

(2013) 03 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 2349 of 2012

M/s. Hi Tech India Construction

APPELLANT

Vs

Chief Executive Officer, Slum Rehabilitation Authority and
Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 13(2), 3(s)

Citation : (2013) 3 ABR 132 : (2013) 3 ALLMR 165 : (2013) 3 MhLj 707

Hon'ble Judges : S.J. Vazifdar, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : Rajni Iyer, H.S. Anand and J.S. Saluja instructed by Anand Charanbir, for the Appellant; G.D. Utangale, B.V. Phadnis instructed by Utangale and Co., S.G. Surana, P.K. Dhakephalkar and Ms. Deepa Kamath instructed by PS Legal, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, J.—Respondent No. 1 is the Chief Executive Officer of the Slum Rehabilitation Authority (hereinafter referred to as "SRA"), respondent No. 2 is the Assistant Registrar, Co-operative Societies, SRA, respondent No. 3 is the Maharashtra Housing and Area Development Authority (hereinafter referred to as "MHADA"), respondent No. 4 is Aman (Kurla) SRA Co-operative Housing Society (Proposed), respondent No. 5 is a firm of developers M/s. Dani Builders and Developers and respondent No. 6 is the Vinoba Bhave Co-operative Housing Society (Proposed). The petitioners have challenged a show-cause notice dated 7th June, 2010, an order dated 28th September, 2010 passed by the SRA and an order dated 21st May, 2011, passed by the High Power Committee (hereinafter referred to as "HPC"). By the order dated 28th September, 2010, passed u/s 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the SRA terminated the petitioners appointment as the developer and granted respondent No. 4 -Aman (Kurla) SRA Co-operative

Housing Society (hereinafter referred to as "the society"), liberty to appoint a new developer by determining the expenses incurred by the petitioners for implementation of the scheme. The HPC, by the order dated 21st May, 2011, dismissed the petitioners' appeal against the order of the SRA dated 28th September, 2010.

2. On 23rd February, 2006, the petitioners had submitted a proposal for the implementation of a slum rehabilitation scheme. The competent authority issued Annexure-II on 21st June, 2006. The scheme was approved on 20th May, 2009. The SRA, by a report dated 20th May, 2009, recommended approval to process the petitioners proposal. The approval of the letter of intent stated that 93 out of 105 i.e. 88.57 percent of the eligible slum dwellers had consented to the scheme by passing a resolution for the implementation thereof. These eligible slum dwellers had formed respondent No. 4 - Aman (Kurla) SRA Co-operative Housing Society (Proposed). The approval of the letter of intent also referred to an access to be provided. It referred to the Chief Promoter of the society having applied to MHADA for the right of access to the scheme plot from a proposed DP load and to allow the right of access for ten years on certain terms and conditions. Accordingly, the approval of the letter of intent recommended the petitioners scheme being approved subject to the condition that a lease agreement for a right of access should be insisted upon before development permission of the rehabilitation building. It was also recommended that a condition ought also to be incorporated in the draft letter of intent to obtain an extension for the lease beyond ten years after its expiry. Clause 19 of the approval of letter of intent stipulated that the premium would be recovered as per the office circular No. 88 as the land belonged to MHADA.

3. Prima facie, there was, in the first instance itself therefore, considerable delay from the time when the petitioners submitted the proposal on 23rd February, 2006, to the approval of the letter of intent on 20th May, 2009. The petitioner's explanation for this is that the Annexure-II was issued only on 14th August, 2006. Ms. Iyer, the learned senior counsel appearing on behalf of the petitioners relied upon a letter dated 15th May, 2008, to explain the delay in the payment of premium which was also expressly referred to in the approval of the letter of intent. It appears that the Deputy Engineer of the SRA had, by a letter dated 8th May, 2008, called upon the petitioners to pay the premium. The petitioners replied to the same by its letter dated 15th May, 2008. The petitioners agreed to the payment of the premium and requested SRA to inform them as to how the payment was to be released and whether it could be released in installments.

4. The mere issuance of the letter dated 15th May, 2008, would not indicate that there was no delay on the part of the petitioners. These are slum rehabilitation schemes. It is for the developers to pursue the matter and to ensure that the scheme is implemented without delay. Developers cannot, by merely addressing letters to the authorities, sit back and contend that they had nothing more to do in the matter till they received a reply.

5. Added to this is the fact that the letter dated 15th May, 2008, was produced for the first time only before this Court and had not even been relied upon before the HPC. Mr. Dhakephalkar, the learned senior counsel appearing on behalf of the respondent No. 5 -the new developer -justifiably contended that the HPC cannot, therefore, be faulted for not having referred to and dealt with the said letter.

6. The petitioners also relied upon the SRA having accepted the access granted by MHADA for ten years only on 27th April, 2009. It was, therefore, contended that there was no delay on the petitioner's part at least till 27th April, 2009.

7. Mr. Dhakephalkar contended that even this letter dated 27th April, 2009. was not relied upon by the petitioners before the HPC. The HPC. therefore, cannot be faulted for not having dealt with the same. In fact, it was not even filed along with the Writ Petition. It was filed only as an annexure to a further affidavit dated 15th December, 2012. Moreover, as rightly submitted by Mr. Dhakephalkar, the petitioners have not disclosed when they made the application for the same and the steps taken by them leading to the access being granted. The reference in the letter of approval for letter of intent to the Chief Promoter of the society having applied for the access does not absolve the petitioners of their responsibility.

8. Thus, till this stage, there was considerable delay of over three years in even having the letter of intent report issued.

9. Several complaints were filed on behalf of the respondent - society and certain members. Ms. Iyer stated that some of the complainants are partners of the new developer viz. respondent No. 5, and their complaints were, therefore, motivated. This, however, is not relevant. The question really is whether on account of the delay by the petitioners in implementing the scheme, the impugned order u/s 13(2) was justified.

10. The petitioners also relied upon proceedings filed in the Bombay City Civil Court. It is necessary to note, however, that there was no order restraining the petitioners from implementing the scheme. The pendency of the proceedings, therefore, do not either explain or justify the delay in the implementation of the scheme.

11. Ultimately, the society, by a resolution dated 19th March, 2010, removed the petitioners as the developer.

12. The impugned show-cause notice was issued on 7th June, 2010. The petitioners filed their reply thereto.

13. The petitioners had filed Writ Petition No. 1173 of 2010, challenging the said resolution dated 19th March, 2010 removing them as developers. The Writ Petition was, however, disposed of by an order dated 14th June, 2010, by permitting the petitioners to withdraw the petition with liberty to approach the HPC and with a clarification that the development rights of the petitioners as per the letter of intent allegedly obtained by them would be subject to the decision of

the HPC. The order records the petitioners contention that they had obtained a letter of intent. In fact, there was only an approval of the letter of intent and the letter of intent itself had never been issued.

14. By the impugned order dated 28th September, 2010, the SRA terminated the appointment of the petitioners and granted the society the liberty to appoint a new developer. The petitioner's appeal was dismissed by the order of the HPC dated 21st May, 2011.

15. Apart from the general delay, it is important to note that the petitioners did not pay the premium which admittedly was to be paid in view of the circular dated 12th June, 2008, read with the circular dated 16th April, 2008. The contention that the petitioners had sought a clarification from the authorities as to where and as to whom the premium should be paid has been held to be a devise for avoiding payment. We are unable to state that this conclusion is perverse or mala fide. The circulars are clear. The petitioners ought to have tendered the payment in accordance therewith. Their failure to do so resulted in their not having been granted the letter of intent leading to a delay in the implementation of the scheme. Even assuming that the authorities did not respond to the petitioners queries, it would make no difference. The petitioners were not entitled to delay the implementation of the project on that ground. The slum dwellers are not concerned with the same in any event. Their project has now been delayed considerably.

16. 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 petitioners are 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).

17. We are also not inclined to interfere in this Writ Petition in view of the subsequent developments. The new developer - respondent No. 5 was issued a letter of intent on 14th July, 2011. Out of 130 eligible hutments, 74 have been demolished by respondent No. 5. 104 eligible members have been shifted by respondent No. 5 by paying them compensation in lieu of temporary alternate accommodation. Respondent No. 5 has taken steps to have respondent No. 4 registered. The plot has been demarcated. Respondent No. 5 has also paid the premium.

18. Ms. Iyer further submitted that the show-cause notice was void ab initio as it was issued by the Deputy Chief Engineer of the SRA. She submitted that u/s 3(s) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, it was the Chief Executive Officer of the SRA who was entitled to take action u/s 13(2).

19. The submission is not well founded. It is not even necessary for the respondents to establish that the Chief Executive Officer had delegated his powers. The respondents have tendered in Court, the submissions made by the SRA authorities on 25th/29th May, 2010. The same is taken on record and marked "X". The submission was prepared by the SF, AE and EE-1 of the SRA. The last paragraphs thereof read as under:-

In view of above Dy. Ch. Engineer (SRA)/CEO/SRA's approval is requested to issue notice u/s 13(2) of the Slum Act, to earlier developer M/s. Hi Tech India Construction and call for his explanation in this matter. The draft copy of the notice is submitted herewith for approval.

On receipt of approval, notice will be issued under the signature of Dy. Ch. Engineer (SRA) and earlier Developer/Architect/Society will be called for hearing by giving suitable date.

The Chief Executive Officer, on 3rd June, 2010, endorsed on the submission : "YES". Thus, it is clear that the show-cause notice was only issued "under the signature of the Deputy Chief Engineer, SRA. The draft thereof was referred to in the submission. The Chief Executive Officer, therefore, approved the draft and directed that the show-cause notice to be issued under the signature of the Deputy Chief Engineer. Pursuant to the show-cause notice, it is the Chief Executive Officer who heard the matter and passed the impugned order dated 28th September, 2010. There is, therefore, no technical infirmity in respect of the show-cause notice.

20. In the circumstances, no interference in our writ jurisdiction is warranted. The Writ Petition is, therefore, dismissed.