

(2008) 08 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No. 3207 of 2008

Om Shri Sai Developers

APPELLANT

Vs

Slum Rehabilitation Authority, Shree Pandit Coop. Housing
Society (Proposed), Shree Siddhi Vinayak Construction
Company and State of Maharashtra

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 6 ALLMR 682 : (2009) 1 BomCR 718 : (2008) 110 BOMLR 3063

Hon'ble Judges : Swatanter Kumar, C.J.;A.P. Deshpande, J

Bench : Division Bench

Advocate : Rajani Iyer, S.G. Surana and Vibhav Krishna, instructed by Juris Consills, for the Appellant; V.M. Thorat and Tejas Dande, instructed by Vipin Kamdi, for respondent No. 2, Havinder Toor, S.B. Pawar, S.K. Chari and R.J. Nirmal, instructed by S.K. Legal Associates for respondent No. 3, J.G. Reddy, for respondent No. 1, V.P. Malvankar, Assistant Government Pleader and R.B. Raghuwanshi, A.S.G., for the Respondent

Judgement

Swatanter Kumar, C.J.—In this writ petition under Article 226 and 227 of the Constitution of India, the petitioner has primarily amongst others made the following prayers:

(a) This Hon"ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, Order calling for the records and proceedings relating to the proceedings and after perusing the legality, validity and propriety of the proceedings and the order bearing No. SRA/CEO/LA/HCO130/ Pandit/61/08 dated 4th March, 2008 passed by the Respondent No. 1 herein, be pleased to quash and set aside and reverse the same.

(b) Pending the bearing and final disposal of this appeal, the impugned Order passed by the Respondent No. 1 bearing No. SRA/CEO/LA/HCO130/ Pandit/61/08 dated 4th March, 2008 be stayed.

(c) That this Hon"ble Court be pleased to pass a order of injunction restraining the Respondent No. 3 from carrying out any construction on suit land bearing C.T.S. No. 6(pt), 7, 7/1 to 3,9,9/1 to 4 and 10 (pt) situated at L B S Road, Mulund West, Mumbai 400080 and/or to create any third party rights on the suit land or changing the nature of suit property etc.

2. These prayers have been made on the averments of the petitioner which is a firm engaged in construction business and was appointed as the developer by respondent No. 2 society vide agreement dated 3rd March, 1996. The petitioner persuaded the slum dweller to join the scheme for which they consented and the society passed resolution on 1st March, 1996 in its General Body Meeting for implementation of Slum Redevelopment Scheme through the petitioner. The Slum Rehabilitation Authority, hereinafter referred to as the `Authority", on 6th January, 1998 issued L.O.I., I.O.D. and Commencement Certificate upto the plinth level. The respondent society did not cooperate and started making illegal demands and some of the slum dwellers refused to shift which brought the scheme to stall. On 14th January, 1998, notice was issued by Mumbai Municipal Corporation against the petitioner which was replied to wherein all these facts were brought to the notice of the authority but in view of the false complaint lodged by respondent No. 2, the authority did not issue the commencement certificate for the further work. On this basis, even on 24th March, 2000, a resolution was passed by the Special General Body Meeting to remove the petitioner. This resolution is stated to be fabricated and the petitioner filed the suit before the Bombay City Civil Court being Suit No. 2045 of 2005. On 19th May, 2000, the respondent No. 1 Authority directed the petitioner to start the work of rehabilitation building in three months and that further commencement certificate was ready and called upon him to make the payment and collect the certificate. The petitioner gave an undertaking to the said authority and upon payment of revalidation charges on 22nd May, 2000, respondent No. 1 issued the certificate. Again on 1st September, 2000, members of the society informed the said authority that they intended to terminate the agreement dated 3.3.1996 executed in favour of the petitioner. Various disputes arose between the parties and they approached the different authorities including the police. On 22nd January, 2003, the petitioner informed the authority that they have completed the Rehab DWing building and had commenced the work of constructing Rehab CWing. The Authority had subsequently informed the petitioner that it has come to the notice upon inspection that rehabilitation building was occupied without obtaining occupation certificate. Vide letter dated 20th February, 2004, the respondent Authority requisitioned the respondent society to convene a meeting of all the members to declare the details of the Slum Rehabilitation Scheme including interalia the name of the developer.

3. The petitioner filed writ petition in this Court being Writ Petition No. 2953 of 2004. In the said writ petition, the court passed the following order:

The respondent No. 2 is the authority having over all control, in the matter of

development of the areas notified as slum area. The developer can be appointed only with their permission. The new developer can also be appointed only with their permission. Once that be the case, Respondent No. 2 is duty bound before agreeing to the appointment of the new developer to hear the developer who has been working as to whether prima facie there is valid termination in the eyes of law. In the instant case, it appears that apart from some correspondence respondent No. 2 has not given hearing to the petitioner in the matter of termination of their contract of the development agreement by Pandit Cooperative Housing Society Ltd. In the light of that Respondent No. 2 is directed to hear the petitioner and Pandit Cooperative Housing Society Ltd. and if need be also Respondent No. 4 as to whether the development agreement between the Respondent No. 3 and the Petitioner has been prima facie validly terminated. If that be so, thereafter to decide the same according to law.

4. Thereafter, vide letter dated 5th March, 2005, respondent Authority had raised the query whether formalities have been completed prior to the termination of the agreement with the society. Pursuant to the order of the High Court, the respondent Authority heard the matter and vide order dated 10th March, 2005 held that termination was valid and project was completed by Siddhi Vinayak Construction and not the petitioner. The petitioner also filed another suit being Suit No. 2145 of 2007 in the City Civil Court at Bombay wherein an order was passed on 10th January, 2008, that no new construction will be carried out by Siddhi Vinayak Construction. Vide order dated 5th February, 2008, the Appellate Court had remanded the matter to the Slum Rehabilitation Authority for considering the said question. The Slum Rehabilitation Authority took even the written submissions on behalf of the petitioner and the matter was proceeded before the Slum Rehabilitation Authority who has passed an order interalia upholding the termination of the agreement dated 3rd March, 2006 carried out under the Special General Body Meeting dated 24th March, 2000 and has permitted Siddhivinayak Construction to complete the balance work of Slum Rehabilitation Scheme. The petitioner, thus, prays for quashing of the order dated 4th March, 2008. Exhibit 'LL' to the writ petition on the ground that the authority has not applied its mind in accordance with law and has not appreciated correctly the facts on record. It is also averred that the detailed facts submitted in the written submissions filed by the petitioner have not been considered in their correct perspective. The respondents have raised an objection as to the maintainability of the petition on the ground that in view of the Full Bench judgment of this Court in the case of Tulsiwadi Navnirman Coop. Housing Society Ltd. and Another Vs. State of Maharashtra and Others, , the petitioner should approach the High Power Committee and/or in any case should file civil suit as serious disputed facts and circumstances are required to be settled for considering the petition on merits which this Court may not be able to do in exercise of jurisdiction under Article 226 of the Constitution of India.

5. At the outset, it will be useful to notice that when the petitioner had filed the writ petition earlier in this Court on the same facts, the matter came up for

hearing before the Division Bench and the same was disposed of vide order dated 10th February, 2007. After considering the contentions raised by the parties in that writ petition, the court directed the respondent authority to examine the question whether the agreement between the society and the petitioner was prima facie validly terminated and thereafter to decide the question on law. The Bench also left all the questions open for determination. In furtherance to the directions of the court, the respondent authority after detailed enquiry and noticing different disputed questions of facts, held as under:

11. It also needs to be seen that M/s. Om Shri Sai Developers, whose Development Agreement dated 3.3.1996 was duly terminated by the Society in a Special General Body Meeting held on 24th March, 2000, and after intimation of the same on 26th March, 2000, except making complaints to the Police the developer M/s. Om Shri Sai Developers have not taken positive legal steps for a period of 4 years to challenge their termination. It is also a matter of record that Slum Rehabilitation Authority vide their letter dated 5th February, 2003 had intimated to the Police that the M/s. Siddhivinayak Constructions Co. is the developer of the Scheme. The Slum Rehabilitation Authority has accepted various payments from M/s. Siddhivinayak Construction Co. and also given approvals to the plans submitted on their behalf. Therefore, I am unable to agree with the contention of M/s. Om Shri Sai Developers that the Slum Rehabilitation Authority has not accepted M/s. Siddhivinayak Constructions as a new Developer to implement the Scheme Rehabilitation Scheme for Pandit SRA Cooperative Housing Society Ltd.

12. In view of the aforesaid facts M/s. Om Shri Sai Developers were removed by Pandit SRA Cooperative Housing Society Ltd. due to inordinate delay in implementation of the Slum Rehabilitation Scheme and termination of the Development Agreement executed with M/s. Om Sai Development dated 3rd March, 1996 has been validly done in a Special General Body Meeting dated 24th March, 2000. I am also of the view that M/s. Siddhivinayak Constructions is duly appointed by the Society to carry out further balance work of Slum Rehabilitation Scheme on plot bearing CTS No. 6(part), 7,7/1 to 3,9,9/1 to 4, 10 (part) of Village Mulund, Mumbai Suburban District. Subsequent necessary permissions for construction of Rehab as well as free Sale tenement of the Pandit SRA Cooperative Housing Society Ltd. was also granted by the Slum Rehabilitation Authority to M/s. Siddhivinayak Construction Co. Besides the collective will of the eligible Slum Dwellers as expressed through the General Body Resolution dated 24.3.2000 of Pandit SRA Cooperative Housing Society Ltd. and with the fact that more than 70% of eligible Slum Dwellers have entered into agreement/consent in favour of M/s. Siddhivinayak Construction Co. needs to be upheld.

13. Therefore taking into consideration all facts and evidence brought on record and in the larger interest of Slum Dwellers early rehabilitation, M/s. Siddhivinayak Constructions Co. appointed by the Pandit SRA Cooperative Housing Society Ltd. should be allowed to complete the balance work of Slum

Rehabilitation Scheme on plot bearing CTS No. 6(Part), 7,7,1 ti 3,9,9/ 1 to 4, 6(part), 10(part) of Village Mulund, Mumbai Suburban District for Pandit SRA Cooperative Housing Society Ltd.

6. The findings recorded by the authority can hardly be interfered by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Firstly, the facts which are disputed seriously by the parties would require evidence to be led to be established the facts one way or the other. Secondly, the attempt of the petitioner in the garb of writ petition is to settle private disputes between himself and the society on the one hand and the other builder on the other. Such settlement of private disputes can hardly be a subject matter of controversy in a writ petition. Full Bench judgment of this Court in the case of Tulsiwadi Navnirman Cooperative Housing Society Ltd. (supra) stares the petitioner in face.

7. In that judgment, the Full Bench of this Court held that under the garb of filing writ petitions against SRA, State, BMC, MHADA, MMRDA, if the applicant/petitioner is ventilating a purely private grievance or dispute so also raising an issue which is not possible of being resolved in writ jurisdiction, then, he can always be directed to avail of private law remedies. Merely because, a Letter of Intent has been issued by SRA to the applicant that itself would not mean that for all time to come, the applicant/developer is the agent of SRA and they could freely invoke the writ jurisdiction of this Court. In furtherance to the judgment of the Full Bench of this Court, the State has already notified the establishment of High Power Committee which is in place. The Committee is expected to resolve all disputed facts. All such matters are expected to be dealt with by the High Power Committee, only exception being where there is challenge to the virus of the provisions or to the policy decision of the State which is certainly not the position in the present case.

8. Furthermore, as is evident from the above facts that the petitioner himself had filed suits earlier to resolve the issues and had even obtained interim orders. Keeping in mind the disputed factual matrix of the case, it would be more appropriate for the petitioner to invoke jurisdiction of the Civil Court if permissible and in accordance with law. It is not a case where the petitioner is remedy less. In fact, he may even had choice of remedy. We are not commenting upon the maintainability of the remedy and scope of the proceedings before any of the forum available to the petitioner under law but we certainly are of the firm view that the present writ petition would not lie under Articles 226 and 227 of the Constitution of India, keeping in view the peculiar facts and circumstances of this case. The writ petition is disposed of as not entertainable under Article 226 of the Constitution leaving the petitioner to take recourse to such remedy as may be available and permissible to him in accordance with law. Rule is discharged. No order as to costs.