[2023] 16 S.C.R. 724 : 2023 INSC 1080

SAYUNKTA SANGARSH SAMITI & ANR
v.
THE STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 1359 of 2023)

DECEMBER 15, 2023

[ANIRUDDHA BOSE AND SUDHANSHU DHULIA*, JJ.]

Issue for consideration:

An entirely private arrangement was arrived at between the Developer on the one hand and some of the hutment dwellers on the other. Slum Rehabilitation Authority had no role to play in it. Is private agreement as such enforceable against the statutory mandate of the Slum Rehabilitation Authority.

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 – Slum Rehabilitation Authority (SRA) issued a Letter of Intent in favour of Developer for residential tenements – In 2007, the project was stalled by a minority section of the slum dwellers (appellant society) – The Developer filed a civil suit seeking injunction against obstructers – During the pendency of the suit an MoU was signed between them, whereby the appellant society undertook to enforce self-development rehabilitation with cooperation of the developer – Towers which the appellant-society undertook to construct or supervise their construction were towers D, E and F, which were then to be occupied exclusively by the members of the appellant society – Pursuant to MOU, the appellant-society approached SRA to do allotment as per the settlement – Propriety:

Held: The Civil Suit was at the behest of the developers against individual society and SRA was not made party to these proceedings – Private agreements cannot be enforced in Slum Rehabilitation Schemes as against the statutory mandate of the SRA – The claim of the appellant was based entirely on terms of consent arrived between the Developer and them, which has no basis in law – SRA has to act in terms of its own policies and circulars without allowing private or contractual interests to prevail over public policy especially a policy which is welfare based – It is also

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Circular No.162 dated 23.10.2015, that allotment will be done by draw of lots for all the hutment dwellers and same was sought to be followed by the SRA – The appellant society though has filed two Writ Petitions subsequently in connection with the procedure for allotment undertaken by the SRA, yet it has not challenged the validity of Circular No. 162, instead it has sought to impose its private contractual rights over and above the statutory provisions which is not permissible – SRA directed to carry out the allotment of flats in accordance with law. [Paras 20, 21,22,23, 25,26]

Ram Chandra Mahadev Jagpat and Ors. vs Chief Executive Officer and Others, **[2006] 8 Suppl. SCR 658 : (2006) 11 SCC 661;** *Pramila Singh Suman vs State of Maharashtra and Others,* **[2008] 17 SCR 1517 : (2009) 2 SCC 729;** *Balasaheb Arjun Torbole and Others vs Administrator and Divisional Commissioner and Others,* **[2015] 6 SCR 750 : (2015) 6 SCC 534 – referred to.**

Lokhandwala Infrastructure Pvt. Ltd. and Another v. State of Maharashtra and others, **2011 SCC OnLine Bom 118;** *Susme Builders Private Limited v. Chief Executive Officer, Slum Rehabilitation Authority,* **2014 SCC OnLine Bom 4822;** *New Janta SRA CHS Ltd. v. State of Maharashtra,* **2019 SCC OnLine Bom 3896;** *Smt. Usha Dhondiram Khairnar and Others v. State of Maharashtra and Others,* **2016 SCC OnLine Bom 11505 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1359 of 2023.

From the Judgment and Order dated 22.10.2021 of the High Court of Judicature at Bombay in WPL No.8391 of 2020.

Jayant Bhushan, Sr. Adv., Rahul Kripalani, Ankit Yadav, Ms. Suhasini Sen, Ms. Prakriti Rastogi, Aditya Pratap Singh Chauhan, Ms. Supraja V., Ms. Mahalakshmi Ganapathy, Amartya Bhushan, Yojit Mehra, Prashant Gawali, Advs. for the Appellants.

Arunabh Chowdhury, Sr. Adv., Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aniruddha Joshi, Shashibhushan P. Adgaonkar, Omkar Jayant Deshpande, Mrs. Pradnya S Adgaonkar, Anil Rao, Mubarakka

Mohammed Lokhandwala, Mrs. Pragya Baghel, Dechen W. Lachungpa, Anirudha M. Sethi, Sagar Ghogre, Vaibhav Ghogre, Amrendra Kumar Mehta, Advs. for the Respondents.

The Judgment of the Court was delivered by

SUDHANSHU DHULIA, J.

1. The appellants before this Court have challenged the order dated 22.10.2021 passed by the High Court of Judicature, Bombay, which has dismissed the Writ Petition of the appellants. The petition was for quashing of the order dated 26.10.2020 passed by respondent No. 2 i.e. Slum Rehabilitation Authority, Maharashtra (hereinafter referred to as 'SRA').

2. SRA had proposed a Slum Rehabilitation Scheme for the slum at CS No. 1(pt) of Lower Parel Division at J.R. Boricha Marg. The project was for construction of a total built up area of 75854.716 sq. m., where 1765 slum dwellers were to be rehabilitated. Nine towers i.e. tower nos. A to I, 69 commercial tenements, 24 recreational tenements, 6 existing amenities, 19 balwadis, 19 welfare centres and 19 society offices, were in the construction plan. The construction of all the above towers has been completed as of now, and 473 slum dwellers have already been given possession of their tenements in Towers A, B and C. All the same, the allotment for the remaining towers has been stalled due to the present dispute and the ongoing litigation between various stake holders of the project. Hopefully it should end now.

3. Slums of Mumbai are symbolic of the existing inequalities in our society. The growth of industries and urban centres invariably result in migration of rural population to urban industrial areas areas, in search of employment. The migrants, displaced poor and the marginalised are forced by circumstances to form a living space for themselves, which are called slums. Slums have also been described as a crowded settlement of temporary household with inadequate facilities and very poor hygienic conditions. Although, many of the slums in Mumbai such as 'Dharavi', 'Byculla' and 'Khar' were initially villages, but they too have mushroomed into slums in the lopsided urban development.

4. The city of Mumbai has a maximum number of recorded slums in the country and as per the 2011 census, 42 percent of its population stays in slums. Very little attention was paid to the slum dwellers in their initial period during the late 19th century and early 20th century, during colonial Rule. After the 1896 bubonic plague the Government recognised the need for improvement in the housing and sanitary conditions, in the city. This resulted in the formation of Bombay Improvement Trust (for short 'BIT') in 1898, and later Bombay Development Department (for short 'BDD') in the year 1920. BDD in particular, *inter alia,* had a mandate to construct low-cost houses for the workers who were manning the factories and the mills in the city; and for the workers in ports and railway station as well. All the same, not much was done by these bodies as far as improvement of living conditions of the workers in these areas or for providing them with a decent housing or sanitary conditions.

5. With independence, initially the approach of the authorities towards slums was also largely focused on clearing the slum areas, rather than improving their conditions. The Slum Areas (Improvement and Clearance) Act, 1956 was enacted by the Parliament for declaring the areas as slum area, and clearing it. The competent authority could declare an area as a slum area and would thereafter pass demolition or clearance orders. There was no purposeful welfare, socially sensitive, provision in the Act for redevelopment of the area after its clearance and this was left to the satisfaction of the competent authority, which may redevelop an area, subject to his or her satisfaction (see Section 11 of the Act).

6. This approach of the executive and the legislature subsequently changed with the concept of welfare state taking hold and the growth of awareness of the inhabitants towards their rights under the Constitution. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as '1971 Act') was enacted which had provisions for redevelopment of area and other benefits for the inhabitants. In 1971 Act the purpose of the Act was *"improvement and clearance of slums areas in the State and for their redevelopment and for the protection or occupiers from eviction, distress and warrants; and for matters enacted with the purposes aforesaid; ……"*. The main authorities in the 1971 Act are the competent authority to be appointed under Section 3 of

the Act and more importantly the Slum Rehabilitation Authority for implementing slum rehabilitation scheme. The Slum Rehabilitation Authority or SRA is a creature of the statute of "1971 Act" and as a body corporate consisting of following:

"3-A……..

(1)……..

(2) Every Slum Rehabilitation Authority shall consist of a Chairman, a Chief Executive Officer and fourteen other members, all of whom shall be appointed by the State Government."

Slum areas are defined under Section 2(ga) of the 1971 Act as follows:

"Slum area means any area declared as such by the Competent Authority under sub-section (1) of Section 4 [and includes any area deemed to be a slum area under Section 4-A"

Section 4 and 4A of the 1971 Act is regarding declaration of slum areas, which are as follows:

"*4. Declaration of slum areas.— [(1) Where the Competent Authority is satisfied that—*

(a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise; or

(b) the building in any area, used or intended to be used for human habitation are—

(i) in any respect, unfit for human habitation; or

(ii) by reasons of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area,

the Competent Authority may, by notification in the Official Gazette, declare such area to be a slum area. Such declaration shall also be published in such other manner (as will give due publicity to the declaration in the area) as may be prescribed.]

(2) In determining whether buildings are unfit for human habitation for the purposes of this Act, regard shall be had to the condition thereof in respect of the following matters, that is to say, —

(a) repairs;

(b) stability;

(c) freedom from damp;

(d) natural light and air;

(e) provision for water-supply;

(f) provision for drainage and sanitary conveniences;

(g) facilities for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid, if, and only if, it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

(3) Any person aggrieved by a declaration made under sub-section (1) may, within thirty days after the date of such declaration in the Official Gazette, appeal to the Tribunal. [No such appeal filed after the expiry of thirty days as aforesaid shall be entertained.]

(4) When an appeal is presented under sub-section (3), the Tribunal shall, by a public notice published in a newspaper in the Marathi language circulating in the local area in which the slum area is situated and also displayed at some conspicuous place in the slum area, call upon the residents of the slum area to file their objections, if any, to the appeal within a period of fifteen days from the date of publication of such public notice in the newspaper as aforesaid, either by themselves or through any association of residents in the slum area of which they are members.

(5) On expiry of the period of fifteen days as aforesaid the Tribunal shall fix a day for hearing the appeal and inform the appellant about the same by letter under certificate of posting and the residents of the slum area by displaying the notice of hearing at some conspicuous place in the slum area and upon hearing the appellant, and the residents or representative of their association in the slum area, if present, or on considering the written objections, if any, made by such residents or association, if absent, the Tribunal may, subject to

the provisions of sub-section (6), make an order either confirming, modifying or rescinding the declaration: and the decision of the Tribunal shall be final.

Explanation.—For the purposes of sub-section (4) and this sub-section, the, expression "any association of residents in the slum area" means a society, if any, of such residents registered under the Societies Registration Act, 1860 (21 of 1860) or under the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961).

(6) While deciding the appeal the Tribunal shall ignore the works of improvement executed in such slum area by any agency of the Government or any local authority after the declaration thereof as such slum area by the Competent Authority under sub-section (1).]

[4-A. Certain slum improvement areas deemed to be slum areas.—(1) Any declaration made under Section 26 of the Maharashtra Slum Improvement Board Act, 1973 (Mah. XXIII of 1973), declaring any area to be slum improvement area, and in force immediately before the date of commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment)Act, 1976 (Mah. XX of 1970), (herinafter in this section referred to as "the said date") shall, on and from the said date, be deemed to be a declaration made under Section 4 of this Act declaring the same area to be a slum area for the purposes of this Act.

(2) Any person aggrieved by the provisions of sub-section (1) may, within thirty days from the said date, appeal to the Tribunal function under this Act.

(3) on such appeal, the Tribunal may make an order either confirming, modifying or rescinding the declaration: and the decision of Tribunal shall be final]."

7. The Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'MRTP Act, 1966') is again an important piece of legislation with which we are presently concerned. The MRTP Act, 1966 was enacted in order to have a planned development in the State of Maharashtra. An amendment was brought in the MRTP Act, 1966, in the year 1995 whereby SRA was given the status of Planning Authority so far as slums were concerned. The State

Government under the 1966 Act has got powers to frame what is called Development Control Regulations (DCR) for the purposes of implementation of any scheme, project, etc which would include development of a slum. The DCR Regulation under which the present rehabilitation of slum was to be undertaken was Regulation 33(10) of DCR, 1991.

The present slum area with which we are concerned is at Lower Parel Division in J.R. Boricha Marg and is notified as a "slum" under the 1971 Act and had 1672 residential tenements. As per the scheme of SRA more than 70 percent of the eligible hutment dwellers were members of the federation, i.e., present respondent no.6 which were to choose its developer and take the scheme forward under the overall supervision of SRA.

8. In accordance with the procedure given under the DCR, 1991 the majority section of the slum dwellers, in the present case, who were earlier divided into different independent societies, got together and formed a society called "Shramik Ekta Co-Operative Housing Federation" (respondent No. 6, herein), which we here refer as the "Federation". The Federation in turn appointed Lokhandwala Kataria Constructions (respondent No. 5) as its Developer. SRA consequently issued a Letter of Intent (LoI) on 16.04.2005, in favour of the Developer, approving the proposed Slum Rehabilitation Scheme, submitted before them.

9. The work for construction of the nine towers commenced but was stalled shortly afterwards in 2007. Since then, the project was moving only in fits and starts. This was due to the interference caused by a minority section of the slum dwellers. These slum dwellers are also members of the Federation though have formed a separate minority society for themselves, called "Sayunkta Sangharsh Samiti" (hereinafter referred to as 'SSS'), which is the present appellant no. 1 before us, and to which we would refer in a while.

10. Based on the provisions of law regarding redevelopment of a slum, the procedure for the implementation of a Slum Rehabilitation Scheme has been summarised and published by SRA in form of "*Guidelines for the Implementation of Slum Rehabilitation Schemes in Greater Mumbai"* which was published in September, 1997. The procedure

mandates that: "*70% or more of the eligible hutment-dwellers in a slum or pavement in a viable stretch at one place have to show their willingness to join Slum Rehabilitation Scheme and come together to form a cooperative housing society of all eligible hutment-dwellers through a resolution to that effect.*"

11. This Court has upheld this procedure in a catena of Judgments which include ***Ram Chandra Mahadev Jagpat and Ors. vs Chief Executive Officer and Others* (2006) 11 SCC 661[1]; *Pramila Singh Suman vs State of Maharashtra and Others* (2009) 2 SCC 729[2]; *Balasaheb Arjun Torbole and Others vs Administrator and Divisional Commissioner and Others* (2015) 6 SCC 534[3]**

12. In 2007, the project being stalled by a minority section of the Federation, the Developer filed a civil suit before the City Civil Court, Bombay seeking injunction against the defendant nos.1 to 15 who were inhabitants of the slum, and as per the scheme had an entitlement for a flat each in the residential complex which was to be constructed by the developer i.e., the plaintiff, but these defendants were not letting the Developer make construction of the nine towers which had to be constructed within a stipulated time. Defendant no.16 was the federation and the recitals of the plaint clearly states that defendant no.16 is only a proforma party, it is actually defendant nos.1 to 15 who were creating obstructions in the construction of the towers, which the plaintiff was mandated to construct as per the scheme. To our mind, this Civil Suit was not even maintainable in view of Section 42 of the 1971 Act, which bars the jurisdiction of Civil Courts in matters relating to slum development. Section 42 of the 1971 Act reads as under:

"42. Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under this Act, to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

1 Para 28
2 Para 18
3 Paras 14 & 15

13. Be that as it may, the SRA which was in any case a necessary party to the Civil Suit, was not made a defendant. The reasons are not difficult to locate. In the absence of SRA, there was no one to question the maintainability of the suit, as it ultimately ended in a compromise decree.

    It so happens that during the pendency of the suit an MoU was signed between the plaintiff and appellant-society, which had as its members, most of the contesting defendants, and the so called contesting parties agreed to resolve their differences as per the MOU.

14. The Memorandum of Understanding (hereinafter referred to as 'MoU') dated 23.06.2009, is an interesting piece of document signed between the developer and the society registered under the Societies Registration Act, 1860 which is also proposed to be registered as a charitable trust under the Bombay Public Trust Act, 1950 (it was till then not registered as a Trust). The society claimed that it had 770 hutments dwellers as its members. The MoU is between the developer and the society, to which most of the defendants in the Civil Suit were members of the society i.e., Sayunkta Sangharsh Samiti (hereinafter referred to as 'SSS'). A purely private arrangement was thus arrived at between the developer and the minority members of the hutment dwellers whereby the society undertook to enforce self-development rehabilitation with the cooperation of the developer. Some of the important terms of the MoU are as under:

    "A. ……

    B. Samiti i.e. M/s. Sayukta Sangharsh Samiti is a charitable organization incorporated with the sold object for the guidance and welfare of the Slum Dwellers occupying the said property. Trustees of the said Samiti are also the occupants of the said entire property. The said Samiti is a non profit making organization. However it will work for the benefit of the said occupants including corpus and other benefits.

    C. Out of about 2000 Hutments about 770 Hutments dwellers of the said entire property approached Samiti to undertake the Self Development. List of the said 770 Hutment Dwellers is annexed herewith as Annexure 'A' and they are hereinafter referred to as the "Said Occupants". Hence considering the

interest of the said occupants Samiti had decided to enforce Self Development Rehabilitation Scheme and hence suggested the said intention to the Developer.

D. Developers have alternately suggested to the Samiti to carry out the Self Construction of the rehab building/s for the said occupants which the Samiti has agreed.

E. The parties have agreed to give cooperation to the either party for self construction of rehab building/s by the Samiti for the said occupants and completion of the said Scheme.

F. The Samiti has also represented that they hereby undertake to actively assist the Developer in continuation, implementation and completion of the said entire Scheme on the said entire property."

As we can see it is an entirely private arrangement arrived at between the Developer on the one hand and some of the hutment dwellers on the other. SRA has no role to play in it, rather it is an arrangement at the back of SRA and is in defiance of an already existing rehabilitation scheme, statutorily sanctioned, which was surviving.

15. The towers which the Samiti undertook to construct or to supervise their construction were towers D, E and F, under the said MoU which were then to be occupied exclusively by the members of the Society i.e., SSS. Subsequent to this, the Society was also registered as a public trust on 21.11.2009. In September, 2009, the consent terms which were arrived at in the Court between the developer and defendant nos.1 to 4, 6 to 9 and 16, read as under:

"1. ……..

2. Plaintiffs confirm that they have arrived at Memorandum of Understanding dated 23rd June 2009 with one M/s. Sayukta Sangharsh Samiti, a Society registered under the provisions of Maharashtra Cooperative Societies Act and to be registered as Charitable trust under the Bombay Public Trust Act (Proposed) for better and smooth implementation and completion of Slum Redevelopment Scheme under DC Rules 33(10). Hereto annexed and marked as Exhibit "A" is a copy of the said Memorandum of Understanding.

3. Parties confirm that the said Slum Redevelopment Scheme has been approved vide LOI dated 16th April 2005 bearing Ref. No. SRA/ENG/027/GS/ML/LOI (which may be revised from time to time if required) for development of the property bearing CS NO.1 (Part) and 2 (Part) of Lower Parel Division situate at JR Boricha Marg, Bombay – 400 011.

4. Defendant Nos.1 to 4 and 6 to 8 confirm that they are lawfully appointed as Trustees of M/s. Sayukta Sangharsh Samiti and have been duly authorized by the said Samiti to sign the Consent Terms and confirm having signed Memorandum of Understanding as duly authorized by the said Samiti and is final, conclusive and binding upon the said Samiti.

5. Parties confirm that the Defendant Nos. 7 and 9 are not members of the Samiti but are only will-wishers and supporters of Samiti and have therefore willingly agreed to join in this Consent Terms.

6. Parties agree that they have agreed to resolve all the disputes and differences among themselves as recorded in Memorandum of Understanding dated 23.06.2009.

7. Parties agree to adopt, confirm and approve the Memorandum of Understandings which is annexed hereto.

8. Parties confirm that the said Memorandum of Understanding is confirmed by themselves in their personal capacity and also in their capacity as members of the Samiti.

9. Parties confirm that decree be passed in terms of Consent Terms as against the Defendant Nos. 1 to 4 and 6 to 9 and 16 herein.

10. Parties confirm that the suit may be continued as against other Defendant Nos.10 to 15 as they are not ready and willing to cooperate and sign the Consent Terms herein."

According to the appellants before this Court, the suit was decreed in terms of the MoU as against defendant nos.1 to 9, as to what happened for the remaining defendants, it is not clear as no such order is there on record.

16. Meanwhile, after the aforesaid MoU/Settlement, the Developer wrote to the SRA on 05.10.2009 stating that the rehabilitation scheme which was earlier facing problems has been resolved. It says that earlier the slum dwellers were divided into different groups and got themselves formed into different societies who were creating obstructions in the construction, but now an amicable settlement has been arrived between the parties and the consent terms/MoU was filed in Civil Suit No.1341 of 2007. The terms of the MoU are binding between the parties and the project would be now completed. It further requests that on the complaint of SRA, the earlier enquiry which was being conducted against the developer be dropped. It so happens that an enquiry against the Developer was pending. We are not aware as to the fate of this enquiry. Be that as it may, more or less similar information and request was made by the appellants before SRA vide its letter dated 28.10.2009.

17. Pursuant to the MoU/Settlement between the developer and the appellants, the appellants approached SRA to do the allotment as per the terms of settlement. There are some exchange of letters between the parties on which much reliance has been placed by the appellant to show that their request for allotment of Towers D, E and F was being agreed. This, however, is not correct, but even assuming there was any such indication and an assurance by SRA or any of its office bearers in this regard, the same would be in violation of the law, as we shall explain in a while.

18. Ultimately the SRA decided vide order dated 21.09.2020 to allot 712 flats on Tower D, E & F, on the basis of lottery, but then vide order dated 25.09.2020, the SRA stayed this order. This order dated 25.09.2020 was challenged by the appellant before the Bombay High Court in a writ petition which was disposed of vide order dated 09.10.2020 directing SRA to take a call on allotments of these flats in Tower D, E & F, by way of lottery. The SRA in compliance with the said order passed an order on 26.10.2020 deciding to allot the flats in Tower D, E & F as per the procedure prescribed vide Circular No. 162 dated 23.10.2015.

19. Aggrieved by this order of SRA, the appellants filed another Writ Petition (L) No. 8391 of 2020 before the Bombay High Court with a prayer to set aside the order dated 26.10.2020. The main ground

taken by the appellant was that SRA had to conduct allotment as per the terms of the MoU dated 23.06.2009 by giving preferential allotment to the members of the appellant society in Towers D, E and F. The Bombay High Court dismissed the Writ Petition on 22.10.2021 which is the order impugned in this Civil Appeal.

20. The case of the appellant before the High Court was that once the Developer and the appellant society had come to a settlement in terms of the MOU dated 23.06.2009 allotment of flats in towers D, E and F ought to have been made accordingly, with allotments of these flats only to the members of appellant society. The appellant, however, failed to show any provision of law on which this claim was based, particularly when it was a minority society, which is not even recognised under the law presently applicable, and was not a part of the SRA scheme. As we have already referred to the relevant provision of the concerned Regulation where at least 70% of the settlement dwellers should be on board. The members of the present appellant society are admittedly much less than 70%. The claim of the appellant was based entirely on the terms of consent arrived between the Developer and them, which has no basis in law. This is what the Bombay High Court observed:

11. It clearly appears that the claim of the petitioner is on the sole basis of the consent terms which were executed between the said parties in the civil suit filed by the developer. As noted above, the suit between these parties was a matter strictly between such private parties which would be completely outside the scheme of any slum redevelopment being undertaken and as approved under the rules by the SRA. It clearly appears that for such reason, the SRA was not made a party to the said civil suit. It also cannot be conceived that a developer enters into some private arrangement with a parallel society that too which is of minority of slum dwellers, can have no bearing on the execution of a slum scheme under the rules and regulations of the SRA. Such arrangement can never be made binding on the SRA and/or can never restrain the SRA from implementing its rules, regulations and circulars which are bind on any developer and/or a slum society undertaking the SRA scheme.

12. Any private arrangement between the petitioner, a society not of the majority slum dwellers, and the developer in a civil suit, if is recognized, it would certainly bring about a complete chaos and uncertainty in regard to the SRA granting permissions to a particular slum society and the developer appointed by it, as per the rules, to undertake the SRA scheme. Any private arrangement which goes contrary to the rules and regulations, governing the SRA scheme cannot be recognized in law."

The writ petition was hence dismissed and SRA was directed to make allotment in accordance with Circular no. 162 dated 23.10.2015.

21. Since the procedure for allotment is at the core of the dispute, it would be necessary for us to examine the relevant legal provisions governing the procedure of allotment. Under DCR-1991, Regulation 33(10), Appendix (IV), Clause 1.8, it is mentioned as follows:

'1.8 Hutments dwellers in category having a differently abled person or female headed households shall be given first preference in allotment of tenements. Thereafter lots shall be drawn for allotment of tenements from the remaining tenements to the other eligible hutment-dwellers before grant of O.C. to rehab Building.'

Even otherwise, the SRA accepted the proposal for implementation of the Slum Rehabilitation Scheme submitted by the Developer under Regulation 33(10) and subsequently issued the Letter of Intent (LoI) dated 16.04.2005. Clause 42 of the said LoI provides as follows:

'42. That the allotment of rehabilitation tenements to the eligible slum dwellers in the scheme, shall be made by drawing lots in presence of the representative of the Asst. Registrar of societies (SRA) and statement of rehab tenements allotted to the eligible slum families in the rehabilitation building with corresponding tenements No. in rehab composite building and Sr. No. in Annexure-II etc. duly certified by the concerned society of slum dwellers and Asst. Registrar (SRA) shall be submitted before requesting for occupation permission to the rehab. tenements.'

The allotment by draw of lots is not an arbitrary order of SRA but this is the settled procedure, long continuing and in terms of the law. It is also provided under the Circular No. 162 dated 23.10.2015, that allotment will be done by draw of lots for all the hutment dwellers.

22. The case of the Appellants, based entirely on the Consent Terms executed pursuant to the MoU, had little else to say in its favour. As has rightly been noted by the Bombay High Court, the consent terms are in the nature of a private agreement. The Civil Suit was at the behest of the Developer against individual society members and as we have noted above, SRA was not made a party to these proceedings. The seemingly ingenious, yet unfair and even specious method adopted by the Developer in league with the Appellants to bypass the statutory procedure must be deprecated. Admittedly, there is no provision in law by which the settlement terms entered into by two private players can be accepted and followed in violation of the statutory procedure given in Circular No.162 dated 23.10.2015. We do not agree with the submissions advanced on behalf of the appellant who only seeks to enforce a private arrangement arrived at between the Developer and the appellant in derogation of the procedure laid down by the SRA.

23. Private agreements cannot be enforced in Slum Rehabilitation Schemes as against the statutory mandate of the SRA. In the case of ***Lokhand wala Infrastructure Pvt. Ltd. and Another*** *v.* ***State of Maharashtra and others reported in 2011 SCC OnLine Bom 118,*** the Bombay High Court had held as follows:

9. A Slum Rehabilitation Scheme which is implemented under DCR 33(10) read with Appendix IV does not lie in the realm of a purely private contractual agreement. Undoubtedly, the scheme postulates a co-operative housing society of slum dwellers. Appendix IV of DCR 33(10) clarifies that the provisions will apply to redevelopment/ construction of accommodation for hutment/pavement dwellers through owners/developers/co-operative housing societies of hutment/ pavement dwellers or by public authorities or by nongovernmental organisations within the limits of Brihan Mumbai. The Scheme regulates the rights of hutment dwellers, the grant of building permission for a Slum Rehabilitation Project, rehabilitation and freesale components in the total floor space index, the construction of temporary transit camps, the relaxation in building and other requirements, development plan reservations and payments to be made inter alia to the Slum Rehabilitation Authority. The Development Control Regulations, it is well settled, constitute subordinate legislation

enacted with reference to the provisions of section 22(m) of the Maharashtra Regional Town Planning Act, 1966. Slum Rehabilitation Schemes have a public law element.

10. The execution of Slum Rehabilitation Schemes is impressed with a public character. The lands on which the Scheme is sought to be sanctioned and implemented may be lands belonging to the Municipal Corporation or to the State of Maharashtra or, for that matter, its instrumentalities such as the Maharashtra Housing and Area Development Authority. The title to the land does not vest in the society or in its members at the stage when the Scheme is propounded and subjected for sanction. Where it owns the land, the Municipal Corporation of Greater Mumbai is the authority responsible for issuing a certification of Annexure II containing the list of eligible occupants who can participate in the Scheme. The interest of the Municipal Corporation as the owner of the land is recognized by conferring upon the Municipal Corporation the role of verifying and authenticating who are the actual and genuine occupants of the land as on 1 January, 1995. Public land is sought to be utilized in order to further the object of providing dignified accommodation to those living in slums. The co-operative societies of slum dwellers and developers through whom the Slum Rehabilitation Scheme is sought to be implemented facilitate the implementation of the Scheme. The agreements or arrangements that may be arrived at between them cannot be treated at par with purely private or contractual agreements entered into in respect of land belonging to private individuals. The State as the owner of the and upon which a slum is situated has a vital public interest in ensuring that the object for which the land is utilized subserves the purpose of rehabilitation of the slum dwellers. It is in that context that diverse provisions are made by the Development Control Regulations to regulate every stage of the Slum Rehabilitation Scheme, from the submission of the proposals, the evaluation of proposals, scrutiny and verification, grant of sanctions and the actual implementation of the Scheme. Though a dispute between the co-operative society and its developer has a private element, it is not as if that a recourse to private law remedies is the only available form of redress. The Slum Rehabilitation Authority as the authority which is vested with the power to regulate the implementation of the Scheme and the

owners of the land such as the Municipal Corporation or, as the case may be, the State Government are vital components in the implementation of the Slum Rehabilitation Scheme. Their statutory powers to ensure that the Scheme is not misused and is utilized to subserve the public purpose underlying the Scheme is not trammelled by private contractual arrangements.

(emphasis supplied)

[See also: ***Susme Builders Private Limited v. Chief Executive Officer, Slum Rehabilitation Authority, 2014 SCC OnLine Bom 4822*** at Para 109 and ***New Janta SRA CHS Ltd. v. State of Maharashtra, 2019 SCC OnLine Bom 3896*** at Para 189]

24. Moreover, under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 SRA is the final authority for implementing a slum rehabilitation scheme. The Bombay High Court has held in the case of ***Smt. Usha Dhondiram Khairnar and Others v. State of Maharashtra and Others*** reported in ***2016 SCC OnLine Bom 11505*** that slum society or private Developer cannot dictate terms to the SRA and it must act in terms of its own policies and circulars. The following was held in Paragraphs 24 and 26:

24. We do not think that the developer and slumdwellers' society can dictate the SRA in such cases and matters. If that is the designated authority, then, it must act strictly in terms of its own policy, circulars, rules, regulations and the SLUM Act. These are guiding the SRA and in ensuring that all such slum dwellers who are languishing in slums for decades together and if found eligible are rehabilitated, how the rehabilitation package evolved for them has to be implemented and worked out, is entirely left to SRA.

26. We do not allow the SRA to take a decision like this and contrary to the principle of natural justice, fairness and equity. If they now intend to withdraw the allotment letters issued to the Petitioners and desire to accommodate them in some other scheme nearby, then, that decision cannot be reached or allowed to be reached in the manner stated by the SRA before us. Equally, the SRA cannot at the instance of any developer/owner or society of slum dwellers take a decision contrary to its defined and settled policies, circulars,

rules and regulations. We, therefore, direct that no such decision as is intended to be taken now in paragraph no. 7 shall be taken or reached without hearing all affected parties and particularly the Petitioners.

(emphasis supplied)

25. Thus, SRA has to act in terms of its own policies and circulars without allowing private or contractual interests to prevail over public policy especially a policy which is welfare based. Apart from this, it is pertinent to point out that the Circular No. 162 was issued on 23.10.2015. The appellant society though has filed two Writ Petitions subsequently in connection with the procedure for allotment undertaken by the SRA, yet it has not challenged the validity of Circular No. 162, instead it has sought to impose its private contractual rights over and above the statutory provisions which as we have seen above, is not permissible.

26. Consequently, we dismiss this Appeal and uphold the order dated 22.10.2021 passed by the High Court of Bombay. The order of *status quo* on allotment of flats given by this Court on 24.01.2022 is also vacated. The Slum Rehabilitation Authority is directed to carry out the allotment of flats in accordance with law. All pending interim applications are disposed of in terms of the directions contained in the present judgement.

Considering the conduct of the Developer who has evidently taken a surreptitious route bypassing the statutory procedure, the SRA would be failing in its duty if it does not seek explanation from the Developer in this regard and takes suitable action in accordance with law.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal dismissed.