

Bombay High Court

Manju Yagnik And Anr vs Mahalaxmi Sra Co. Op. Housing ... on 6 January, 2023

Bench: G.S. Patel, S. G. Dige

11-OSIAL-18362-2022 IN WP-1513-2021+

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 18362 OF 2022
IN
WRIT PETITION NO. 1513 OF 2021

Manju Yagnik & Anr ...Applica
In the matter between
Mahalaxmi SRA Co-Op Housing Society Ltd & ...Petition
Ors
Versus
Slum Rehabilitation Authority Through its Chief ...Respondent
Executive Officer & Ors

WITH
INTERIM APPLICATION (L) NO. 14614 OF 2022
IN
WRIT PETITION NO. 1513 OF 2021

Omkar Realtors & Developers Pvt Ltd ...Applic
In the matter between
Mahalaxmi SRA Co-Op Housing Society Ltd & ...Petition

ARUN
RAMCHNDRA
SANKPAL

Ors

Versus

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ARUN
RAMCHNDRA
SANKPAL

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Slum Rehabilitation Authority Through its Chief ...Respondent
Executive Officer & Ors

WITH
INTERIM APPLICATION NO. 4827 OF 2022
IN
WRIT PETITION NO. 1513 OF 2021

6th January 2023

11-OSIAL-18362-2022 IN WP-1513-2021+.DOC

Braja Kishore Mishra ...Applicant
In the matter between
Mahalaxmi SRA Co-Op Housing Society Ltd & ...Petitioners
Ors
Versus
Slum Rehabilitation Authority Through its Chief ...Respondents
Executive Officer & Ors

WITH
INTERIM APPLICATION (L)NO. 26683 OF 2022
IN
WRIT PETITION NO. 1513 OF 2021

Yaser Furniturewala & Ors ...Applicants
In the matter between
Mahalaxmi SRA Co-Op Housing Society Ltd & ...Petitioners
Ors
Versus
Slum Rehabilitation Authority Through its Chief ...Respondents
Executive Officer & Ors

Mr RM Upadhyay, with M Singh & Vinod Singh, for the Petitioners.
Mr DD Madon, Senior Advocate, with Jamshed Master & Shakib
Shaikh, i/b Diamondwala & Co, for Respondent No.4 -Developer.
Mr Vijay D Patil, for the SRA in IA/4827/2022, IAL/26683/2022,
IAL/18362/2022 and IAL/14614/2022.
Mr Ankit Lohia, with Yash Momaya, Munaf Virjee & Rushabh
Parekh, i/b ABH Law LLP, for the Applicants in
IAL/26683/2022.
Mr Karl Tamboly, with Filji Frederick, Ali Kazmi & Vinay Kumar,
i/b FF & Associates, for the Applicant in IAL/18362/2022.
Mr Rushad Irani, with Aashna Jain, i/b Pioneer Legal, for the
Applicant in IA/4827/2022.

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CORAM G.S. Patel &
S.G. Dige, JJ.

DATED: 6th January 2023

PC: -

1. The dispute pertains to a slum rehabilitation project being undertaken at Pandurang Budhkar Marg, Lower Parel, Mumbai. The Writ Petitioner is the slum society, Mahalaxmi SRA CHSL. The developer is the 3rd Respondent, Omkar Realtors and Developers Private Limited ("Omkar Realtors"; "the Developer").
2. The complaint of the Writ Petitioners originally was that there were large amounts of unpaid transit rent and that the rehab component had not been completed as required under the sanctioned slum rehab scheme.
3. At an early hearing on 8th September 2021, a Division Bench of this Court of AA Sayed J, as he then was, and one of us SG Dige J, passed the following order:

"1. Leave to amend to correct the name of Respondent No.3 Developer in the title. Amendment to be carried out forthwith.

2. Learned Counsel for the Petitioner-Society submits that despite the undertaking of Respondent No.3-Developer as recorded in paragraph 9 of the Order dated 14th August 2015 in Writ Petition No.899 of 2014 (Exhibit A to the Petition) to complete the construction of the building by 31st July 2016, neither the construction of the building has been carried out nor the Respondent No.3-Developer has paid the rent to some of the members of the Petitioner-

6th January 2023 11-OSIAL-18362-2022 IN WP-1513-2021+.DOC Society from February 2017. Learned Counsel for the Petitioner has further pointed out that despite the letter of SRA dated 8th August 2020 that the flats in free sale building shall not be sold, four flats have already been sold by the Respondent No.3-Developer in the free sale building. Two of the Agreement for Sale of flats dated 23rd November, 2020 and 7th December, 2020 have been annexed to the Petition.

3. On the request of the learned Counsel for the Respondent No.3-Developer, we grant time to file Affidavit in Reply. Affidavit in Reply shall inter alia indicate (i) the amount of rent paid and the arrears of rent till date to be paid to the members of the Petitioner-Society (in the form of a Statement) and (ii) how many flats in the free sale building are sold by the Respondent No.3-Developer and how many flats remain to be sold.

4. The Affidavit in Reply to be filed within 10 days from today.

5. Until the next date, the Respondent No.3- Developer shall not enter into any further Agreements for Sale in respect of the flats in free sale building.

6. List the Petition on 22nd September, 2021."

(Emphasis added)

4. It is paragraph 5 of this order that is the subject matter of controversy today.

5. Some background is necessary. The rehab component consists of eight buildings or eight wings. Mr Madon for Omkar Realtors says that six buildings are completed. Mr Patil for the SRA tells us that of the total number of slum dwellers found eligible, as 6th January 2023 11-OSIAL-18362-2022 IN WP-1513-2021+.DOC many as 1,321 are already in possession of rehab tenements in rehab Buildings Nos. 1 to 6. Rehab Building No. 7 does not have a lift and is awaiting an occupancy certificate. The construction of rehab Building No.8 has not yet begun.

6. Mr Madon also candidly tells us that Omkar's business fortunes suffered several setbacks. There were proceedings under the Prevention of Money Laundering Act. Some directors were arrested. Those proceedings ended without an adverse order against the company or its directors. But, in the meantime, because company accounts were frozen, Omkar Realtors ran into trouble, perhaps inevitably, with its bankers and financiers. We are told that there are borrowings from Yes Bank Ltd and one or more financial entities from the Piramal Group. The mechanism is that there is an escrow account. These financial institutions undoubtedly have a mortgage and a charge over the entire free sale component of the project. Because Omkar Realtors is now facing a declaration as an NPA, there is a consequential freezing of its accounts including the escrow account.

7. In the meantime, there are several persons, at least 16 by Mr Madon's count, who have been given allotment letters for flats in the free sale component. Some of them have paid quite significant amounts already. A few are even said by Mr Lohia who appears for one set of allottees to be in actual physical possession. All these persons are said to have received no objection certificates from one or the other of the financial institution allowing them to pay the amounts that are due from them against their allotted flats into the 6th January 2023 11-OSIAL-18362-2022 IN WP-1513-2021+.DOC required or designated escrow account. On such payment these persons would undoubtedly be entitled to the execution of Agreements for Sale. At present they only hold letters of allotment. But the execution of these further Agreements for Sale cannot be done in view of the Division Bench order of 8th September 2021 to which we have referred.

8. This is why there are a number of Interim Applications including by Omkar Realtors itself as also by individual purchasers requesting what they called a 'clarification' of paragraph 5 of the 8th September 2021 order. It is plain that what is actually being sought is a modification, and for stated reasons.

9. Our primary and foremost concern is, as we believe it must be, the remaining issues and interests of the slum dwellers and their society. In a slum rehabilitation project, everything depends on one central fundamental factor: the successful completion of the rehab building, the complete payment of all transit rent as required and the eligible slum dwellers being put in possession of their completed structures. This is the consideration for the developer being entitled to even put up or sell

flats in the free sale component. Indeed, the free sale component is synchronized with the completion of the rehab component, such that as rehab buildings are progressively completed, free sale flats are correspondingly released for sale in the market.

10. Viewed from this perspective, it seems to us abundantly clear that the rights of financial institutions over the free sale component 6th January 2023 11-OSIAL-18362-2022 IN WP-1513-2021+.DOC cannot possibly come at the cost of the interests of the slum dwellers and their society. The interest of the slum dwellers and society are paramount. They are first. They are foremost. The Developers' financiers' interests are without doubt in a subordinate, subsidiary, or secondary position.

11. The unfortunate result of this situation is that there is no disbursement possible from the escrow account because of the declaration of the Developers' account as an NPA by the financial institution. An immediate impact is visited on the slum dwellers and slum society, those whose interests are the foundation of the entire slum scheme, and who are, in regard to the financial elements of the project, totally innocent and not responsible for any indebtedness of the Developer.

12. To our mind, this requires that there be a carefully calibrated adjustment, modification or exception carved out to the 8th September 2021 order.

13. Having said that, we are equally clear that it would be unwise to do so without at least minimally giving notice to the financial institutions. It is only fair, after all, that they be informed of what is being proposed and the reasons why the Court proposes to fashion an order in the way it does. We make it clear that while we are not today immediately making any order of modification, we are certainly contemplating a mechanism by which sufficient funds can or should be allowed to be released from the escrow account albeit only for completion of the slum rehab component and for clearing of 6th January 2023 11-OSIAL-18362-2022 IN WP-1513-2021+.DOC all arrears of transit rent. We believe this to be in the interest of the financial institutions as much as the other parties, because once the slum component is completed in all respects, then questions of title or entitlement for the rest of the project will not arise. The slum rehabilitation component needs to be taken care of first. It is a statutory entitlement. To put it differently, if the statutory entitlement of the slum dwellers is not taken care of, then it is seriously in doubt whether the Developers have the fullness of their right to the free sale component. If the slum rehab portion is not completed, the corresponding free sale flats are not available for sale. This is the logical domino sequencing of rights in every slum rehabilitation project. If the rehab component is not completed, then not only are the Developers without entitlement to the pro rata free sale component, but even the financial institutions are prejudiced. It would be difficult to accept a scenario, for instance, by which the financial institution can proceed in recovery against a free sale mortgaged flat if that flat is not correspondingly released on account of non completion of the rehab component. It is thus, logically, in the interests of the financial institutions to have the rehab component completed -- and that needs funding.

14. The financial institutions are not before us. The various third party purchasers whose Agreements are affected are more than the applicants before us today. As far as we can tell, only three individuals have filed Interim Application. For the rest, there is an application by Mr Madon

on behalf of Omkar Realtors.

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15. We will require a consolidated statement from Mr Madon, which we propose to include as part of the order, of those Agreements that are yet pending because of the order of 8th September 2021. This statement must show the dates of the allotment, the names of the parties, other material particulars and, especially if these persons have received no objection certificates from the bank, the dates of those particular no objection certificates. We will also require a statement of other flats that have been sold and how much stock is yet unsold, if any. We will require individual flat numbers with the status of each. As far as the 16 persons whose Agreements are pending, these can be included with more complete details in Part I of the list. The lists of sold or previously sold flats (those sold by Agreements prior to 8th September 2021) and unsold flats need only mention the flat numbers and, where sold, the dates of the sale Agreements as also the names of the parties. On the next date we propose to take these details on record.

16. We have set this out at some length because we are today issuing notice to the two financial institutions concerned at the following address.

- 1 Piramal Realty Pvt Ltd,
Piramal Tower, 8th Floor,
Lower Parel (West), Mumbai.
- 2 YES Bank,
Yes Bank House,
Western Express Highway,
Santacruz (East), Mumbai.

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17. The Advocates on record for the Omkar Realtors are requested to give notice to the two financial institutions accompanied by an ordinary copy of this order.

18. We have not formally yet directed them to be joined as party Respondents to the Petition.

19. This order outlines our understanding of the statutory, legal and factual matrix involved. The dues of the financial institutions will have to be taken into account and they will need to be heard on what is being proposed, viz., a court-monitored release of enough funds from the escrow account to complete the rehab component.

20. We clarify that we are not suggesting and should not be misunderstood to have suggested that

we require the consent of the financial institutions to pass an appropriate order.

21. Mr Madon has (or had) a threshold submission regarding maintainability. This is based on previous decision of another Bench of this Court in a different matter. We will consider that aspect of the matter if required at an appropriate stage. Presently, on maintainability, we leave all contentions open.

22. List the matter on Friday, 13th January 2022 at 2.30 pm. (S. G. Dige, J) (G. S. Patel, J) 6th January 2023