisdiction of Civil Courts in respect of matters which such authorities are empowered to determine under the Slum Act. The relevant provisions in this behalf may be noted at the outset. (Since the State Government has appointed a Slum Rehabilitation Authority and published a Slum Rehabilitation Scheme for the areas which include the suit property herein, respectively, under Section 3A and 3B of the Slum Act, the provisions of the Slum Act which apply to the facts of this case, and which are noted below, are the modified provisions of the Slum Act according to Section 3D of the Slum Act.) Section 3A of the Slum Act provides for constitution of a Slum Rehabilitation Authority ("Authority") for implementing the Slum Rehabilitation Scheme framed and published under Section 3B. Under Sub- Section (3) of Section 3A, the powers, duties and functions of the Authority are as follows :

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

- (a) to survey and review existing position regarding slum areas;
- (b) to formulate schemes for rehabilitation of slum areas;
- (c) to get the Slum Rehabilitation Scheme implemented;
- (d) to do all such other acts and things as may be necessary for achieving the objects of rehabilitation of slums."

Section 3B provides for preparation and publication of a general Slum Rehabilitation Scheme for the areas specified under sub-section (1) of Section 3A. Under sub-section (4) of Section 3B, the Authority lays down the parameters for declaration of any area as a slum rehabilitation area and indicates the manner in which rehabilitation of such area shall be carried out. Section 3C empowers the Chief Executive Officer of the Authority to declare any area as a slum rehabilitation area under the Slum Rehabilitation Scheme. Such declaration, which is referred to as "the slum rehabilitation order", can be challenged by any aggrieved person under sub-section (2) of Section 3C before a Special Tribunal appointed under the Slum Act. Section 3D provides for application of the other chapters of the Slum Act to Slum Rehabilitation Area with modifications. Sections 3Z-1 and 3Z-2 provide for powers of the Competent Authority to demolish unauthorized or illegal dwelling structures and penal liabilities. Section 12 empowers the Chief Executive Officer of the Authority to make a clearance order in relation to any slum area, which is declared as a slum rehabilitation area, ordering demolition of each of the buildings specified therein. Any aggrieved person can prefer an appeal from the clearance order to the Special Tribunal, under sub-section (4) of Section 14. Section 13 of the Slum Act is in the following terms :

"13. Power of Slum Rehabilitation Authority to develop Slum Rehabilitation Area.

(1) Notwithstanding anything contained in sub-section (10) of section 12, the

slum Rehabilitation Authority may, after any area is declared as the Slum Rehabilitation Area, if the landholders or occupants of such area do not come forward within a reasonable time, with a scheme for re-development of such land, by order, determine to redevelop such land by entrusting it to any agency for the purpose.

(2) Where on declaration of any area as a Slum Rehabilitation Area the Slum Rehabilitation Authority, is satisfied that the land in the Slum Rehabilitation Area has been or is being developed by the owner in contravention of the plans duly approved, or any restriction 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 order, determine to develop the land by entrusting it to any agency for the purpose:

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

Section 22 provides for a prohibition from taking proceedings for eviction of occupiers or execution of eviction decrees or for issue of distress warrants without the previous permission of the Authority. Section 23 provides for an appeal from such order. Section 24 provides for allotment of tenements to occupants who have vacated, or have been evicted from, the premises in their occupation in a slum rehabilitation area, after completion of the development of the area and reconstruction of the building/s therein under the Scheme. Section 27 to 40 provide for various miscellaneous matters such as entry and inspection powers of the Authority, allotment of tenements to slum dwellers not willing to join the scheme, removal of offensive or dangerous trades from slum areas, demolition of buildings in certain cases, jurisdiction of courts, etc. Sections 41 and 42, which bar suits and prosecutions, and jurisdiction of civil courts, are in the following terms :

"41. Protection of action taken in good faith.

No suit, prosecution, or other legal proceedings shall lie against the Competent Authority, Slum Rehabilitation Authority or against any person acting under its authority for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

42. Bar of jurisdiction

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Slum Rehabilitation Authority, the Appellate Authority, Competent Authority, Grievance Redressal Committee or Special Tribunal is empowered by or under this Act, to determine; and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

14. As the provisions of the Slum Act quoted above indicate, the matters which

the Administrator, Authority and Tribunal are empowered to decide are the specific matters noted above. These matters are out of bounds for the civil court to exercise jurisdiction over, under Section 42 of the Slum Act. So also no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Slum Act. (The powers are noted above.)

15. The Plaintiff has sought the following reliefs in the suit:

(a) Declaration of nullity in respect of the termination of the suit development agreement by Defendant No. 2 and the corresponding declaration of subsistence and validity of the suit development agreement and power of attorney executed by Defendant No. 2 in favour of the Plaintiff;

(b) Specific performance of the suit development agreement by Defendant Nos. 1 to 25 and members of Defendant No. 1 / Defendant No. 2 and consequential reliefs;

(c) Cancellation of the rival development agreement between Defendant Nos. 1 to 25 on the one hand and Defendant No. 26 on the other and consequential reliefs; and

(d) Damages against Defendant Nos. 1 to 25 in the alternative.

In other words, the suit is basically for specific performance of a development agreement (which is coupled with an agreement to sell immovable property) or damages in lieu thereof. The cause of action is: (i) execution of a development agreement between the Plaintiff and Defendant Nos. 1 to 25, and (ii) non performance of that development agreement by Defendant Nos. 1 to 25 inter alia by executing a development agreement with a rival developer, Defendant No. 26. Now the question is, does this cause of action and reliefs claimed in connection therewith involve matters which the administrator or the Authority or the Tribunal is empowered by or under the Slum Act to determine.

16. Having regard to the powers, duties and functions of the Authority, it is clear that the Authority is not empowered to determine the private rights or liabilities as between the Slum dwellers and the developer vis-a-vis any development agreement entered into between them for redevelopment of any slum. Whether or not such development agreement is binding on the parties thereto, whether or not either of the parties has breached such development agreement, and whether or not the party complaining of a breach is entitled to specific performance of the development agreement, all of which are matters arising for the determination of this Court in the present suit, are not matters which the Authority is empowered to decide under the Slum Act. (None of these matters fall for the determination of any of the other entities including the Special Tribunal named in Section 42.)

17. But Defendant No. 2 contends that a party cannot seek to do indirectly what he cannot do directly. It is submitted that granting of reliefs in the present suit

would involve impugning the exercise of the Authority of its powers under Section 3A read with Section 13(2) of the Slum Act to appoint Defendant No. 26 as the developer / builder for the Slum Rehabilitation Scheme in question. It is submitted that the bar under Section 42 of the Slum Act does not countenance this.

18. Section 13(2) empowers the Authority to determine to develop the land by any agency recognized by it for the purpose, on being satisfied that the land has been or is being developed by the owner "in contravention of the plans duly approved, or any restriction 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 is not anyone's case that this power has been exercised by the Authority or that Defendant No. 26 is entrusted with the development of the suit property through the exercise of this power. The termination of the suit development agreement and execution of the rival development agreement with Defendant No. 26 by Defendant No. 2, are matters involving their private inter se disputes and do not in any way concern the Authority or exercise of any power by it under the Slum Act.

19. As for the particular relief, namely, the permanent or temporary injunction restraining Defendant No. 26 from carrying on any development or directly or indirectly preventing it from acting as a developer of the particular Slum Rehabilitation Scheme, which the Authority has authorized it to do, whether or not such relief can be granted would be considered on merits at the hearing of the suit or the Notice of Motion, as the case may be. Such a consideration does not reflect on the jurisdiction of this Court to entertain the suit as a whole. The Court may entertain the suit and yet not grant the particular relief, if it considers the same to be barred under Section 42 of the Slum Act.

20. Learned Counsel for Defendant No. 2 relied on the judgment of this Court in Lokhandwala Infrastructure (supra) to submit that the dispute between a society of slum dwellers and the developer does not lie purely in the realm of a private contractual dispute in the context of the role of the Authority with respect to the scrutiny and approval of a slum rehabilitation scheme. It is submitted that such a dispute has an important bearing on the proper implementation of the slum rehabilitation scheme and goes beyond the interests of the society and the developer. In Lokhandwala Infrastructure (supra), the petitioner developer had challenged an order of the CEO of the Authority directing processing of a letter of intent in favour of another developer (who was one of the respondents in the petition) on the ground that 70% members of the co-operative society had supported the respondent developer at a general body meeting. The petitioner developer was seeking a writ of mandamus directing the Authority to process his proposal for redevelopment and consider issuance of a letter of intent in his favour. One of the submissions before the Court was that a dispute between the co-operative society and its developer is a private dispute and a recourse to private law remedies was the only form of redress. Whilst considering this

argument, this Court held that the execution of Slum Rehabilitation Scheme was impressed with a public character; that lands on which such scheme was sought to be sanctioned and implemented might be lands belonging to the Municipal Corporation or the State or its instrument abilities such as MHADA, etc.; that the co-operative societies of slum dwellers and developers through whom the scheme was sought to be implemented facilitated the implementation of the scheme; but that the State as the owner had a vital public interest in ensuring that the object for which the land was utilized subserved the purpose of rehabilitation of the slum dwellers. This Court, therefore, held that though a dispute between the co-operative society and its developer had a private element, a recourse to private law remedies was not the only available form of redress; that the Authority and the owners of the land such as the Municipal Corporation or the State were vital components of the rehabilitation scheme; and that their statutory powers were not trammled by private contractual arrangements.

21. This entire discussion as to whether or not public law remedies can be availed of in cases of rehabilitation schemes where there may be private disputes between the society and the developer, but equally the actions of the Authority based on such disputes are under scrutiny, is quite besides the point in our case. Here, a developer has come before the Court essentially with a private dispute and has not challenged any action of the Authority or sought determination of any matter, which exclusively rests with the Administrator, Authority or Tribunal. What we are considering here is whether the jurisdiction of the civil court is barred and not whether the recourse to that jurisdiction is the only form of redress. The ratio of *Lokhandwala Infrastructure* (supra) has no application to the facts of our case.

22. The other cases relied upon by Defendant No. 2 also lend no assistance to its case. In *Naresh Lachmandas Aswani* (supra), the plaintiff claimed as successor-in-interest of the lessee of the suit property, a slum which was being developed under a letter of intent issued by the Authority. Prayers (d) and (i) of that suit sought an order and decree to hand over possession of the suit property to the plaintiff. Such possession was sought from the third defendant, who was the owner / developer of the suit property and in whose favour a letter of intent was granted by the Authority. This Court held that in view of the admitted fact that the scheme was being implemented under a letter of intent granted by the Authority, the prayer for possession cannot be granted by a civil court in the face of the bar under Section 42. The Court at the same time considered prayers (a) to (c) and (e) to (h) in that suit, which were seeking a declaration and corresponding reliefs concerning the plaintiff's entitlement to a share in the suit property and challenge to the deeds executed by the first defendant in favour of other defendants, to be within its jurisdiction. The ratio of this decision has no bearing on the maintainability of the present suit which challenges the society's action in terminating the suit development agreement and entering into a rival development agreement with another developer. In *Qari Mohammed's* case

(supra), a section of hutment dwellers had challenged the action of the Authority in allotting the suit land, which was owned by the Municipal Corporation, to the respondent developers. The action was impugned as a collusive and mala fide action. This Court in fact held that if the act is mala fide or fraudulent or collusive, the civil court retained its jurisdiction to even question an act of the Authority. It is difficult to see how this judgment may even remotely help Defendant No. 2. In Kohinoor (SRA) Co-operative Society's case (supra), the developer plaintiff had sought a direction against the Authority to accept the plaintiff's proposed rehabilitation scheme. This Court held that the civil court had no jurisdiction in the matter in view of the bar under Section 42. The relief sought there was in the teeth of the bar. As explained above, such is not the case in the present suit. In Om Shree Sai Developer's case (supra), the same principle, as in Kohinoor (SRA) Co-operative Society, is affirmed. In Pramila Suman Singh (supra), the Court was not concerned with the bar under Section 42 or any of the issues relevant in the context of our case.

23. Mr. Kamdar referred to the various orders passed by the Authority in the present case and the orders passed in the various challenges to the same before this Court and the Supreme Court. He submitted that having regard to these orders, it is clear that the Plaintiff no longer enjoys the support of the statutory number of eligible slum dwellers and it has been confirmed that Defendant No. 26 enjoys such support. These facts, any way, reflect on the Plaintiff's entitlement to get the relief in the suit, namely, specific performance of his development agreement or the interim relief in the Notice of Motion, namely, the interim injunction sought. But it is difficult to see how they non-suit the Plaintiff on a ground of want of jurisdiction. If the Court accepts the Defendant's plea of the various orders disentitling the Plaintiff to specific performance of its contract, the Court can very well consider granting the Plaintiff damages in lieu of specific performance, which, in any case, is an alternative prayer of the Plaintiff.

24. In that view of the matter, there is no substance in the plea of bar of jurisdiction under Section 42 of the Slum Act. The preliminary issue is decided in favour of the Plaintiff and against the Defendants. This Court has jurisdiction to entertain and try the present suit. The Notice of Motion may now be taken up for hearing. S.O. to 27 November 2014.