

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2157 OF 2021

Kapilkunj CHSL ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

WITH

WRIT PETITION (L) NO. 3329 OF 2022

Rajesh Madhukar Chavan ...Petitioner
Versus
State of Maharashtra & OrsRespondents

WITH

WRIT PETITION (L) NO. 17385 OF 2022

Sakshi Shankar Shinde ...Petitioner
Versus
The Slum Rehabilitation AuthorityRespondents

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2023.07.07
10:25:45 +0530

Mr JS Kini, with Arun Keini, i/b Sapna Krishnappa, for the Petitioner
in WP/2157/2021.

Mr Mayur Khandeparkar, with Anand Pail, Manjiri Parisnis &
Priyank Shukla, i/b RD Mishra, for the Petitioner in
WPL/3329/2022.

Mr VA Gangal, with Divya Parab, for the Petitioner in
WPL/17385/2023.

Mr Sandesh Patil, with Prithviraj S Gole, for Respondent No.2-SRA.

Mr Rubin Vakil, with *Manish Doshi, Siddhi Deolekar & Shivam Trivedi, i/b M/s Vimadalal & Company*, for Respondent No. 3 in WP/2157/2021.

Mr LT Satelkar, AGP, for State in WP/2157/2021 & WPL/17385/2023.

Mrs Uma Palsuledesai, AGP, for State in WPL/3329/2022.

Mr SK Dhekale, Court Receiver present.

Mr Satish Lokhande, CEO, SRA present.

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

DATED: 5th July 2023

PC:-

1. We have before us three Writ Petitions and almost twice as many parties. This is a classic case of a developer playing fast and loose with development rights at the cost of those entitled to reconstructed homes or rehabilitation, third party purchasers, permanent transit camp units and worse. Over the last few days, we have also expressed our great dismay and distress at the complete lack of supervision of the developer and his on-site activities by the Slum Rehabilitation Authority (“SRA”), the special planning authority, and particularly its CEO. He is present in Court under our directions.

2. Pursuant to directions yesterday, we now have a report of the CEO. We have seen that report and its annexures. It is signed by the Executive Engineer, N Ward of the SRA. Because there is now supervision and compliance and because we find this report fairly satisfactory for the present purposes we do not think it is necessary to immediately initiate further action against officers of the SRA.

But we must be mindful that these problems with the SRA are not isolated instances. Our daily cause list is filled with SRA-related matters, and we find this happening again and again. Particularly disturbing is the complete lack of adequate record-keeping by the SRA of the activities of builders and how rehab properties change hands and even character without the SRA knowing the slightest thing about any of this.

3. A sharper observation should not be invited as to how this could possibly come to pass. We trust our meaning is now abundantly clear to all concerned.

4. The three Petitions are like this.

(a) Writ Petition No. 2157 of 2021 is by the Kapilkunj Cooperative Housing Society Ltd (“**the society**”).

(b) Writ Petition (L) No. 3329 of 2022 is for some mysterious reason still on a lodging number. It is to be finally numbered by the next date. The Petitioner here, represented by Mr Khandeparkar, Rajesh Madhukar Chavan (“**Chavan**”) has a registered agreement with the developer Shreenath Corporation apparently a sole proprietorship of one Niraj Ved, against whom we issued a contempt notice yesterday. Not just that but Chavan has obtained a decree for possession from the State Consumer Disputes Redressal Forum. There is a balance consideration that was due from Chavan to

Shreenath Corporation and that amount has been deposited before the State Consumer Disputes Redressal Forum and credited under Complaint No. 274 of 2011. The decree is dated 10th September 2018.

- (c) Writ Petition (L) No. 17385 of 2023 is by one Sakshi Shankar Shinde (“**Shinde**”) represented by Mr Gangal. She is among several who were sold premises by Shreenath Corporation including two premises that were previously sold under registered agreements to Mr Khandeparkar’s client, Chavan.

5. This is only the tip of the iceberg. There has been much difficulty in the project itself and for this reason a very brief background is now required. We are now dealing with two sites. The first site is at Ghatkopar (West) at RB Kadam Marg. This was the principal site of the Development Agreement (“**DA**”) and it is here that the Society represented by Mr Kini is based. The development here was a composite development of rehab and free sale units in a single structure. Sanction was obtained up to the 7th floor and there is presently no sanction beyond the 7th floor. To cut a very long story short, it seems that the developer failed to fulfil its obligations in completing the structure at Ghatkopar and it was the society members that had to put in the funds to complete that construction.

6. This puts sharply into focus one fact that we will constantly bear in mind viz., that we will under no circumstances permit the developer to derive a benefit at the cost of the Society. By this we

mean that the developer will get to exercise no rights in respect of the premises once it is shown that the developer has not fully met its or his obligations under the Letter of Intent in respect of the rehab units. It was and is the obligation of the developer to complete the entire construction and to pay transit rent. This was the consideration for being able to exercise rights in respect of the free sale units. If the developer did not fulfil those obligations there is, quite simply put, in contract law a failure of consideration and the developer can claim no rights over the free sale units.

7. While on the subject, we note that the failure of the developer extends also to non-payment of the full amount of transit rent. Mr Kini appears for the society and he says that there is today a demand for Rs 80 lakhs in accumulated arrears but the actual figure of the amount due to the society is probably well in excess of Rs 3 crores.

8. There is a limit beyond which we will not be able to make immediate orders in regards to the monetary element but we will endeavour to provide some comfort to the Society members in that regard.

9. There is in parallel the conflict between the claims by Chavan and Shinde. To put this more specifically: Chavan has rights over units or flats Nos. 503 and 504, these being the subject matter of the registered agreements which have resulted in the Consumer Forum decree. Chavan was never given possession of these units. These units were also never constructed or never meant to be Permanent Transit Camp (“PTC”) tenements. They were constructed as

regular free sale tenements but, and it is at this point that the story becomes extremely murky, and may require us to question how SRA went about things. It is contended that the developer sought to club this scheme with another scheme at Kurla and said that some of the tenements at the Ghatkopar scheme would now become Permanent Transit Camps. Whether this could have been done at all is another matter that we will address at an appropriate stage. We are simultaneously told there was no clubbing. But if there was no clubbing, no tenement in the Ghatkopar building could ever have been dubbed or dealt with as a PTC tenement.

10. But then there is another twist because what was sold to Shinde represented by Mr Gangal was not a PTC tenement at all but was a free sale unit although it was one that was purportedly converted in the interregnum to a PTC tenement.

11. This incessant pendulum swinging and see-sawing has resulted in a vast number of people being aggrieved and the developer literally getting away with doing what he wanted without the slightest control or supervision by the SRA.

12. Mr Patil for the SRA tells us that criminal proceedings have been initiated and FIRs filed. That is hardly enough. We do not see any evidence of the developer having his LoI cancelled, and it is for this reason that we have asked the CEO of SRA to prepare an unsigned letter of termination which he has done. It is shown to us. It will be brought to court on the next occasion also. Because of the order that we propose to pass today we will not immediately have

that letter cancelling the LOI issued but it may happen at any time and without notice. Mr Vakil for the developer had best note this. The developer is present in Court.

13. Now what is required is protection of various units both at Ghatkopar and at Kurla. In the report of the SRA of 5th July 2023, which is taken on record and marked "X" for identification with today's date, there is a list of the persons such as Shinde who have been sold tenements at Ghatkopar and put in possession. The numbers are 304, 404, 503, 504, 603 and 604. The device used apparently was to conveniently renumber some of these and to pretend that they were in some unknown wing A, a structure that simply does not exist and is purely a figment of the developer's evidently quite perfervid imagination.

14. Now because Mr Khandeparkar's clients have a decree in respect of Units 503 and 504, those in possession of units 503 and 504, i.e., one Balkrishna Suranje and one Arvind Nanaware will need to be translocated to another non-PTC tenement somewhere.

15. We are immediately concerned with these six flats 304, 404, 503, 504, 603 and 604 and we want no vulnerability or prejudice to those in possession. We do not know what further might be uncovered in respect of the other flats and it is for this reason to protect these occupants and to make sure that they are under the supervision of this Court that we take the liberty of appointing the Court Receiver, High Court, Bombay to take symbolic possession of these flats. He is only required to notionally visit the flats and make

a report noting the names of the persons and obtaining copies of their agreements. He is not to put his board on any of the flats. This order will continue until further orders of the Court.

16. We asked the CEO, SRA to visit the Kurla project, i.e., the Suhana CHSL at CTS No. 394/B of village Kurla. There, the MCGM is the planning authority.

17. The report says that according to the developer he was undertaking that project as NRJ Developer Private Limited and claimed that he and his wife were the only directors. That again is if not a half-truth at best a two-thirds truth because there is a third director, one Vishawanath Pratap Singh. SRA officers visited the Suhana CHSL's site on 4th July 2023. There the developer proposed to deliver possession of 11 PTC tenements with a total built up area of 450 sq mtrs in lieu of 18 PTC tenements earlier proposed in the Kapilkunj CHSL at Ghatkopar. So much for there being no order permitting clubbing; and yet again, we are forced to ask how it comes to pass that SRA simply does not know what is going on.

18. Officers from the Engineering Department of the SRA visited the site. The authority verified from the official MCGM website that there was a part Occupancy Certificate issued. SRA officers took photographs and noted the physical condition of the structures.

19. As to title, the report notes that there are five PTC tenements Nos. 002, 004, 005, 006 and 007 that Shreenath Corporation sold

under registered Sale Deeds. Then for tenements nos. 002, 004 and 006 he executed what are called Rectification Deeds and cancelled the Sale Agreements and those persons were allotted tenements no. 202, 104 and 106. This means that tenements nos. 002, 004 and 006 are available *as PTC tenements* at Kurla Two further cancellations were similarly executed for PTC tenements nos. 005 and 007 and this brings the total tally of available PTC tenements to five.

20. We are now informed that there is one non-PTC tenement in Suhana CHSL tenement no. 107 of 570 sq ft carpet that is currently unoccupied and unsold with no clog on title. In addition, the developer says that he is prepared to effect a cancellation of an agreement that is executed for a non-PTC tenement no. 206 and will do so within two weeks from today.

21. Given all this, we require the Court Receiver now to visit the Suhana CHSL at Kurla and take immediate possession of the five PTC tenements viz., 002, 004, 006, 005 and 007. He will take actual physical possession of those tenements. In addition, there are another six PTC tenements, making in all a total of 11, and the Court Receiver will take possession of all 11. The SRA officers will indicate the numbers of the remaining tenements.

22. Further, the Court Receiver will be appointed and will take possession of non-PTC tenement no. 107. If any person is found in possession, the Court Receiver must immediately make a report and that person must give to the Court Receiver copies of any

documents of title. The Court Receiver is not to dispossess anyone without an order of the Court.

23. The developer (and his company) is hereby restrained from dealing with, parting with possession or entering into any agreements, arrangements of any kind whatsoever in respect of any premises in Kapilkunj CHSL or Suhana CHSL (PTC or non-PTC) until further orders of the Court except for the document of cancellation of non-PTC tenement no. 206.

24. The documents of cancellations of non-PTC tenement no. 107 and the future/proposed cancellation or rectification document of tenement no. 206 are to be brought to Court by the next date.

25. In the meantime, the Prothonotary and Senior Master is requested to communicate with the Registrar of the Consumer Dispute Redressal Forum to immediately transfer to this Court on the Original Side the amount of Rs. 34,51,000/- deposited by Chavan and others in Complaint No. 274 of 2011, along with all accrued interest. This amount would have been payable by Mr Khandeparkar's clients to the developer to complete the purchase under the registered agreements for Units 503 and 504 at Ghatkopar/Kapilkunj and for which there is a decree. This amount being deposited in Court will be treated as in discharge of the purchasers' obligation to the developer. Since the developer has an obligation to pay transit rent to the society, the amount deposited, when received, will be distributed to members of the society in part satisfaction of the Society's claim for arrears of transit rent. The

Prothonotary and Senior Master is requested to ensure that the amount is transferred to this Court within a period of two weeks since there has been already a significant loss to the society. Since we are listing the matter at an early date, the amount is not to be invested.

26. We will await the report of the Receiver to make further orders. The unsigned termination letter is returned to Mr Patil.

27. In the meantime, we require now a further report from the engineers of the SRA as to the construction at the Kapilkunj CHSL and whether it is in conformity with the sanctioned building plans or not. At this stage, no action is to be taken against the Society until we have that report because we do not know if any portion is non-conforming or if the non-conforming portion can be regularised.

28. We also require a report from the SRA as to whether there is under the current development regime any further development potential at the Kapilkunj site. If that be so, it may be possible to make further orders at a later stage for the benefit of all concerned.

29. If there are any structural issues requiring repairs or immediate interventions either at Kapilkunj CHSL or Suhana CHSL, the SRA should be at liberty to point this out so that we can make an appropriate order in that regard.

30. Mr Khandeparkar and Mr Gangal are correct in saying that some arrangements will need to be made in regard to the non-PTC

tenements at the Kurla site. We will consider that on the next date after the Receiver has taken possession of non-PTC tenement Unit No 107, and after we have got a cancellation of the remaining tenement because there is a need for two non-PTC tenements of suitable area and condition to be made available.

31. In respect of unit no. 206 at Kurla, the non-PTC tenement for which the developer says there will be rectification or cancellation, the Receiver will take formal notional possession so that this developer is not even tempted into making yet another agreement in respect of that very flat.

32. Mr Patil clarifies that the two schemes have not been clubbed. If anything this makes matters worse for both the SRA and the developer.

33. Mr Kini says that units no. 702, 703 and 704 in Kapilkunj CHSL are not in possession of any party but may have been sold not once but multiple times.

34. It seems that for tenements nos. 702 to 704 this developer did what he is evidently so good at doing. He sold the same premises to multiple people. Some began to complain. The developer filed for anticipatory bail, quite correctly anticipating that there would be criminal complaints against him. He was asked to deposit an amount of Rs 3.24 crores which he has done and on that deposit being made, that set of complainants withdrew their complaints. But we do not believe the developer can be so sanguine as to imagine that there are

no other complainants because only he knows how many duplicate, triplicate and quadruplicate agreements he has entered into with various parties with the same premises. If the developer is advised to move for anticipatory bail in any future proceedings this order may be shown to that Court as well.

35. The Receiver will stand appointed of these premises Nos 702 to 704 at Kurla as well because there are bound to be rival claimants for these flats also. If any of the parties require to make any applications these are to be made in this Court and not by way of proceedings in any other Court.

36. The Kapilkunj CHSL will lodge its Writ Petition with the Court Receiver and will pay the initial amount of Rs.5000/- towards the charges of the Court Receiver.

37. Mr Patil submits that the society should cooperate with the SRA. We find that submission utterly extraordinary. Mr Kini for the Society points out that the Society wrote half a dozen letters to the SRA and met with no response. The Society is not obstructing the SRA. The cooperation required is the other way around. Given the way SRA has conducted itself, we expect the SRA to cooperate with the society, Mr Gangal's clients and Mr Khandeparkar's clients. We trust our meaning is clear because officers of the SRA are above all *public servants* and the emphasis is on the second word. They are not satraps in fiefdoms, and it is about time they stopped conducting themselves as such. That includes the CEO of the SRA.

38. The CEO of the SRA and its Executive Engineers are to be personally present in Court on the next date.

39. List these matters high on board on 25th July 2023.

(Neela Gokhale, J)

(G. S. Patel, J)