

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

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

Mr Sharan Jagtiani, Senior Advocate, with Aman Kacheria &
Ibrahim Merchant, for the Petitioners.
Mr Vincent D'Silva, for Respondent No. 1.
Mr Jagdish G Aradwad (Reddy), for Respondents Nos. 2, 4, 5 & 6.
Mr Anoop Patil, with Shashank Shubham, for Respondent No. 3
(AGRC).
Mr Aman Bartaria, for Respondent No. 7.

CORAM G. S. Patel &
Neela Gokhale, JJ.
DATED: 3rd August 2023

PC:-

1. There is a communication dated 2nd August 2023 from the Slum Rehabilitation Authority ("SRA") tendered by Mr Reddy, taken on record and marked 'X' for identification with today's date. It computes the amount that is due to the Petitioner society as arrears of transit rent payable by the 1st Respondent. The order itself notes, to our surprise, an admission by the Developer that for the period from 2017 to 2023 a sum of Rs. 6,44,82,000/- is due as arrears to 72 slum dwellers.

2. This question of the amount due to 72 slum dwellers (and not others) is addressed in our order of 20th July 2023.

3. After considering all submissions, the SRA has found that there are arrears of transit rent due from 2015 till June 2019 for 69 slum dwellers and from June 2019 until 2023 for 20 slum dwellers. The SRA computes a total of Rs. 5,55,89,160/- as being the rent in arrears.

4. We are not requiring the 1st Respondent represented by Mr D'Silva to make payment to the Society or even to deposit the amount with the SRA. It seems that Mr D'Silva has some submissions to make about the amount that according to the 1st Respondent is "actually due". There is also, as we have previously noted, Mr D'Silva's submission on maintainability.

5. We are prepared to consider all these but only after the 1st Respondent demonstrates its bona fides because according to the 1st Respondent, the confidence of the Apex Grievance Redressal Committee ("**AGRC**") in his continuance as a developer is justified.

6. This sits particularly at odds with the submission now made that the Developer requires several weeks or months to bring in even the amount found due by the SRA. We have held in several cases that the developer has no rights to a free sale component without performing obligations to eligible slum dwellers, and that a failure to abide by the terms of the Letter of Intent issued by SRA in making timely payments of transit rent and in completion of rehab buildings

on schedule is sufficient to warrant an ejectment. No developer has a vested right to continue as a developer without discharge of these obligations. No developer has a right to profit from the free sale component without meeting and fully discharging these obligations.

7. We are not prepared to grant the developer an extended period of time. The reason is explained from the SRA communication itself. These are not arrears that were due yesterday but they have been due from 2015 onwards though in a broken form, i.e., that there were some payments made in between. We are in 2023 and it is inconceivable that persons out on transit rent in Mumbai when leave and license and rentals always proceed only in one direction, i.e., upwards, should be expected by this developer to somehow manage and fend for themselves for nearly an entire decade while the developer claims to be capable, eligible, financially sound and in a position to complete the project. If that is indeed what Mr D'Silva has been instructed to say, then the 1st Respondent needs to be put to the test. He must prove his sincerity. He cannot simply chant it.

8. We round off the number to Rs. 5.55 crores. It is to be deposited in Court by Friday, 11th August 2023. After that we will hear Mr D'Silva on the amount, according to him, that is actually due though we note the risk is involved in this because if the Developer even attempts to argue that some amount is due and unpaid, not only will that amount be paid out of this Rs. 5.55 crores, and any additional amount be ordered to be brought in, but the admission itself of arrears may be found sufficient to justify his

ejection and a quashing of the AGRC order. Mr D'Silva will take instructions accordingly.

9. But it is only after the deposit is made that we would hear these submissions and any other submissions including as to maintainability and any submissions that the Petitioner and SRA may have to make. If Mr D'Silva is correct that the lesser amount is due, then the developer will be entitled to a return from the deposit of the additional amount. But the figure as noted by SRA must get the due regard that it deserves as it comes from the statutory authority and the special planning authority in question. There is no possibility of a developer saying that only the Developer will decide the amount of arrears of transit rent and that the special planning authority, namely the SRA, cannot do so.

10. List the matter on Friday, 11th August 2023 at 2.30 pm.

(Neela Gokhale, J)

(G. S. Patel, J)

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GITALAXMI KRISHNA
KOTAWADEKAR
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