

**(2024) 05 BOM CK 0014**

**In the Bombay High Court**

**Case No :** Writ Petition No.2436 Of 2024, Interim Application No.6934 Of 2024

Prithvi Infra Projects And Others

APPELLANT

Vs

Apex Grievance Redressal Committee

RESPONDENT

**Date of Decision :** 10-05-2024

**Acts Referred:**

Maharashtra Slums Areas (Improvement, Clearance And Redevelopment) Act, 1971 — Section 32  
Maharashtra Regional Town Planning Act, 1966 — Section 31(1)  
Monopolies And Restrictive Trade Practices Act, 1969 — Section 89, 90  
Slum Areas (Improvement And Clearance) Act, 1956 — Section 13(2)

**Citation :** (2024) 05 BOM CK 0014

**Hon'ble Judges :** Amit Borkar, J

**Bench :** Single Bench

**Advocate :** Girish S. Godbole, Altaf Khan, Akash Bhagat, Karl Tamboly, Rupesh M. Geete, Shubhan Hundia, Satyaki, Jagdish G. Aradwad (Reddy), Vijay Patil, Yogesh Patil, Sanjeev Gorwadkar, Nitesh Acharya, Akash Mangalgi, Prasad Dhakephalkar, Prasad Dhakephalkar, Vaibhav Charalwar, Ajay Vazirani, Raksha Thakkar, Karan Koya, Palak Salecha

**Final Decision :** Disposed Of

## Judgement

Amit Borkar, J

1. The petitioner, who is a developer seeks to impugn order dated 2 August 2023 passed by respondent No.2 – Chief Executive Officer, Slum Rehabilitation Authority ("CEO, SRA" for short) exercising power under Section 32 of the Maharashtra Slums Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("the Slums Act" for short) and order dated 13 February 2024 passed by the respondent No.1 – Apex Grievance Redressal Committee ("AGRC" for short) in Application No.190 of 2023.

2. Land bearing F.P. No.663 of Town Planning Scheme No. III, Mahim Division at Kapad Bazar Road, Mahim (West), Mumbai 400 16 in G/North Ward area admeasuring 1961.55 sq. mtr. ("the said property" for short) belonging to the

Municipal Corporation of Greater Mumbai ("MCGM" for short) is occupied by slum dwellers and censused in the records of the MCGM.

3. On 24 August 1960, the Government of Bombay vide Notification sanctioned a Town Planning Scheme demarcating a "garden" on the said property. On 8 May 2018, the State Government, by Notification, granted sanction under Section 31(1) of the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act" for short) to the revised Development Plan of Greater Mumbai wherein the said property is designated as R.R.2.1 (Rehabilitation and Resettlement). On 30 October 2019, the slum dwellers on the said property came together. They formed Millet-E-Society by holding general body meetings and, by the majority, appointed the petitioner as its developer for implementing the Slum Scheme (DCR-33(10) Scheme). On 28 November 2019, the petitioner and Millat-E-Society filed a proposal with the Slum Rehabilitation Authority ("SRA" for short). On 4 December 2019, Millat-E-Society, through its officer bearers, executed a development agreement in favour of the petitioner for implementing the Slum Rehabilitation Scheme ("SR Scheme" for short). On 28 February 2020, the District Superintendent of Land Record – SRA granted NOC for the SR Scheme through the petitioner. On 11 March 2020, the Cooperative Department – SRA granted no objection to implementing the SR Scheme. On 11 March 2020, the Deputy Collector (Mumbai City) – SRA granted NOC to implement the SR Scheme. On 24 September 2020, SRA prepared the financial status of the developer (Annexure-III), holding that the petitioner has sufficient net worth for implementing the SR Scheme. On 7 April 2022, the petitioner paid scrutiny fees to the SRA. On 8 April 2022, SRA issued an acceptance letter in favour of the petitioner for implementing the SR Scheme on the said property.

4. On 13 September 2022, Assistant Commissioner, G/North Ward, issued eviction notices against slum dwellers under Section 89 of the MRTP Act for implementation of the plan of the garden as per the Town Planning Scheme of 1 September 1961. On 15 September 2022, the Engineering Department, SRA, issued a letter to the Tehsildar – 1 (Special Cell), SRA, for issuance of Annexure – II through the Competent Authority. On 19 September 2022, Tehsildar – 1 (Special Cell), SRA issued a letter to the Assistant Commissioner, G/North Ward (Competent Authority), for preparing a list of eligible slum dwellers (Annexure-II).

5. On 6 October 2022, the petitioner and the society filed a writ petition in this Court challenging notices dated 13 September 2022 issued under Section 89 of the MRTP Act. By order dated 12 October 2022, this Court recorded a statement of the MCGM that petitioners' representation will be decided in accordance with law and thereafter, for a period of two weeks, protected slum dwellers from eviction. However, according to the petitioners, on 23 November 2022, the Assistant Commissioner, G/North Ward, without deciding representation of the petitioners, issued an eviction notice under Section 90 of the MRTP Act against the occupants. The petitioners again filed a writ petition in this Court challenging

said notices. However, by order dated 20 December 2022, the petitioner was deleted from the said writ petition.

6. On 23 December 2022, the Special General Body meeting of Millat-E-Society resolved to terminate the petitioner's appointment on the grounds of delay of four years and failure to take steps by the petitioner against eviction notices issued by the MCGM. On 2 January 2023, the society, through its chief promoter, intimated to the petitioner about the termination of his appointment as a developer. On the same day, the society communicated to the SRA to terminate the petitioner's appointment as a developer. On 23 January 2023, the Special General Body meeting of Millat-E-Society reiterated the termination decision and appointed HRUB Constructions LLP as a developer.

7. The petitioner filed its reply before SRA and submitted its explanation, among other things as under: (i) the petitioner filed a proposal on 28 November 2019 with SRA for implementation of the SR Scheme on land under reference; (ii) after that, due to the Covid-19 pandemic, nationwide lockdown was imposed. Despite that, the petitioner made all efforts by continuously following up with SRA; (iii) Ultimately the SRA prepared report dated 4 April 2022 approving acceptance, subject to payment of LoI scrutiny fee; (iv) SRA issued acceptance letter on 8 April 2022 in favour of the petitioner of the SR Scheme on the said property; (v) the petitioner referred to the no objection dated 11 March 2020 by Cooperative Department of SRA, letter dated 19 September 2022 by the Assistant Commissioner for preparing list of eligible slum dwellers and issuance of eviction notices defended by the petitioner at his own costs as the explanation for delay in implementation of the Scheme.

8. The CEO, SRA, on 2 August 2023, passed an order terminating the petitioner's appointment as a developer to implement the SR Scheme on the said property and granted liberty to appoint a new developer by passing a fresh general body resolution. The CEO of SRA terminated the petitioner's appointment as a developer for the implementation of the SR Scheme broadly on the following grounds: (i) Since the appointment of the petitioner in the year 2019, no approvals were obtained by the petitioner for the period of around four years. The delay is attributable to the petitioner; (ii) the reason of the delay due to the initiation of legal proceedings against society and challenging eviction notices was not accepted; (iii) the majority of slum dwellers have lost faith in the petitioner.

9. The petitioner, therefore, challenged the order dated 2 August 2023 passed by respondent No.1 before the AGRC by filing Application No.190 of 2023. The petitioner raised three contentions before the AGRC, which are as under: (a) the reason for the delay in implementation of the Scheme was an interim order passed by this Court on 31 July 2002 in Writ Petition No.1152 of 2002; (b) situation of Covid lockdown; and (c) action taken by the MCGM to evict occupants and failure to process certification of Annexure-II.

10. However, the AGRC refused to accept the contentions raised on behalf of the petitioner and dismissed the application. Hence, the petitioner has filed a present writ petition.

11. Mr. Godbole, learned Senior Advocate on behalf of the petitioner, submitted that the CEO, SRA, had no power to terminate the authority of the developer to develop the SR Scheme in the absence of violation of the provisions of the Act or Agreement between the parties. Relying on a document at Exhibit – 1 prepared by SRA, he submitted that the officials of the SRA were under the impression that this Court, by order dated 31 July 2002, directed not to sanction a new rehabilitation scheme without permission of the Court. This bona fide impression of the officials of the SRA caused a delay in taking necessary steps. He submitted that there is no delay attributable to the petitioner. The petitioner had already taken necessary steps to implement the Scheme, including filing a writ petition by challenging eviction notices issued against the occupants. He submitted that the meeting conducted by the society was not in accordance with the Circulars of the SRA. According to him, the delay is attributable to the inaction on the part of the SRA and the officials of the MCGM.

12. Per contra, Mr. Dhakephalkar, learned Senior Advocate for respondent No.6, submitted that the explanation of the petitioner that the officials of the SRA were under bona fide impression that the interim order passed by this Court in Writ Petition No.1152 of 2002 restrained them from sanctioning new scheme is raised only during the course of oral arguments in the present petition and it is not raised as a defence or explanation for the delay before the SRA in the original proceedings. He, therefore, submitted that such an explanation is nothing but an afterthought that would be of no assistance to the petitioner. He submitted that the interim order passed in Writ Petition No.1152 of 2002 was unambiguous restraining sanction of the new rehabilitation scheme only in respect of open spaces, which are referred for gardens, parks, playgrounds, recreational spaces, maidans, no development zones, pavements, roads and carriageways. In the present case, undisputedly, the property is designated as R.R. 2.1 (Rehabilitation and Resettlement). Therefore, there was no question of any impediment in implementing the SR Scheme over the said property. He submitted that from November 2019 till March 2020, the petitioner had ample opportunity to liaise with SRA to secure permissions. However, no steps were taken in four months till the onset of covid pandemic. From June 2020 (easing of restrictions) till April 2022, for almost a period of two years, the petitioner took no steps to ensure the development of the SR Scheme. Therefore, the authorities below have rightly terminated the petitioner's authority as a developer to implement the SR Scheme.

13. In this background, it would now be appropriate to consider the submissions made on behalf of the parties and the facts of the present case.

14. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, is the primary legislation governing slum redevelopment in Maharashtra. The Act aims to improve and clear slum areas, providing better

living conditions for slum dwellers. It establishes the Slum Rehabilitation Authority (SRA), which is responsible for identifying slums, launching redevelopment operations, procuring land, issuing permits, and overseeing slum redevelopment programs. Under this Act, the SRA declares an area as a 'Slum Area' if it poses a danger to public health, safety, or convenience, lacks basic amenities, is overcrowded, unfit for human habitation, or is detrimental to public health, safety, or convenience. Once an area is declared a 'Slum Area', the Slum Rehabilitation Scheme (SRS) can be initiated. Every slum structure existing prior to 01/01/1995 is treated as a protected structure, and every slum dweller whose name appears in the electoral rolls as of 1st January 1995 and continues to stay in the slum is eligible for rehabilitation. Eligible slum dwellers receive a free-of-cost self-contained unit for their own residence, called the Rehab Component. Developers are compensated for their efforts in the form of the Free Sale Component, which can be commercially exploited. The Development Control and Promotion Regulation for Greater Mumbai, 2034, governs the development of the SRS. The process involves forming a housing society by 51% or more slum dwellers, appointing a developer, submitting a proposal with requisite plans and documents, obtaining scrutiny fees, and receiving a Letter of Intent (LoI) with a layout plan from the SRA. The developer then provides slum dwellers with rent money or transit accommodation, demolishes their hutments, and constructs the Rehab Component. After completion, allotment takes place as per eligibility, and any remaining units are handed over to the government free of cost. The Slum Rehabilitation Act also includes provisions for establishing slum rehabilitation programs (SRS), ensuring slum dwellers' participation in the redevelopment process.

15. The implementation of the SRA scheme on a proposal submitted by a developer involves several steps and procedures, which are detailed below:

**Submission of Proposal:** The developer must submit a proposal to the SRA with all the necessary documents, including the Consultant's Remarks, Design, and Completion Certificate. The proposal should include the project details, the concessions sought, and the scheme parameters.

**Verification and Certification:** Circular No. 177, dated 1 May 2017, requires that the SRA verify the proposal and issue Annexure-III within 15 days of receiving all the necessary documents from the developer. The developer must also submit Annexure-IV (Ownership Documents—CTSO NOC) to the Designated Officer appointed by the CEO (SRA) within 15 days of submitting the proposal.

**LOI Stage:** Circular No. 177, dated 1.5.2017, also requires that the Architect/LS submit the draft note for consideration and approval of the CEO (SRA). This note should include all the details, concessions sought, and scheme parameters. The proposal will then undergo a series of scrutiny and approval stages by various SRA officials, including the Sub-Engineer, Assistant Engineer, Executive Engineer, Dy. Chief Engineer, Secretary (SRA), and CEO (SRA).

**Building Permission:** The SRA shall adopt the procedure in the MR & TP Act, 1966, for giving building permission to any Slum Rehabilitation Project under this Scheme. The proposal for each Slum Rehabilitation Project shall be submitted to the SRA with all the necessary documents, no-objection certificates, and the plans that the SRA may decide from time to time. The SRA shall approve the Project within a period of 60 days from the date of submission of all relevant documents. The SRA may lay down terms and conditions as may be necessary.

**Transit Rent:** The developer shall deposit an advance rent of two years and a post-dated cheque for the remaining period of completion at the stage of Annexure-III. The eligible slum dwellers are to be paid transit rent until the developer hands over possession of their new rehab tenement to them.

**Implementation:** The developer shall implement the Project according to the approved plan and the terms and conditions laid down by the SRA. The developer shall obtain all necessary concessions for approval of the Layout and buildings (Sale and Rehab) at the time of approval of the LOI itself.

**Monitoring and Evaluation:** The SRA shall monitor the progress of the Project and evaluate its impact on the slum dwellers. The SRA may take necessary action against the developer for any default or non-compliance with the terms and conditions of the SRA scheme.

16. In summary, implementing the SRA scheme on a developer's proposal involves several steps and procedures, including submission of the proposal, verification and certification, the LOI stage, building permission, transit rent, implementation, and monitoring and evaluation. The developer must comply with all the terms and conditions laid down by the SRA and obtain all necessary approvals and concessions to implement the SRA scheme successfully.

17. As noted earlier, the petitioner and society filed a proposal with the SRA on 28 November 2019. The society terminated the petitioner's appointment as a developer on 23 December 2022. It is, therefore, necessary to consider whether there was an inordinate delay on the part of the Petitioner in implementing the development scheme of the slum. Therefore, it is necessary to consider the explanation given on behalf of the petitioner to justify his inaction to implement the Scheme.

18. The original explanation submitted by reply before respondent No.1 mentions the reasons as the COVID-19 pandemic, nationwide lockdown, and continuous efforts made by the petitioner with the SRA. Another reason was the initiation of eviction notices by the MCGM against the occupants of the slum and the petitioner's filing of a writ petition along with the society challenging such eviction notices. As noted earlier, the society executed a development agreement in favour of the petitioner on 4 December 2019, and the decision to terminate his appointment was taken on 23 December 2022. The petitioner is unable to explain positive steps taken by the petitioner against inaction or failure on the part of the SRA authorities failing or refusing to perform their statutory duties.

Even if the officials of the SRA were under the bona fide impression that the interim order passed by this Court in Writ Petition No.1552 of 2002 restrains them from sanctioning a new Scheme, the petitioner was not expected to sit quiet and allow the officials of the SRA to remain under wrong legal impression. The petitioner ought to have moved the superior authorities or ought to have approached this Court against the inaction or failure on the part of the SRA authorities.

19. Moreover, Circular No.177, dated 1 May 2017, which is advisory in nature, provides indicators of timelines that need to be complied with by SRA authorities dealing with implementation of SR scheme. The Circular provides broad guidelines for performing various actions within the time prescribed in it. In case of failure of the SRA authorities to perform their duty within time prescribed as per the Circular, the petitioner ought to have approached the superior with written representation/application complaining about the inaction of the SRA officials or ought to have approached this Court seeking a direction against the officials for not performing their statutory duty. Circular No. 177 requires that the SRA verify the proposal and issue Annexure-III within 15 days of receiving all the necessary documents from the developer. The developer must also submit Annexure-IV (Ownership Documents - CTSO NOC) to the Designated Officer appointed by the CEO (SRA) within 15 days of submitting the proposal.

20. Moreover, reason of bonafide impression of SRA officials for delay in taking steps to implement the Scheme was not mentioned in the reply filed before the SRA. Had it been the reason, nothing prevented the petitioner from raising such a defence before the SRA in its original reply. I am, therefore, of the considered view that the reason for the bona fide impression carried by the SRA officials of the wrong interpretation of the interim order passed by this Court in Writ Petition No.1152 of 2002 is an afterthought.

21. The wrong interpretation of the order in Writ Petition No.1152 of 2002, dated 31 July 2002, is not available to the petitioner. The relevant part of the said order reads thus:

"3. ... In the meantime, until further orders, no new rehabilitation scheme be sanctioned without the permission of this Court in respect of the open spaces which are referred for gardens, parks, playgrounds, recreational spaces, maidans, no-development zones, pavements, roads and Carriageways."

22. On perusal of the order, it appears that the restrain from permitting a new rehabilitation scheme was only in respect of open spaces, which are referred for gardens, parks, playgrounds, recreational spaces, maidans, no-development zones, pavements, roads and Carriageways. As noted earlier, by Notification dated 8 May 2013, the State Government granted sanction under Section 31(1) of the MRTP Act to the revised development plan of Greater Mumbai wherein said property is designated as R.R. 2.1 (Rehabilitation and Resettlement). Therefore, after 8 May 2018, the order dated 31 July 2002 was not applicable to the said

property. Moreover, there is no communication by the SRA officials to the petitioner indicating an impediment created by an order dated 31 July 2002. In the absence of such communication, the petitioner relying on extract in some resolution is not entitled to take benefit of the contention that the SRA officials were under the impression that this Court restrained it from sanctioning a new rehabilitation scheme. Moreover, Respondent No. 6 is right in submitting that the petitioner had ample opportunities from November 2019 till March 2020 to liaise with SRA for securing permissions as the onset of the COVID-19 pandemic occurred only in March 2020. Though the restrictions of Covid-019 were relaxed in June 2020 and Government Departments resumed their operations, the petitioner has not explained the positive steps taken by the petitioner from June 2020 to April 2022 to ensure the development of the SR Scheme. The petitioner addressed a communication to the SRA on 17 April 2022 for payment of the scrutiny fee. Except for this communication, the petitioner failed to take any positive steps for implementation of the Scheme till April 2022. Even after April 2022, the petitioner took no steps to obtain requisite approvals from the SRA. Therefore, in my opinion, respondent No.1 was justified in terminating the petitioner's appointment as the developer for the implementation of the SR Scheme on the grounds of inordinate delay and the grounds of loss of faith by the majority of slum dwellers.

23. The next contention raised on behalf of the petitioner is that the Slum Rehabilitation Authority under Section 13(2) of the Slums Act is entitled to take action only when there is a violation of the conditions imposed under the provisions of the Act or in the Agreement. However, the contention raised on behalf of the petitioner is no longer *res integra* in view of the judgment of a Coordinate Bench of this Court dated 26 September 2019 in *New Janta SRA CHS Ltd v. The State of Maharashtra* in Writ Petition No.2349 of 2018. The learned Single Judge of this Court, in paragraph 175, considered similar submissions raised on behalf of the development and observed thus:

16. "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."

24. In view of the ratio laid down by this Court, the SRA has the power to change

the developer in case there is an inordinate delay in the implementation of the Scheme by the developer.

25. For the reasons aforesaid, I find no merit in the writ petition. The writ petition is, therefore, dismissed. No costs.

26. In view of disposal of the writ petition, all pending interlocutory application/s stand disposed of as infructuous.

27. At this stage, learned advocate for the petitioner seeks continuation of ad-interim relief. Considering the facts of the case, ad-interim relief is continued for two weeks from today.