(2014) 12 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 8410, 8412 and 8414 of 2014

Sayeeda Gulamrasul Sayed — APPELLANT

Vs

State of Maharashtra — RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Co-operative Societies Act, 1960 — Section 154
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 — Section 3G, 4

Citation : (2015) 2 ALLMR 388 : (2015) 3 BomCR 409 : (2015) 1 MhLj 936

Hon'ble Judges : R.V. More, J

Bench : Single Bench

Advocate : P.K. Dhakephalkar and P.S. Dani, Senior Advocates and Ajay Patil, Advocate for the Appellant; P.S. Cardozo, AGP, Advocate for the Respondent

Judgement

R.V. More, J.—Rule. Rule made returnable forthwith. The learned Counsel appearing for the Respondents waive service. Since the issue involved in the writ petitions is in narrow compass, by consent of the learned Counsel and Senior Counsel appearing for the respective parties, writ petitions are forthwith taken up for final hearing.

2. As all these writ petitions are off-shoot of a common order passed by the Divisional Joint Registrar of Cooperative Societies, Mumbai Division, Mumbai [for short "the DJR"] in exercise of revisional jurisdiction under section 154 of the Maharashtra Co-operative Societies Act, 1960 [for short "the MCS Act"] and the issue involved in the petitions being the same, these three petitions are being disposed of by this common order.

3. For the sake of convenience and brevity, only the facts of Writ Petition No. 8410 of 2014 are being discussed in this common order.

4. By this writ petition under Article 227 of Constitution of India, the Petitioner is challenging the order dated 11th September 2014 passed by the DJR in Revision

Application No. 296 of 2014. By the said order, the DJR has set aside the letter dated 15th July 2014 issued by the Assistant Registrar of Co-operative Societies, SRA, Mumbai.

5. The factual matrix giving rise to the present petition is thus :

[A] The Petitioner claims to be the meeting convener / organiser of the Hind Ekta SRA Griha Nirman Sanstha (Proposed) situated at Mahim, Mumbai. [for short "the proposed society"]. The property on which the structures of the members of the Petitioner are situated is declared as slum under the provisions of section 4 of The Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971 [for short "the Slum Act"]. Thereafter the occupants of the property decided to redevelop the said property under the amended provisions of Regulation No. 33(10) of the Development Control Regulations for Greater Mumbai, 1991 and formed proposed society.

[B] In the general body meeting of the proposed society held on 9th January 2006, Shree Nidhi Concept Realtors Pvt. Ltd. [for short "Shree Nidhi"] was appointed as developer for the implementation of said redevelopment scheme. Accordingly, development agreement and irrevocable power of attorney was executed by the proposed society in favour of Shree Nidhi on 17th October 2006. It is the case of the Petitioner that though said Shree Nidhi was appointed as developer in the year 2006, not a single step was taken by Shree Nidhi till the year 2014, therefore all the members of the proposed society unanimously decided to terminate the agreement with Shree Nidhi as their developer and consequently passed a resolution on 31st May 2014 of termination, revocation, cancellation and withdrawal of the development agreement and power of attorney dated 17th October 2006 made in favour of Shree Nidhi. This decision was communicated by the proposed society to Shree Nidhi on 14th June 2014.

[C] In the general body meeting of the proposed society held on 22nd June 2014, resolution was passed unanimously appointing M/s. SLK Buildcon Private Ltd. [for short "SLK"] as their new developer for the implementation of the slum redevelopment scheme of the said property. The said decision was immediately communicated to the Slum Development Authority [for short "the SRA"] and fresh development agreement and power of attorney was executed in favour of SLK.

[D] It is the case of the Petitioner that in the meanwhile, Respondent No. 3 by using letter head of the proposed society fraudulently submitted an application to the office of Assistant Registrar, Co-operative Societies, SRA, Mumbai [for short "the AR-SRA"] for name reservation and shown himself to be the Chief Promoter.

[E] The Chief Executive Officer of SRA [for short "the CEO"], by his letter dated 11th July 2014 directed the AR-SRA to hold a general body meeting of the proposed society. Accordingly, the AR-SRA by his letter dated 15th July 2014 informed the proposed society to call for the general body meeting of all the eligible slum dwellers for election of Chief Promoter and other Promoters and to ascertain whether earlier developer has consent of more than 70% eligible slum dwellers for implementation of the slum rehabilitation scheme on the said property.

[F] Respondent No. 3 being aggrieved by the afore-said letter of AR-SRA, filed revision under the provisions of section 154 of the MCS Act before the DJR, being Revision Application No. 296 of 2014. The DJR by the order impugned in this petition has quashed and set aside the said letter of the AR-SRA.

6. Mr. Dhakephalkar, the learned Senior Counsel appearing for the Petitioner submitted that the said property is being redeveloped under the provisions of Regulation No. 33(10) of the Development Control Regulations for Greater Mumbai 1991 and the slum rehabilitation scheme framed by Government of Maharashtra. He submitted that for implementation of the slum rehabilitation scheme, the SRA has issued various circulars. Under those circulars, the CEO is required to ascertain as to which developer has consent of more than 70% eligible slum dwellers. He further submitted that developer appointed earlier, i.e., Shree Nidhi has not taken any steps therefore development agreement with the said developer has been cancelled and new developer by name SLK is appointed by the proposed society. Since there were rival claims about the termination of Shree Nidhi and appointment of new developer, the CEO to ascertain which developer has consent of more than 70% eligible slum dwellers, has instructed AR-SRA to issue a communication to the proposed society to hold fresh meeting of the general body of the proposed society. He submitted that this decision was taken by the CEO and only the communication thereof is made by the AR-SRA, therefore, the DJR could not have entertained the revision application filed by Respondent No. 3 under section 154 of the MSC Act. He submitted that the CEO is neither subordinate to the DJR nor the decision was taken by the CEO in exercise of powers conferred upon him under MCS Act and therefore the impugned order cannot be sustained.

7. Mr. Kadam, the learned Senior Counsel appearing for Respondent No. 3 and Mr. Samdani, the learned Senior Counsel appearing for Respondent Nos. 4 to 6, contested the petition vehemently. They supported the impugned order and submitted that AR-SRA cannot be said to be an authority under section 3G of the Slum Act nor he is an officer of the SRA. They submitted that the order of the AR-SRA directing the Chief Promoter to convene the general body meeting of the proposed society is in excess of jurisdiction conferred upon him under the MCS Act and therefore it is rightly set aside by the DJR in exercise of revisional jurisdiction. They also submitted that the DJR has approached the matter from correct point of view and has rightly set aside the communication of the AR-SRA. They relied upon the decision of Division Bench of this Court in Awdesh vs. Chief Executive Officer [2006(4) Mh.L.J.] to support their contention.

8. Mr. Vijay Patil, the learned Counsel appearing for the SRA supported the Petitioners. He submitted that the communication of AR-SRA is in pursuance of the decision taken by the CEO. The said communication is not issued under the

provisions of the MSC Act and therefore cannot be revised by the DJR in exercise of powers under section 154 of the MCS Act. He submitted that the revision itself was not maintainable and therefore the impugned order deserves to be quashed and set aside.

9. Having considered rival submissions and having gone through the compilation annexed to the petition along with the impugned orders, I find merit in the petition.

Parties are not at dispute that initially, in the year 2006, Shree Nidhi was appointed by the proposed society as developer to redevelop the said property and this development agreement has been terminated in the year 2014 and new developer by name SLK is appointed to redevelop the said property. The record indicates that the proposed society has not been registered and there are rival claims by the members of the society regarding the appointment and termination of the developers. Several applications/complaints from the members of the proposed society were received by the SRA in this regard. The CEO in the light of disputes regarding the appointment and termination of the developer to redevelop the property and in view of Circular Nos. 72 and 80 came to the conclusion that fresh general body meeting of the proposed society be held in the presence of the representative of SRA in order to ascertain which of the developers has consent of more than 70% eligible slum dwellers and accordingly by his order dated 11th July 2014 directed the AR-SRA to hold general body meeting of the proposed society. Pursuant to the directions given by the CEO, the AR-SRA on 15th July 2014 issued communication to the proposed society whereby, the AR-SRA has directed the Chief Promoter / Meeting Convener of the society to call for the general body meeting of the eligible slum dwellers to elect the Chief Promoter and Other promoters, to consider whether the present developer - Shree Nidhi has the consent of more than 70% slum dwellers and if not to take decision on the appointment of new developer - SLK.

10. The learned Senior Counsel appearing for Respondent No. 3 and 4 to 6 have not disputed that CEO is not subordinate to the DJR and his decision is not amenable to the revisional jurisdiction of the DJR under section 154 of the MSC Act. The dispute is about the communication by the AR-SRA to the Chief Promoter of the proposed society.

11. I have gone through the said letter issued by the AR-SRA. By the said letter, the Chief Promoter / Meeting Convener of the proposed society was informed to hold the general body meeting of the members - eligible slum dwellers for electing the Chief Promoter and Other Promoters and to consider which of the developers has consent of more than 70% eligible slum dwellers. In my view, the decision dated 11th July 2014 taken by the CEO is administrative decision and that the AR-SRA has merely communicated this decision of the CEO to the Chief Promoter / Convener of the proposed society. The AR-SRA has not taken any independent decision but he has acted on the directions of the CEO. This communication, therefore, cannot be said to be a decision or order passed under

any provision of the MSC Act within the meaning of section 154 of the MSC Act and therefore, DJR could not have entertained the revision filed by Respondent No. 3.

12. It is pertinent to note that AR-SRA by filing reply in the revision of Respondent No. 3 specifically pointed out that revision is not maintainable. The DJR, however, observed that the power under the MSC Act are delegated to the AR-SRA for registration and administration of housing societies of the slum dwellers in Greater Mumbai. The DJR further observed that AR-SRA before convening the general body meeting ought to have thoroughly verified the factual position and without following this procedure he could not have convened the general body meeting. He also observed that AR-SRA ought to have convened a joint general body meeting of all three societies, including the society involved in the present writ petition. It is unfortunate that despite specific reply of the AR-SRA, the DJR has held that he has jurisdiction to entertain the revision of Respondent No. 3. The jurisdiction is assumed on the ground that the AR-SRA is an authority for registration and administration of the co-operative housing society of slum dwellers. The DJR, however, overlooked the fact that societies are the proposed societies and not yet registered and therefore there is no question of administration of the cooperative society. The DJR has no jurisdiction or concern about the procedure adopted by the CEO. The DJR ought to have considered that the AR-SRA has acted on the instructions of the CEO. The procedure which the DJR talks about is adopted by the CEO and he could not have gone into the validity thereof. Considering the matter from any point of view, in my opinion, the impugned order passed by the DJR cannot be sustained as the same is without jurisdiction and liable to be quashed and set aside.

13. Before parting with the matter, reference must me made to Awadesh''s case (supra) relied upon by the learned Senior Counsel appearing for Respondent Nos. 3 and 4 to 6. I have gone through the said decision, which lays down the procedure to be followed in implementation of the slum redevelopment scheme under Regulation No. 33(10) of DCR for Greater Mumbai, 1991. If it is the case of the Respondents that the CEO has not followed the procedure as laid down in the said decision, then, they can approach the appropriate authority, however under no circumstances, the challenge to the decision of CEO or communication thereof by the AR-SRA could have been entertained by the DJR in exercise of revisional powers under section 154 of the MSC Act.

14. In the light of above discussion, rule is made absolute in terms of prayer clause (b) in all the petitions.

