(2014) 01 BOM CK 0119

Bombay High Court

Case No: Writ Petition No. 1595 of 2009 with Notice of Motion No. 205 of 2011

Adarsh Estate Sahakari Griha Nirman Sanstha Maryadit (Proposed)		APPELLANT
	Vs	
The State of Maharashtra and Others		RESPONDENT

Date of Decision: Jan. 20, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Maharashtra Regional and Town Planning Act, 1966 - Section 149 45 47

Citation: (2014) 4 ABR 21 : (2014) 2 ALLMR 513 : (2014) 4 BomCR 421 : (2014) 2 MhLj 700

Hon'ble Judges: V.M. Kanade, J; Girish S. Kulkarni, J

Bench: Division Bench

Advocate: Milind Sathe, Chirag Balsara, Jyoti Sinha instructed by Negandhi Shah Himyatullah, for the Appellant; Milind More, AGP for Respondent Nos. 1 and 2, Mr. A.A. Kumbhakoni, J.G. Reddi for Respondent No. 3, Mr. A.Y. Sakhare, Vinod Mahadik for Respondent No. 4, Mr. V.A. Thorat a/w Anil C. Singh a/w Anil D. Yadav Sandesh Patil instructed by D.R. Shah for Respondent No. 5 in WP 1595 and 1596/2009 and Mr. Anil C. Singh a/w Anil D. Yadav instructed by Mr. Ajay Patil for Intervenor, for the Respondent

Final Decision: Dismissed

Judgement

V.M. Kanade, J.

By these petitions which are filed under Article 226 of the Constitution of India, Petitioners are challenging the orders passed by the High Power Committee dated 7th February, 2009 in Misc. Application No. 316 of 2008 filed by Respondent No. 5 and also the subsequent order dated 5th March, 2012 passed by Respondent No. 3 i.e. the Chief Executive Officer, Slum Rehabilitation Authority (for short "CEO, SRA"). Brief facts which are relevant for the purpose of deciding both the petitions are that Respondent No. 5 is a Society of slum dwellers and the Petitioners in both the

petitions also are the Society of slum dwellers. Respondent No. 5 had submitted a proposal for slum rehabilitation scheme in respect of plot of lands bearing CTS Nos. 585, 595, 596, 601, 602, 604 and 605, situated at Hindustan Naka, M.G. Road, Kandivali (W), Mumbai 400067 to the Slum Rehabilitation Authority. The said plots were owned by the Municipal Corporation. On 20.6.2004 General Body of Respondent No. 5 passed a resolution regarding implementation of the slum rehabilitation scheme and appointment of the developer. Thereafter on 6.9.2005 Respondent No. 5 submitted its proposal, and the SRA accepted the scrutiny fee which is paid by Respondent No. 5.

2. The SRA thereafter addressed a letter dated 15.9.2005 to the Assistant Municipal Commissioner ''R'' South Office (for short "AMC") asking him to verify the Annexure-II list of eligible and non-eligible slum dwellers. On 8.3.2006 the AMC forwarded Annexure-II to the SRA pointing out that out of 347 eligible structures, 308 were residential, 34 were commercial and 5 were commercial and residential, and the 303 eligible slum dwellers, apparently, had given their consent in favour of the said scheme.

3. Thereafter several complaints were filed before the Municipal Corporation Greater Mumbai (for short "MCGM") and the SRA, stating as to how the said list was issued on the basis of fraudulent and bogus documents submitted by Respondent No. 5 Society. Several complaints were also filed with the Charkop Police Station. An allegation was also made that 83 electricity bills submitted by the slum dwellers were bogus. Thereafter inquiry was also held by the Reliance Energy, who informed the MCGM by letter dated 1.7.2006 that the details mentioned in the electricity bills/letters did not tally with their records. Criminal complaint was also filed in respect of the false and fabricated electricity bills with the Charkop Police Station.

4. In view of these developments, on 16.9.2006 the AMC wrote a letter to the SRA stating that the documents which were submitted to his office were fabricated and Annexure-II stood cancelled and the said proposal given by Respondent No. 5 also stood cancelled. An inquiry was made and statement of various persons were recorded and ''R'' South Ward confirmed that the names of 34 eligible slum dwellers were deleted from Annexure-II.

5. Correspondence was exchanged by the Dy. Collector and the Executive Engineer of SRA, in which all these facts were highlighted and accordingly SRA wrote a letter to the MCGM dated 7.12.2006 requesting that as per the order dated 21st November, 2006 of the SRA, a report may be submitted pointing out the facts which were brought on record. The SRA thereafter passed order dated 20th December 2006 in which an observation was made that Annexure-II was issued on account of bogus and fraudulent documents filed by Respondent No. 5, and therefore, land owning authority has cancelled Annexure-II and further directed to record the proposal of Respondent No. 5 Society. The SRA thereafter informed Respondent No. 5 about the said action by its letter dated 30.12.2006.

6. In MCGM''s detailed report dated 9.10.2007 it was held that in view of the fabricated documents which are filed by Respondent No. 5 for the purpose of obtaining Annexure-II, the said Annexure-II was cancelled. Thereafter on 19.7.2008 SRA further wrote a letter to AMC informing about cancellation of Annexure-II on 16.9.2006 and directing the AMC not to take any action on the said Annexure-II.

7. In the meantime, the Petitioners in Writ Petition No. 1595 of 2009 had submitted the proposal for implementation of the scheme for rehabilitation of the slum dwellers on land CTS No. 601, alongwith consent of the slum dwellers mentioned in the resolution of their on 8.6.2006. The Petitioners in Writ Petition No. 1596 of 2009 also submitted a proposal for implementation of the scheme for rehabilitation of the slum dwellers on land CTS No. 595, 596, 602 alongwith common consent of slum dwellers. The SRA after examining the proposal of both the Petitioners, directed the acceptance of scrutiny fees, which were promptly paid by the Petitioners. Respondent No. 5 filed Misc. Application No. 316 of 2008 in November 2008 before the High Power Committee, challenging the decision taken by the SRA of cancellation of Annexure-II and recording of their proposal on 30.12.2006, and further prayed to reconsider their proposal, and also prayed to direct the SRA not to sanction slum rehabilitation scheme submitted by the two Petitioners.

8. The High Power Committee by its order dated 7.2.2009 set aside the order passed by the SRA dated 30.12.2006 and further directed the BMC to issue revised Annexure-II.

9. The Petitioners being aggrieved by the said order passed by the High Power Committee, filed present writ petitions in this Court. Rule was granted on 11.1.2010. On 25.2.2011 Draft Annexure-II was issued by the MCGM in favour of Respondent No. 5.

10. The Petitioners thereafter filed Notice of Motion Nos. 282 of 2011 and 283 of 2011 for granting stay to the hearing fixed by the CEO, SRA. Initially interim stay was granted on 20th May, 2011. However, the Notice of Motion was disposed of and the interim stay was vacated but it was clarified that if any decision is taken, the same should not be implemented till further orders are passed by this Court.

11. Respondent No. 3 thereafter heard the parties and by order dated 5th March, 2012 recorded the proposal submitted by the two Petitioners i.e. Adarsh Estate Sahakari Grihanirman Sanstha Maryadit (proposed) and the Saidham Sahakari Grihanirman Sanstha Maryadit (proposed) and further directed that the proposal submitted by Respondent No. 5 should be processed further and the revised Annexure-II be issued by the competent authority.

12. The Petitioners in both the petitions thereafter filed Chamber Summons No. 124 of 2012 and 125 of 2012 seeking leave of this Court to amend the petition and permit the Petitioners to challenge the said order passed by Respondent No. 3 (CEO, SRA) dated 5th March, 2012.

13. Mr. Milind Sathe, learned senior counsel appearing on behalf of the Petitioners submitted that Annexure-II issued in favour of Respondent No. 5 was cancelled by the SRA by an order dated 30.12.2006. He submitted that almost for a period of 2 years, no steps were taken by Respondent No. 5 and the said order was challenged in November 2008. It is submitted that there is gross delay of almost 2 years in filing the said application. It was contended that on this ground alone the said application was liable to be rejected, and it was not open for the High Power Committee to have considered the application of Respondent No. 5 on merits. Reliance is placed on the judgment of the Apex Court in the case of- Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, .

14. Secondly, it is submitted that order of the High Power Committee in reviewing the earlier order of SRA and directing the BMC to forward revised Annexure-II to the SRA, was contrary to the judgment of the Division Bench of this Court, which was delivered in the case of- Awdesh Vasistha Tiwari and Others Vs. The Chief Executive Officer, Slum Rehabilitation Authority and Others, . It was submitted that Annexure-II which was issued in favour of Respondent No. 5 was cancelled in 2006 and thereafter the proposal of the Petitioners therein having been accepted and the Petitioners having paid the scrutiny fees, it was not open further for the High Power Committee to thereafter cancel the proposal of the Petitioners and revive the earlier proposal which was given by Respondent No. 5. He submitted that procedure as laid down in paragraph 20 of the judgment in the case of Awdesh Tiwari (supra) has not been followed by the SRA. He also submitted that the said judgment of this Court was considered in the subsequent judgment by the Division Bench of this Court in the case of Shri Atesham Ahmed Khan and Others Vs. Lakadawala Developers Pvt. Ltd. and Others, . It is submitted that in paragraph 10 of the said judgment the procedure which has to be followed by the SRA was again elaborately mentioned. It is submitted that in the said paragraph it is observed that effect of the acceptance of the first application was to exclude from scrutiny all other applications until the scrutiny of the first application is complete. It is submitted that this aspect was not considered by the High Power Committee. Since the Respondent No. 5''s application having been recorded and the Petitioners'' application and proposal having been scrutinised and the fees having been accepted, the SRA could not have reconsidered the proposal of Respondent No. 5, which was recorded and cancelled.

15. It is then submitted that the High Power Committee had erred in coming to the conclusion that final order was not passed by the CEO, SRA and that the said proceedings have been kept in abeyance by Respondent No. 4 (MCGM). It is submitted that High Power Committee relied on 2 letters, on which reliance is placed by Respondent No. 5 also. It is submitted that the order dated 30.12.2006 in terms states that Annexure-II was cancelled and proposal of Respondent No. 5 was recorded, and this fact was communicated to the AMC. It is then submitted that the question of granting the permission to Respondent No. 5 by the SRA did not arise since the order which was passed is in the nature of order u/s 45 of the Maharashtra

Regional and Town Planning Act, 1966 (for short "MRTP Act"). Reliance is placed on the judgment of Division Bench of this Court in the case of- Raja Bahadur Motilal and Another Vs. State of Maharashtra and Others, , more particularly, the observations made in paragraph 15 and 16 of the judgment.

16. On the other hand, learned senior counsel appearing on behalf of Respondent No. 5 submitted that High Power Committee has taken into consideration all these aspects and had rightly decided those issues in the impugned order. He submitted that it is a settled position in law that any order which had effect of adverse civil consequences, such order would not have been passed without giving any hearing to the affected party. It is submitted that the order cancelling the Slum Rehabilitation scheme and the Annexure-II, and recording the proposal given by Respondent No. 5 have adverse civil consequences and it was the duty of the SRA to have heard Respondent No. 5 before passing the said order. It is submitted that the said order was not a final order, which was evident from the correspondence between Respondent No. 4 and Respondent No. 5. It is submitted that immediately after the impugned order was communicated to the Respondent No. 5, they had made a representation and the said representation was under consideration. He relied on the various letters which were sent by the concerned authority and submitted that from the said correspondence it is abundantly clear that final orders had not been passed by the SRA and that impugned order, in fact, had been kept in abeyance. It is submitted that in view of this correspondence, therefore, the SRA could not have accepted the proposal given by the Petitioners herein since the proposal of the Respondent No. 5 was still not fully and finally recorded. It is then submitted that even assuming that there was some doubt about 83 electricity bills of the occupants, and that irregularity was noticed by the SRA, it was his duty to have issued show-cause notice and given opportunity of being heard to Respondent No. 5, so that they could have clarified the said doubt/irregularity. He submitted that in fact after the impugned order was passed by the High Power Committee, SRA had thereafter investigated the said matter, particularly in respect of Annexure-II, and had come to the conclusion that more than 70% of the slum dwellers were in favour of Respondent No. 5. It is submitted that therefore, High Power Committee had correctly set aside the order of the SRA.

17. After having heard the counsel appearing for the parties at length, in our view, the submissions made on behalf of the Petitioners in both the petitions cannot be accepted. From the correspondence which has been brought to our notice, it does appear that though initially order was passed by SRA, further correspondence indicates that said order was kept in abeyance, which was evident from the subsequent letters dated 23rd August, 2007 and 27th August, 2007.

18. Apart from that, it is an admitted position that no show-cause notice was issued to Respondent No. 5 asking them to give any explanation about the forged and fabricated electricity bills, which were brought to the notice of the SRA. In our view,

it is not open for the SRA to have unilaterally cancelled Annexure-II on the basis of some complaints received from some of the slum dwellers. The Division Bench of this Court in the case of-Awdesh Vasistha Tiwari & Ors. (supra) has taken into consideration the nature and scope of the inquiry and the purpose of the scheme under DC Regulation 33(10). In paragraph 20, the Division Bench has observed as under:

20. If the entire scheme under Regulation 33(10) is perused it is obvious that if 70% of the slum dwellers on a particular area come together and apply after formation of proposed co-operative housing society, the said application has to be independently considered in accordance with law. The scheme does not contemplate simultaneous consideration of such an application made by a proposed society with an Application subsequently made by another proposed society relating to same land. The Applicant-society has to have 70% support which obviously two societies cannot have. The Application received first is to be processed first independently. If it fails to get 70% support, Second Application can be examined. The obvious intention is to avoid unhealthy competition between the different builders who are interested in supporting such societies. If such a course of simultaneous consideration is permitted to be adopted, unscrupulous persons and builders will try to win over the hutment dwellers who have supported the application made earlier by another society. Therefore, it is not desirable that an application which is earlier made and the one which is subsequently filed should be considered together. That is not the scheme provided under D.C. Regulation 33(10). It is necessary that the application which is first received in respect of a particular property by the SRA should be processed and decided first. After decision of the first Application, the second Application made by another society can be considered depending on the result of the first Application. The reason is that none of the societies have any right, title and interest in respect of the property. Such a course will prevents the unhealthy competition between the builders or between the leaders of two groups in a slum area.

19. Similarly, in a subsequent judgment, the Division Bench of this Court in the case of-Atesham Ahmed Khan & Ors. (supra) has dealt with the procedure which has to be followed in such cases. In paragraph 10 of the said judgment, the Division Bench has observed as under:

10. The grievance, however, of the Petitioners relates to the consequential directions that have been issued by the High Power Committee. The Committee has directed the Slum Rehabilitation Authority to obtain a report of the Competent Authority which was to verify draft Annexure II submitted by the Architect of the First and Second Respondents. Now, in this regard it would be necessary to note that when a proposal is submitted by a proposed Cooperative Housing Society of slum dwellers the application is initially accepted and verified. The applicant is then required to pay the scrutiny fees upon which a scrutiny is conducted. Draft

Annexure II containing a list of slum dwellers is thereafter forwarded by the Slum Rehabilitation Authority to the Competent Authority for verifying the names of eligible slum dwellers. In the case of public lands which are of the ownership of the State Government, the Additional Collector (Encroachment and Removal), who is the Competent Authority, has to verify draft Annexure-II containing names of slum dwellers who are eligible to participate in the Slum Rehabilitation Scheme and to certify it. At the stage when an application is submitted before the Slum Rehabilitation Authority, the application, as it stands, must indicate that the applicant fulfills the requirement of the requisite consent of 70% of the slum dwellers. The claim of the applicant is thereupon subject to scrutiny. But before the question of scrutiny arises, the application must on its face indicate that it fulfills the requirement of 70% consents. Hence, we find merit in the contention which has been urged on behalf of the Petitioners in these proceedings that an application which on its face does not fulfill the requirement of DCR 33(10), must be rejected. The applicant cannot be allowed to progressively make up a deficiency in an application which does not ex facie fulfill the conditions on the date when it is submitted. In view of the judgment of the Division Bench in Awdesh Tiwari, the submission of an application operates to exclude all other Societies from having their applications received and processed by the Slum Rehabilitation Authority in respect of the scheme. Since the effect of the acceptance of the first application is to exclude from scrutiny all other applications until the scrutiny of the first application is complete, it is the bounden duty of the applicant to ensure that the application is complete in all respects and does not suffer from any deficiency. Any other construction would lead to the undesirable result that an application which is otherwise deficient and incomplete can progressively be improved upon over a prolonged period of time leading to a delay in the implementation of the Slum Rehabilitation Scheme. Moreover, the mere submission of an application, however deficient, will operate to block all other applicants. This could not possibly be the intent underlying DCR 33(10). Again it must be emphasized that the underlying logic of the judgment of the Division Bench in Awdesh Tiwari (supra) is to exclude the possibility of undesirable competition by unscrupulous elements resorting to extraneous means in the implementation of slum schemes. Hence the first applicant must act bona fide and in compliance with law by submitting an application which fulfills the requirements of a valid application. The application must fulfill the essential requirements of a valid application on the date on which it is submitted.

20. From the ratio of the judgment in the aforesaid cases, it can be seen that the person who initially submits the proposal, his proposal has to be considered first and verified, and only after the said proposal is recorded, other applications have to be taken into consideration. Obvious reason for following the said procedure is to exclude the possibility of undesirable competition by unscrupulous elements resorting to extraneous means in the implementation of slum schemes, as observed in the judgment in the case of Atesham Ahmed Khan & Ors. (supra). In the present

case, admittedly, Respondent No. 5 has first made application/proposal, which was scrutinised by accepting the scrutiny from them, and Annexure-II was issued. Instead of giving notice to Respondent No. 5 regarding certain irregularities which are brought to the notice of the authority, the SRA unilaterally on its own made certain observations on the basis of complaints which were made by some of the complainants, and cancelled the Annexure-II and recorded their proposal. In our view, though the said authority, even assuming had acted in quasi judicial capacity, was expected to have followed the principles of natural justice, and only after giving hearing to Respondent No. 5, ought to have passed the order.

21. It is quite well settled that quasi judicial authority is expected to give hearing to the parties if it finds that its order is likely to entail adverse civil consequences. This law is quite well settled. In 1964 the House of Lords held in Ridge Vs. Baldwin [(1964) AC 40] that "the rules of natural justice were not confined to the narrow precincts of the prevailing definition of quasi-judicial function". Similarly in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, the Apex Court has observed as under:

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In welfare State like ours...it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.

The Apex Court, therefore, in the aforesaid judgments has pointed out that "the concept of judicial power has been undergoing radical change" and that "what was considered as an administrative power some years back is now being considered as a quasi-judicial power". This decision shows a significant change in the judicial thinking on the question of classification.

22. The Apex Court has also now held that adverse civil consequences is now the most important test for holding that the authority has to act judicially. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the Apex Court held that "when the government seeks to impound the passport of a citizen, it must do so after hearing the defence". The said view thereafter has been consistently followed in the subsequent judgment by the Apex Court. In our view, therefore, High Power Committee was justified in coming to the conclusion that the order was passed by the SRA, without giving hearing to Respondent No. 5, was illegal.

23. The submissions made by the learned counsel appearing on behalf of the Petitioners that the impugned order being in the nature of section 45 of the MRTP Act 1966, it was not necessary to give hearing. We are unable to accept this submission. In the case of Raja Bahadur Motilal & Others (supra) the facts were that the Petitioner therein was a textile mill which was declared as SICK unit by the Board for Industrial and Financial Reconstruction and the steps were taken for rehabilitation and revival of the unit. Thereafter the Board directed the Petitioner company to undertake development of the surplus assets as part of the rehabilitation scheme so that the company can be brought out of the debts to be paid to some extent. Permission, therefore, was granted to develop upto the extent of Rs. 2 lakhs of sq. fts. of the land. This rehabilitation scheme was sanctioned by the Board on 18.3.1997. Thereafter the Respondent No. 7 therein made an application for permission to construct and develop on the said construction by utilizing or consuming Transferable Development Rights (TDR) and the said permission was granted. In the said petition, this grant of permission was challenged. The Respondent raised the preliminary objection about maintainability of the petition on the ground that alternative efficacious remedy by way of civil suit was available. In this context, it was contended by the learned counsel appearing for the Petitioners that the order which was under challenge was in the nature of order u/s 45 of the MRTP Act and it had attained finality u/s 149 of the said Act. As long as the said order was not set aside, he could not move the civil Court against Respondent No. 7. The Division Bench in the light of the said facts took into consideration the provisions of Section 45 and 47 of the Act. One of the contention which is raised, was regarding grant of hearing. It was contended that the Petitioners had taken application, which was well in advance in respect of grant of application of Respondent No. 7 for development and that he was not heard, and therefore, the order granting sanction u/s 45 was violative of principles of natural justice. This contention was not accepted by the Division Bench and in paragraph 16 the Division Bench observed that grant of sanction u/s 45 of the MRTP Act was merely an administrative action, and therefore, there was no question of principles of natural justice being attracted in consideration of the application u/s 45 of the Act. It is to be noted that in the present case, even assuming that the said order is ultimately an order u/s 45 of the Act, yet the very procedure which is laid down for the purpose of considering the application for permission of redevelopment, as observed by the two Division Benches, postulates that the action in granting permission for the redevelopment scheme under DC Regulation 33(10) cannot be said to be merely an administrative action but an exercise of quasi judicial power. Moreover, Annexure-II having been sanctioned, and the proposal of the Respondent No. 5 having been accepted, cancellation of the said proposal would definitely entail adverse civil consequences, and therefore, in our view, High Power Committee was justified in setting aside the impugned order. Under these circumstances, therefore, we are not inclined to interfere with the impugned order, which has been passed by the High Power Committee.

24. After the High Power Committee has passed the impugned order, the SRA was permitted to hold a fresh inquiry and accordingly the inquiry was held and the revised Annexure-II has been accepted by the SRA. The SRA in its order has noted that more than 75% of the slum dwellers have given their consent for the redevelopment by Respondent No. 5. We are, therefore, not inclined to interfere with the said order passed by the SRA, since we find no merits in the submissions made by the counsel appearing on behalf of the Petitioners. Both the writ petitions are, therefore, dismissed and rule is discharged in both the petitions.

25. At this stage, the learned counsel appearing on behalf of the Petitioners pointed out that by order dated 8.11.2011, this Court observed that the SRA may take a decision in accordance with law, however, the said decision should not be implemented till further orders from this Court. The SRA has thereafter taken a decision on 5th March, 2012 which is challenged in this Court. We, therefore, direct that the said order dated 8.11.2011 shall continue for a period of four weeks. In view of dismissal of both the petitions, Notice of Motion Nos. 205 of 2011 and 206 of 2011 filed in their respective petition do not survive for consideration and are accordingly disposed of.