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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 9291 OF 2022

Shree Sai Pawan SRA Chs Ltd ...Petitioner
Versus
Chief Executive Officer SRA & Ors ...Respondents

WITH

INTERIM APPLICATION NO. 1141 OF 2023

Afcons Flat Owners Welfare Association Mumbai ...Applicant
In the matter between
Shree Sai Pawan SRA Chs Ltd ...Petitioner
Versus
Chief Executive Officer SRA & Ors ...Respondents

Mr Amogh Singh, *i/b Jeet Gandhi, for the Petitioner.*
Mr Jagdish G Aradwad (Reddy), *for Respondent No. 1-SRA in WPL/9291/2022.*
Mr Sandeep Patil, *i/b Jahangir, for Respondent No. 2.*
Mr Mukesh Vashi, Senior Advocate, *i/b MP Vashi & Associates, for Co-developer.*
Mr Abhijit Patil, *i/b Vijay Patil, for Respondent No. 5-AGRC.*

CORAM: G.S. Patel &
Neela Gokhale, JJ.

DATED: 13th March 2023

PC:-

1. On 27th February 2023, we passed the following order:
 1. Respondents Nos. 2 and 3 have arranged between themselves to be appointed as co-developers of this slum rehabilitation project at Jogeshwari. Over 300 persons are affected. No transit rent has been paid to the majority of them since 2019, i.e., for the last four years. The site has been cleared and there are 300 persons on some form of transit. Of these, 17 persons are in transit accommodation and are therefore not receiving transit rent. But the transit accommodation itself is in dilapidated condition. The remaining 230 persons have received no transit rent since 2019 and have been left to fend for themselves. The two co-developers have arranged to lock themselves in a never-ending arbitration. There is no work being done at site.
 2. If Respondents Nos. 2 and 3 are at all serious about this project, they will bring the entire amount of transit rent due to those entitled to transit rent from 2019 (although there may be a claim to take an earlier date) into Court by Friday, 3rd March 2023.
 3. Mr Singh estimates that amount of Rs.11,20,40,000/-. Every single paisa of this must be paid to the Petitioner society by that date.
 4. The reason is self-evident and we have repeated it again and again in series of judgments and orders. The fundamental point is this: This city is not for developers. The Slum Rehabilitation Act 1995 ("SRA") is not for developers. The Act is intended to serve a public welfare purpose. Developers are a means to that end. They are entitled to a free sale component provided by the incentive Floor Space Index ("FSI") but this is a consideration for their fulfilling their obligations under the contract (for there is always a development agreement) and under law, in the form of Letter of Intent issued by the Slum Rehabilitation Authority. Those obligations include not only the rebuilding

or building of rehabilitation structures and tenements both commercial and residential, but also the payment of transit rent in the meantime or the providing of habitable transit accommodation. A developer who does not pay transit rent, does not provide habitable transit accommodation or otherwise is in default of his obligations, all of which have to be performed on a schedule and within a time frame, is not entitled to any of the benefits of the slum rehabilitation project, i.e., the free sale component. This is the overall architecture of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. As regards slum dwellers, only those who are found to be eligible are entitled to these benefits.

5. But this means that where there is a demonstrated default by the developers or by the co-developers, then the privileges and entitlements are liable to be taken away for there is a complete failure of consideration. A party in default cannot be allowed to take advantage of its own wrong and failure. That would be profiteering and that too at public expense because many of these slum projects are on public lands — such as this one — and the developer is not being made to pay the cost of land.

6. Or, to put it differently, the developer can always be changed. The beneficiaries of a SRA project cannot.

7. And let there be no mistaking this, that if our hand is forced, we *will* compel a change of developer.

8. If these developers want their rights to continue and to be preserved, they must demonstrate their bona fides. They must prove their sincerity. To seek equity, they must do equity.

9. In this view of the matter, we are making it clear that unless there is payment as indicated above by Friday, 3rd March 2023, we will have little option but to consider immediately granting relief inter alia in terms of prayer

clause (d) of the Petition to terminate the appointment of Respondents Nos. 2 and 3 as the developer and co-developer respectively of the project.”

2. On the next date Friday, 3rd March 2023, Mr Vashi appeared for the Co-developer. Our order on that date reads thus:

1. “Mr Vashi for Respondent No. 3, the Co-Developer states that arrangements have been made to pay a substantial amount of the arrears of transit rent that, even according to the developer, is due. He requests time until Wednesday, 8th March 2023. That is not unreasonable.

2. In the meantime, there is an Interim Application No. 6100 of 2023 by some third parties who say that they are an association of third-party flat purchasers. These are persons who have bought or agreed to buy units from the free sale component. Some may have paid in full. Others may have amounts yet to be paid. The free sale component is not our concern. That is not the ambit of the Petition. Those flat purchasers have filed no proceedings of their own. Their rights in law have been determined by previous decisions of this Court. We see no reason to expand the conspectus of this Petition beyond the slum society and the two developers as also the Slum Rehabilitation Authority.

3. The Interim Application filed by the third-party purchasers is dismissed.

4. So far as the developers and the slum society are concerned, there are other steps to be taken. If our intervention is likely to be of assistance to achieve that purpose so that the project gets completed, we will readily make available the time for that purpose. We also caution the society that should we find that there are demands that are excessive, or beyond what is contemplated, or there is an attempt to bring into the claim of the society others who

are ineligible or not entitled to reliefs, then we will have no hesitation in taking appropriate steps against the society or the persons in question.

5. List the matter high on board on 8th March 2023.”

3. Then on 8th March 2023, we passed the following order:

1 “Mr Siddharth Mallya, one of the Directors of the 3rd Respondent, Developer is present in Court. He instructs Mr Vashi to state that an amount of Rs. 4 Crores, on a without prejudice basis, will be deposited in Court by Friday 10th March 2023 not only to establish *bona fides* but as an initial payment of the amount of the transit rent that, according to the developer/co-developer, is due to the slum dwellers, i.e., to those who are eligible to receive transit rent.

2 We accept this statement as an undertaking to the Court by Mr Mallya.

3 List the matter on Monday, 13th March 2023.”

4. We are now on the 13th March 2023, a good two weeks after our first order of 27th February 2023. Not a thing that was promised has been done. Not a rupee that was assured has been paid. One of the Directors of the 3rd Respondent, Siddharth Mallya, was present in the Court on the last occasion. Before us, in Court, he instructed Mr Vashi to make a statement that an amount of Rs. 4 Crores would be deposited in the Court by Friday, 10th March 2023. This was an undertaking to Court, and we said as much on that date. There is now a breach of this undertaking. Mr Mallya is present in Court today.

5. Mr Vashi has attempted to make a submission. We state plainly that we have refused to hear Mr Vashi. We refuse to hear any party who is in breach of an undertaking to the Court and especially one who has made promises repeatedly only to break them. We most emphatically refuse to hear a developer who has not paid transit rent since 2019. We fail to see how a developer can continue to claim 'rights' and 'entitlement' to the free sale component of such a project while continuing in admitted default of obligations to those entitled to rehabilitation, including payment of transit rent. This default is, quite literally, a form of oppression for it forces entire families into near-destitution because they have to fend for themselves to pay rent while in transit. The developers' constant refrain of having financial issues is entirely irrelevant. From the beginning, the developers knew what the project entailed, including the obligation to pay transit rent to persons eligible for rehabilitation. All consequences must now follow. Hence the following order.

6. Mr Reddy, learned counsel for the Slum Rehabilitation Authority ("SRA") has a letter of termination prepared. It is signed and it is dated 2nd March 2023. It was withheld so far only because of our orders and because the matter was before us. Mr Reddy states that in light of this the SRA may be set at liberty to serve the termination order on the developer and the co-developer. We grant the CEO of SRA that leave. The CEO of SRA and every other authority is entitled to rely on this order today and on all previous orders at least in support of the case that these developers are demonstrably in default of payment of transit rent. The CEO of SRA and the society will then take the necessary steps to identify

another agency for developer. All rights of the Society are specifically preserved in that regard.

7. Independently of this, and since there is a breach of the undertaking to the Court, we institute *suo motu* contempt proceedings against Mr Siddharth Mallya, a director of Ameya Housing Pvt Ltd. Every principal officer of Ameya Housing Pvt Ltd would ordinarily be equally liable. We are told by Mr Vashi that the only other director is Mr Mallya's aged mother. We will therefore not issue contempt against her. Issue notice under Rule 9(1) of the Bombay High Court Contempt of Court Rules returnable after six weeks.

8. In the facts and circumstances of the case, there will also be an order as to costs jointly and severally against the Respondents Nos. 2 and 3 in the amount of Rs. 10 lakhs payable to the Society. This is a modest amount and is less than 10% of the amount that is, even according to the developers, due as unpaid transit rent from 2019. This amount is to be paid to the society within two weeks from today. If not, it will carry interest at 6% p.a. thereafter. The entire amount including interest if any, is executable as an order of this Court.

9. The Petition is disposed of in these terms.

(Neela Gokhale, J)

(G. S. Patel, J)