
(2011) 02 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 1977 of 2010

Shri Atesham Ahmed Khan and Others

APPELLANT

Vs

Lakadawala Developers Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2011) 3 ALLMR 1 : (2011) 5 BomCR 192 : (2011) 3 MhLj 604

Hon'ble Judges : D.Y. Chandrachud, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Aspi Chinoy, Z.A. Jariwala., instructed by Thakore Jariwala and Asso, for the Appellant; Rajiv Narula, instructed by . Thakore Jariwala and Associate for Respondent No. 1 S.G. Surana, for Respondent No. 2, M. Sayed, AGP for Respondent Nos. 5 and 6 and G.D. Utangale., instructed by . Utangale and Co. for Respondent Nos. 3, 4 and 7, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule; by consent returnable forthwith. With the consent of Counsel and at their request the Petition is taken up for hearing and final disposal.

2. The First and Second Petitioners are Chief Promoters of a proposed Cooperative Housing Society, representing slum dwellers of a plot of land bearing CTS 6/1 (part) at Mankhurd, Mumbai. The Third Petitioner is a developer. The First Respondent is also a developer appointed by the Second Respondent which is another proposed Cooperative Housing Society, representing the interest of the slum dwellers. The dispute in this case pertain to a Slum Rehabilitation Scheme under DCR 33(10) of the Development Control Regulations.

3. On 15 June 2006, an application for sanctioning a slum rehabilitation scheme was submitted by the First and Second Respondents to the Slum Rehabilitation Authority. Annexure I to the application provided that 1235 structures existed on the land in question. Together with the application, the First and Second Respondents annexed a slum plan and a development agreement showing a total of 1400 existing tenements. On the same day, the First and Second Respondents

submitted an Architect's certificate and a certificate of financial capacity both of which referred to the total number of slum structures as 1403. At that stage, the First and Second Respondents claimed that they had the consent of 911 slum dwellers. The application was accepted. On 17 June 2006, the application was sent for scrutiny by the Deputy Collector of the Slum Rehabilitation Authority to the Additional Collector (Encroachment and Removal) for scrutiny. The Additional Collector forwarded the application in turn to the Deputy Collector. The First and Second Respondents were called upon to produce documents and on 25 July 2006, the First and Second Respondents produced a compilation of documents including inter alia the voters' list and location plan. On 26 September 2006, the First and Second Respondents produced the consents of 1000 slum dwellers out of a total of 1350 slum dwellers.

4. The Petitioners submitted the proposal to the Slum Rehabilitation Authority on 13 October 2006. On 26 October 2006, a complaint was submitted by the Petitioners to the Slum Rehabilitation Authority against the First and Second Respondents. On the same day, an order was passed by the Slum Rehabilitation Authority recording that out of 1403 slum dwellers, the First and Second Respondents had consents of only 864 slum dwellers. Since this represented 61.58% of the slum dwellers and was less than the required consent of 70%, the proposal of the First and Second Respondents was, it was observed, required to be recorded and rejected.

5. The First and Second Respondents thereupon submitted a representation to the State Government upon which the Government called for a report from the Slum Rehabilitation Authority. The Slum Rehabilitation Authority by its communication dated 25 January 2007, informed the State Government that upon receipt of the proposal of the First and Second Respondents, it was found after scrutiny that the Architect had shown a total number of 1235 existing tenements out of which 870 had signed a common consent which represented 70.50% of the slum dwellers. The Slum Rehabilitation Authority, however, noted that it was found from the slum plan and from the agreement submitted by the Architect that there were actually 1400 tenements and on this basis the First and Second Respondents had consents of 65%. This being less than the required 70% consents, the proposal was recorded and rejected. The Slum Rehabilitation Authority stated in its report that subsequently on 26 September 2006 the First and Second Respondents had submitted independent agreements of occupants representing 1000 out of 1350 tenements.

6. The First and Second Respondents moved the High Power Committee constituted by the State of Maharashtra in order to challenge the order passed by the Slum Rehabilitation Authority, dated 26 October 2006 rejecting their proposal. Prior thereto, the First and Second Respondents moved the City Civil Court in Suit 4003 of 2007 in which inter alia, there was the following pleading:

The Plaintiffs state and submit that as per the information of Plaintiff No.1, there were initially about 1350 hutments and slum dwellers who were eligible to join

the scheme of rehabilitation and who were eligible to get the permanent alternate accommodation in lieu of their hutments. But since subsequently, since other hutment dwellers produced their valid and proper evidence, the Plaintiffs state that, now there are about 1403 eligible members as per the information of Plaintiff No.1 which are required to be considered and if deemed fit and proper are required to be certified by Defendant No. 4.

The Court has been informed that at the ad interim stage, the City Civil Court arrived at a prima facie finding that the First and Second Respondents did not have the consent of 70% of the slum dwellers. The suit was subsequently withdrawn and the High Power Committee was moved as noted earlier. The Committee initially rejected the representation based on the order passed by the City Civil Court. In a writ proceeding before this Court, a Division Bench remanded the proceedings back to the Committee. Following the order of remand, the High Power Committee by its impugned decision dated 3 July 2010 set aside the order of the Slum Rehabilitation Authority. The Committee has observed that the order of the Slum Rehabilitation Authority was passed in violation of the principles of natural justice and without waiting for the report of the Competent Authority who was expected to verify draft Annexure II submitted by the Architect of the appellant. In the circumstances, while setting aside the decision of the Slum Rehabilitation Authority, the Committee directed the Chief Executive Officer of the Slum Rehabilitation Authority to obtain a report from the Competent Authority and decide the matter accordingly.

7. Counsel appearing on behalf of the Petitioners submitted that the validity of the application submitted by the First and Second Respondents would have to be determined on the basis of the record which was produced before the Slum Rehabilitation Authority on the date of the application. The submission is that in view of the judgment of the Division Bench of this Court in *Awdesh Vasistha Tiwari and Others Vs. The Chief Executive Officer, Slum Rehabilitation Authority and Others*, it is now a settled principle of law that the first application which is received in respect of a slum rehabilitation project, has to be numbered and scrutinized. Until an application which has been received is under process, no application other than that application can be considered. This procedure has been laid down by the Division Bench in order to obviate unhealthy competition amongst rival slum dwellers actuated by extraneous considerations. Hence, it has been urged that when an application is submitted for scrutiny, the application must be complete in all respects and the validity of the application has to be determined on the basis of the material that is produced together with the application. When the First and Second Respondents applied for sanction on 15 June 2006, the material produced with the application showed that they did not possess the consent of 70% of the slum dwellers as required by DCR 33(10). Hence, Learned Counsel submitted that in pursuance of the order passed by the Committee, the SRA must have due regard to the maintainability of the application of the First and Second Respondents as on the date of its submission. The First and Second Respondents cannot rely upon material provided

subsequently if the original application is liable to be rejected as it stood.

8. On the other hand, it has been submitted on behalf of the First and Second Respondents that during the course of the scrutiny, the eligible slum dwellers have to be certified by the Additional Collector (Encroachment and Removal). The First and Second Respondents produced as many as 1000 consents individually executed by the slum dwellers on 26 September 2006. The grievance of the First and Second Respondents is about the passing of the order by the Slum Rehabilitation Authority on 26 October 2006. This, it is urged, was an order which was passed on the same day as of the submission of the complaint which was made on behalf of the Petitioners. The order recording the proposal of the First and Second Respondents and rejecting their proposal was passed without an opportunity of being heard being furnished to the First and Second Respondents. No opportunity whatsoever was furnished to them of setting forth their view point on the complaint which was filed by the Petitioners. Hence, it was urged that all that the High Power Committee has directed is that the order of the Slum Rehabilitation Authority which was in breach of the principles of natural justice, is set aside and that a fresh order be passed after considering the report of the Competent Authority.

9. The facts as they have emerged on the record would indicate that the First and Second Respondents had submitted an application on 15 June 2006. The application was accepted and scrutiny fees were paid. The application by the First and Second Respondents in the prescribed format contained a statement that a total number of 1235 structures were involved. However, it is common ground that together with the application, the First and Second Respondents submitted a slum plan which showed that there were 1400 slum structures. The First and Second Respondents claimed at that stage to have the consent of 911 slum dwellers. When the Slum Rehabilitation Authority was moved on VBC 10 WP1977.10-23.2 behalf of the Petitioners in a complaint, the basis on which the proposal of the First and Second Respondents was rejected was that considering that there were 1400 existing tenements, it was found on scrutiny that the First and Second Respondents had not produced the consent of 70%. 870 slum dwellers had signed the common consent form which worked out to 65%. The proposal was initially accepted by the Slum Rehabilitation Authority on the basis that 870 out of 1235 slum dwellers, amounting to 70.50% had furnished their consents. However, considering the fact that the total number of slum dwellers involved was not 1235, but 1400, the Slum Rehabilitation Authority was of the view that the First and Second Respondents did not have the stipulated consents of 70% of the slum dwellers. However, this order of the Slum Rehabilitation Authority was passed without furnishing to the First and Second Respondents an opportunity of explaining their position. The High Power Committee cannot be faulted for having come to the conclusion that the order of the Slum Rehabilitation Authority recording and rejecting the proposal of the First and Second Respondents was passed in breach of the principles of natural justice. Whether as a matter of fact the application submitted by the First and Second

Respondents was valid on the date on which it was submitted, was a matter on which the First and Second Respondents ought to have been given an opportunity of explaining their position. The SRA acted hastily by immediately, on the same day, allowing the complaint of the Petitioner and rejecting the proposal of the First and Second Respondents. Hence, on a considered view of the matter, we are not inclined to interfere with the direction that has been issued by the High Power Committee by which the decision of the Slum Rehabilitation Authority dated 26 October 2006 has been set aside.

10. The grievance, however, of the Petitioners relates to the consequential directions that have been issued by the High Power Committee. The Committee has directed the Slum Rehabilitation Authority to obtain a report of the Competent Authority which was to verify draft Annexure II submitted by the Architect of the First and Second Respondents. Now, in this regard it would be necessary to note that when a proposal is submitted by a proposed Cooperative Housing Society of slum dwellers the application is initially accepted and verified. The applicant is then required to pay the scrutiny fees upon which a scrutiny is conducted. Draft Annexure II containing a list of slum dwellers is thereafter forwarded by the Slum Rehabilitation Authority to the Competent Authority for verifying the names of eligible slum dwellers. In the case of public lands which are of the ownership of the State Government, the Additional Collector (Encroachment and Removal), who is the Competent Authority, has to verify draft Annexure II containing names of slum dwellers who are eligible to participate in the Slum Rehabilitation Scheme and to certify it. At the stage when an application is submitted before the Slum Rehabilitation Authority, the application, as it stands, must indicate that the applicant fulfills the requirement of the requisite consent of 70% of the slum dwellers. The claim of the applicant is thereupon subject to scrutiny. But before the question of scrutiny arises, the application must on its face indicate that it fulfills the requirement of 70% consents. Hence, we find merit in the contention which has been urged on behalf of the Petitioners in these proceedings that an application which on its face does not fulfill the requirement of DCR 33(10), must be rejected. The applicant cannot be allowed to progressively make up a deficiency in an application which does not ex facie fulfill the conditions on the date when it is submitted. In view of the judgment of the Division Bench in *Awdesh Tiwari*, the submission of an application operates to exclude all other Societies from having their applications received and processed by the Slum Rehabilitation Authority in respect of the scheme. Since the effect of the acceptance of the first application is to exclude from scrutiny all other applications until the scrutiny of the first application is complete, it is the bounden duty of the applicant to ensure that the application is complete in all respects and does not suffer from any deficiency. Any other construction would lead to the undesirable result that an application which is otherwise deficient and incomplete can progressively be improved upon over a prolonged period of time leading to a delay in the implementation of the Slum Rehabilitation Scheme. Moreover, the mere submission of an application,

however deficient, will operate to block all other applicants. This could not possibly be the intent underlying DCR 33(10). Again it must be emphasized that the underlying logic of the judgment of the Division Bench in *Awdesh Tiwari* (supra) is to exclude the possibility of undesirable competition by unscrupulous elements resorting to extraneous means in the implementation of slum schemes. Hence the first applicant must act bona fide and in compliance with law by submitting an application which fulfills the requirements of a valid application. The application must fulfill the essential requirements of a valid application on the date on which it is submitted.

11. Having regard to this position, we are of the view that the Slum Rehabilitation Authority, in pursuance of the directions that were issued by the High Power Committee, must verify as to whether the application that was submitted by the First and Second Respondents was complete in all respects and fulfills the requirements of DCR 33(10) in order to merit further scrutiny and verification. We are not inclined at this stage to stay the process of verification of draft Annexure II by the Competent Authority. Ultimately, if the order of the Slum Rehabilitation Authority has to be implemented, it is only necessary and proper that the list of eligible slum dwellers must be certified. Thus while we confirm the order that was passed by the High Power Committee, setting aside the decision of the Slum Rehabilitation Authority dated 26 October 2006, we do so on the ground that the decision came to be rendered without furnishing an opportunity to the First and Second Respondents in compliance with the principles of natural justice. We, however, clarify that in this process the Slum Rehabilitation Authority shall determine as to whether the application submitted by the First and Second Respondents was complete in all respects and met the requirements of DCR 33(10). This must be determined by the Slum Rehabilitation Authority with reference to the date on which the application was submitted. In the meantime, we direct the Competent Authority to complete the process of verification of draft Annexure II and remit it back to the Slum Rehabilitation Authority.

12. The Petition shall stand disposed of in the above terms. There shall be no order as to costs.