

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY CIVIL APPELLATE JURISDICTION
WRIT PETITION (L) NO. 17684 OF 2023**

Late Yallapa Narayan Sonavane & Anr ...Petitioners
Versus
Dipak Vithal Rao & Ors ...Respondents

Mr Sharan Jagtiani, Senior Advocate, with Aman Kacheria & Ibrahim Merchant, for the Petitioners.
Mr Vincent D'Silva, i/b Sujit Mane, for Respondent No. 1.
Mr Diptendu Bose, i/b Anoop U Patil, for Respondent No. 3-AGRC.
Mr Jagdish G Aradwad (Reddy), for Respondent Nos. 2, 4, 5 & 6-SRA.
Mr Nikhil Sakhardande, Senior Advocate, with Shubra Swamy, i/b Anmol Bartaria, for Respondent No. 7.

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**
DATED: 20th July 2023

PC:-

1. Mr D'Silva for the 1st Respondent, the Developer through his proprietorship firm, has prepared a list of the amounts of arrears of transit rent from 2017-2018 and 2018-2019 that, according to the Developer, is yet due. This list is taken on record and marked 'X' for identification with today's date. The list answers only a few questions but simultaneously raises many more. Page 1 shows us figures in respect of 72 slum dwellers, 66 residential and 6

commercial. There are the persons that are said to be certified as eligible, i.e., whose names appear on Annexure-II. Amounts are computed as due to them for 2017–2018 and 2018–2019 and the aggregate is Rs 2,09,22,000/-.

2. The first question that arises for these 72 persons is about the arrears of transit rent from 2019–2020 onwards and which this sheet does not cover.

3. Mr D'Silva has instructions to state that 115 persons were found eligible. Of those 115, 43 are still on site and have not vacated or been evicted. Therefore, the 1st Respondent's liability to pay those on-site eligible persons has not yet commenced. We simply note this submission.

4. Page 2 of this note stands on a different footing, and we propose to ignore it entirely. It deals with 112 persons who, Mr D'Silva says, were all found to be ineligible, i.e., not entitled to transit rent and whose names do not figure on Annexure-II. For some reason, perhaps based on some other contract with which we are not concerned, the 1st Respondent seems to have paid even these 112 persons some amounts. That is not the canvas of the Petition and that cannot be our concern. We are going to confine ourselves, as the law requires us to do, only to those who are found to be eligible for rehabilitation. We propose therefore in future to entirely ignore page 2 of the present note.

5. The figures that Mr D'Silva has given us today do not, as we have noted, cover any period after 2019–2020. That will have to be separately provided and Mr D'Silva states that a computation in that behalf will be forwarded to the Slum Rehabilitation Authority (“**SRA**”) with a copy to the Advocates for the Petitioners by 27th July 2023.

6. Mr Jagtiani for the Petitioners disputes the correctness of the computation. We do not think it is possible to enter into that controversy without further material, but, in any case, it is Mr Reddy for the SRA who will be able to give us the more accurate figures according to the official records. Copies of the present computations are given to Mr Reddy and to Mr Jagtiani and an update will follow by next Thursday. By the next date, we expect reconciled figures from the SRA in this behalf.

7. Mr Jagtiani for the Society which is the Petitioner has several contentions why the 1st Respondent should not be allowed to continue as the developer and why the Apex Grievance Redressal Committee (“**AGRC**”) order cannot be sustained. The question of arrears of transit rent is only one part of it. The Society has terminated its agreement with the 1st Respondent and has chosen Mr Sakhardande's client, Respondent No 7, as the substitute Developer. Mr Jagtiani says that every one of the other points must be kept open and available to the Society to justify the termination and to show why the AGRC order cannot be sustained.

8. At present we are not deciding those issues and all contentions on both sides are expressly kept open.

9. But we do note even at this stage that it has been Mr D'Silva's submission that his client is in a position to justify the AGRC's confidence in his ability as a developer. But that justification must translate into something tangible and cannot be a mere statement across the Bar nor a mere promise or assurance. Payment of transit rent is but one aspect. We are making this entirely clear to the 1st Respondent Developer that nothing will persuade us to allow the 1st Respondent to continue unless the full amount of transit rent is cleared as an initial demonstration of *bona fides* and ability. But even that may not be enough, and there may be other factors to be considered including the prolonged delay in implementing anything on site. But if the 1st Respondent Developer cannot cross even the first hurdle, then we see no reason why we should spend more time in considering any other aspect of the matter. That is actually the only reason that we have structured the further progress in the matter in this way. It is to make it abundantly clear (and Mr D'Silva should counsel his client accordingly) not to even attempt to make a request for several months to clear the arrears. That time will be reckoned in days and possibly hours.

10. It is open to the Society to give to the CEO of the SRA its own computation of the arrears of rent for the eligible persons.

11. For the present, neither side is going to make any submissions to any authority in the SRA regarding any other factors that may be undertaken.

12. It is only because these figures are not yet ascertained and confirmed by SRA that we have not today itself made an order against the 1st Respondent to bring that money into Court.

13. But the 1st Respondent should clearly understand that the amount of arrears will go only in one direction: up, not down. Time for bringing arrears into court, on the other hand, will go in the opposite direction.

14. List the Petition on 3rd August 2023.

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signed by
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SUBHASH
LOKHANDE
Date:
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(Neela Gokhale, J)

(G. S. Patel, J)