2024 INSC 559

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/INHERENT JURISDICTION

CIVIL APPEAL NO. 8127 OF 2024
ARISING OUT OF SLP (C) NO. 20844 OF 2022

YASH DEVELOPERS …APPELLANT(S)

VERSUS

HARIHAR KRUPA CO-OPERATIVE HOUSING SOCIETY LIMITED & ORS. …RESPONDENT(S)

WITH

CONTEMPT PETITION (CIVIL) NO. 217 OF 2024
IN
SLP (C) NO. 20844 OF 2022

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J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

I. *Introduction* :

2. The present controversy is a manifestation of common battles between competing real estate developers under the pretext of rehabilitating slum dwellers under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971[1]. In the year 2003, the appellant was appointed as a developer by respondent no. 1, a co-operative Housing Society of slum dwellers having their hutments on the subject land in Borivali, Mumbai which was declared as a 'slum area' under the Act. As the development was unduly prolonged for over two decades, the development agreement in favour of the appellant

[1] Hereinafter, referred to as the "Act".

was terminated by the Apex Grievance Redressal Committee[2] by its order dated 04.08.2021. The order of termination was challenged by the appellant before the Bombay High Court[3].

3. The Bombay High Court formulated the following issues:

> *"(i) A developer being removed on the non-fulfillment of the basic requirement to commence construction of a slum rehabilitation building for a long period of 18 years, whether is not fatal to the object and intention of a statutory intent behind a Slum Rehabilitation Scheme.*
>
> *(ii) Another question would be as to whether the right to shelter which is part of the slum dwellers' right to livelihood guaranteed under Article 21 of the Constitution, can be continued to be nullified by such actions of unconscionable delay on the part of the developer, in not commencing construction of the slum project even by an inch more particularly when the nature of such work awarded to a developer for him is purely a commercial venture, for profit."*

4. Apart from the above two issues, the High Court highlighted the limited scope of judicial review under Article 226 of the Constitution against the decision of the statutory authority-AGRC. The High Court, however, proceeded to examine the facts in full detail and dismissed the writ petition on facts, as well as on law[4]. Thus, the present appeal.

5. Even before us, the appellant argued the case only on facts, to the extent that we were under an illusion that we were

[2] For short, the 'AGRC'.
[3] Writ Petition (L) No. 18022 of 2021.
[4] By judgment dated 14.10.2022, reported as 2022 SCC Online Bom 3712, hereinafter referred to as the impugned Judgment.

hearing suit for specific performance involving an issue of ready and willingness. Having heard the learned counsels for the parties at length on facts, we will certainly deal with their submissions, but before that we must reiterate the limited scope of inquiry under Article 226 of the Constitution.

II. *Scope of Judicial Review against an order under Section 13 of the Act:*

6. In this case, as in any other public law proceedings, we are concerned with the legality and validity of the power exercised by the AGRC in terminating the development agreement with the appellant by its order dated 04.08.2021. This order is in exercise of power under Section 13 of the Act which is as under:

> "***13. Power of Competent Authority to redevelop clearance area:***
> *(1) Notwithstanding anything contained in sub-section (1) of Section 12 the Competent Authority may, at any time, after the land has been cleared of buildings in accordance with a clearance order, but before the work of redevelopment of that land has been commenced by the owner, by order, determine to redevelop the land at its own cost, if that Authority is satisfied that it is necessary in the public interest to do so.*
> *(2) Where land has been cleared of the buildings in accordance with a clearance order,* ***the Competent Authority, if it is satisfied that the land has*** *been, or is being, redeveloped by the owner thereof in contravention of plans duly approved, or any restrictions or conditions imposed under sub-section (10) of Section 12, or has* ***not been redeveloped within the time, if any, specified under such conditions, may, by order, determine to redevelop the land at its own cost****.*

> *Provided that, before passing such order, the owner shall be given a reasonable opportunity of showing cause why the order should not be passed."*
>
> (emphasis supplied)

7. Section 13(2) of the Act specifically empowers the competent authority to re-determine the agreement if it is satisfied that the re-development has not been done within the time specified. The provision is certainly a statutory incorporation of *time integrity* in the performance of the duty. We recognise this as a statutory duty of the competent authority to ensure that the project is completed within the prescribed time. We have no hesitation even in holding that a writ of mandamus would lie against the concerned authorities if they do not perform the statutory duty of ensuring that the project is completed within the time prescribed.

8. In *Susme Builders Pvt. Ltd.* v. *CEO, Slum Rehabilitation Authority & Ors.*[5], this Court held that Section 13(2) of the Act empowers the statutory authorities to take action and hand over the project to some other agency if the development is being delayed. The relevant portions of the judgment are as under:-

> "*49. Otherwise, there would be an anomalous situation where the Society would have terminated its contract with Susme but the letter of intent issued by the SRA would continue to hold the field and it would be entitled to develop the land. The Society*

[5] 2018 (2) SCC 230.

approached the SRA, in fact, asking it to take action against Susme. Since the SRA is the authority which issued the letter of intent, it will definitely have the power to cancel the letter of intent...

...

52. A bare reading of these provisions shows that in terms of clauses (c) and (d) of sub-section (3) of Section 3-A of the Slum Act, the SRA not only has the power, but it is duty-bound to get the slum rehabilitation scheme implemented and to do all such other acts and things as will be necessary for achieving the object of rehabilitation of slums. In this case, the SRA was faced with a situation where the slum-dwellers were suffering for more than 25 years and, therefore the action taken by SRA to remove Susme for the unjustified delay was totally justified."

9. Case after case, the Bombay High Court has been ruling that, a) the developer is duty-bound to complete the project within the stipulated time and that b) the Slum Rehabilitation Authority (SRA) has not merely the power but a broader duty to ensure that the developer completes the project within time. We will refer to those judgments, not so much to certify that the issue is no more res-integra, but to emphasise that the rulings have not had the desired impact, much less compliance. The reason is that, neither the developer nor the authority is asked to face the consequences of their derelictions. That Section 13(2) is a power coupled with duty is clear from the judgments of this Court and many other judgments of the High Courts, however experience tells us that this recognition of a statutory duty in

itself is not sufficient. Until and unless duty is identified with accountability, judicial review is ineffective.

10. In *Galaxy Enterprises* v. *State of Maharashtra*[6], the Bombay High Court observed:

> *"53. The record reveals that what M/s Saral could do in eight years of its appointment, was to get the Annexure II, namely the list of the 73 eligible occupants certified from the MHADA. It was, thus, expected from the petitioner that the revalidation of Annexure II, which was possibly not a complex formality be undertaken at the earliest. However this certainly did not happen and citing various reasons, which cannot be believed to be not attributable to the petitioner, ultimately, the petitioner could not get the Annexure II certified only on 23 December 2013, which is after about eight years of the petitioner's appointment. This fact itself raises a serious doubt as to the real intentions of the petitioner to undertake the scheme. The petitioner could not have simply blamed the authorities for the delay, as there is complete lack of concrete and/or any real steps which were to be taken by the petitioner to effectively seek different approvals, once the society had put the petitioner in the driver's seat, in complete control of the project as rightly commented, in the impugned orders. Thus, the case of the petitioner, that from time to time steps were taken to implement the slum scheme as entrusted to it be the society cannot be accepted. These are the contentions of the petitioner, merely pointing out some movement of the files with the authorities. This was certainly not sufficient and what was required and expected by the petitioner was to take real effective steps to progress the slum redevelopment. The petitioner was expected to expeditiously obtain an Annexure II, as certified by the MHADA, thereafter obtain a LOI and then obtain a Commencement Certificate to start with the constructions and before that make a provision for temporary alternate accommodation for the slum dwellers to reside till completion of the scheme. There is not an iota of material to show that any such steps much less expeditiously were taken by the petitioner which will show the real bonafides of the petitioner to undertake the scheme.*
>
> *54. In fact the petitioner kept the slum dwellers/society in dark on any of the steps alleged to be taken by the petitioner. There was no transparency in the petitioner's approach with the slum-*

[6] 2019 SCC OnLine Bom 897.

dwellers whose anxious, impatient and painful wait of so many years for the slum scheme to start was continuously staring at the petitioner's right from the word go. This was not what was expected of a diligent developer. The slum schemes are expected to be taken and pursued by the developers for genuine and bonafide object and purpose to redevelop the slums as reflected in the rules which is for the mutual benefit namely the benefit of the slum dwellers of being provided a permanent alternate accommodation and so far as the developer, to exploit the free sale component, which is nothing but a business consideration for the developer. If this be the long and short of a slum scheme what can be the intention of a developer to sit tight on a slum scheme and not take expeditious measures to undertake and complete the scheme. The reasons can be innumerable, if the reasons are attributable to the authorities, the developer has certainly remedies in law to be immediately resorted. No forum competent to entertain such complaints would refuse to look into such grievances when the very right to livelihood of the slum dwellers who are living in inhuman conditions, being a concomitant of Article 21 of the Constitution, is involved and which becomes a matter of urgent concern and of utmost priority. A developer cannot shut his eyes to all these factors and attributes, once appointed by the society. For the developer, there has be relentless action on day to day basis as any delay in not implementing the slum scheme is not only detrimental to the slum dwellers, but to the society at large. Delay in effective implementation of the slum scheme would defeat the very goal, the ideals and the purpose of the slum redevelopment scheme.

55. A perusal of the record indicates that the society is correct in contending that during the period from 2006 to 2016 i.e. for about 10 years the petitioner did not take any concrete steps towards implementation of the slum rehabilitation scheme and the petitioner had clearly failed to obtain a LOI for such a long period. The society, thus, was constrained to file the application dated 15 March 2016, under Section 13(2) of the Slums Act, praying for change of the petitioner as the developer. It is correct that Annexure-II was originally issued by MHADA on 16 April 1998. The petitioner was appointed as developer in the month of June 2006 and it clearly took about seven to eight years for the petitioner to obtain revised Annexure-II which was obtained on 23 December 2013. Before the Chief Executive Officer and even before the appellate authority the petitioner has failed to show any justifiable reason as to why it took these many years for the petitioner to simply obtain a revised Annexure-II when as per norms issued by the Slum Rehabilitation Authority Annexure-II is required to be finalised within a period of four months when the hutment dwellers are below 500 in number. Further the record clearly indicates that even after obtaining the

revised Annexure II, on 23 December 2013, the petitioner did not initiate immediate steps to obtain LOI for the next three years. There is, thus, much substance in the contention of the society that only after the society initiated proceedings under Section 13(2) of the Slums Act, the petitioner initiated steps to obtain a LOI.

...

57. There cannot be a myopic approach to these issues of a delay in implementation of a slum rehabilitation scheme. Things as they stand are required to be seen in their entirety. The only mantra for the slum schemes to be implemented is it's time bound completion and a machinery to be evolved by the authorities, to have effective measures in that direction to monitor the schemes as a part of their statutory obligation to avoid delays. Non-commencement of the slum scheme for long years and substantial delay in completion of the slum schemes should be a thing of the past. In the present case, looked from any angle there is no plausible explanation forthcoming for the delay of so many years at the hands of the petitioner to take bare minimum steps to commence construction.

58. The authorities should weed away and reprimand persons who are not genuine developers and who are merely agents and dealers in slum schemes. These persons after get themselves appointed as developers, to ultimately deal/sell the slum schemes, as if it is a commodity. Any loopholes in the rules to this effect, therefore, are required to be sealed.

...

64. Thus, it is quite clear that inordinate delay is a sufficient ground for removal of a developer. There is neither any perversity nor any illegality in the findings as recorded by both authorities below, in observing that the petitioner had grossly delayed the implementation of the slum scheme in question. The findings as recorded in the impugned order passed by the Apex Grievance Redressal Committee are also sufficiently borne out by the files produced before this Court..."

(emphasis supplied)

11. A Full Bench of the Bombay High Court in *Tulsiwadi Navnirman Co-op Housing Society Ltd. & Anr.* v. *State of Maharashtra & Ors.*[7], held that the SRA has been conferred with

[7] 2008(1) Bom.C.R.1.

certain powers and each one of them is coupled with a duty. If the slum dwellers are eligible to be rehabilitated at the site and within a reasonable period, they cannot be left at the mercy of developers and builders. The slum dwellers cannot be expected to occupy a transit accommodation endlessly, without proper maintenance, and hygiene. An independent and impartial implementation, supervision and monitoring of the projects is the purpose for which the authority has been set up under the Act.

12. In *New Janta SRA CHS Ltd.* v. *State of Maharashtra*[8], the High Court considered the dispute between two rival societies claiming rights over a slum scheme. The Court observed as under:-

> "*187. It thus cannot be accepted more particularly considering the provisions of Section 13(2) of the Slums Act that a slum society at its sole discretion and/or without any control and regulations by SRA can change the developer. If such a course of action is made permissible, considering the hard realities and the hundreds of developers being available to take over such schemes, it would create a chaos and it is likely that a situation is created, that the slum rehabilitation scheme never takes off and it is entangled into fights between two factions within the society and/or two rival developers. This is certainly not the object of the legislation. It would be too farfetched to read such draconian rights available to the Managing Committee or to general body of a society without any regulation, supervision and control of the SRA to change the developer. The SRA has all the powers not only to regulate and control such situations but to take a decision as to what is in the*

[8] 2019 SCC Online Bom 3896.

best interest of the slum dwellers and intended to achieve the object of the legislation.

188. Secondly it is not in dispute that the application of the petitioner for change of respondent no.5-developer was under Section 13(2) of the Slums Act. Having noted this provision in the foregoing paragraphs, Section 13(2) of the Slums Act would come into play only when the developer fails to adhere to the provisions of the development permissions granted by the SRA and a change of developer can be sought only when there is an inordinate delay or the construction carried on, is contrary to the sanctioned plans and/or the permissions. Considering this clear position falling under Section 13(2), in the context of this factual controversy as raised by the petitioner in regard to the consent of 70% of the slum dwellers being not available to respondent no.5, 1 am of the clear opinion that the view taken by both the authorities, in not accepting the petitioner's contention, is required to be held to be correct and valid. "

III. ***Accountability of officers exercising power coupled with duty under Section 13:***

13. Two facets of Section 13 (2) of the Act are that; a) the SRA has the power to redevelop the project if it is satisfied that the development is not proceeding within the time specified, and b) that power of SRA is coupled with a duty to ensure that the project is completed within time. We hold that the SRA is accountable for the performance of this duty. Accountability need not be superimposed by the text of a statute, it exists wherever power is granted to accomplish statutory purpose. In *Vijay Rajmohan* v. *CBI*[9], this Court held:-

[9] (2023) 1 SCC 329.

> *"34. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge.*
>
> *35. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between "duty bearers" in authority and "right holders" affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 2015[10] and is also recognised as one of the six principles of the Citizens Charter Movement[11].*
>
> *36. Accountability has three essential constituent dimensions: (i) responsibility, (ii) answerability, and (iii) enforceability. Responsibility requires the identification of duties and performance obligations of individuals in authority and with authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to be taken[12]. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it."*

14. For effective implementation of the principle of accountability of power under the Act, we identify the duties and performance obligations of the CEO. It is evident from the statutory scheme that the responsibility vests in the CEO, defined under Section 2 (b+a) read with Section 3A(2) of the Act.

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[10] United Nations General Assembly Resolution 70/1 dated 25-9-2015.

[11] Citizens Charter adopted by the Government in the "Conference of Chief Ministers of various States and Union Territories" held in May 1997 in New Delhi, available from https://goicharters.nic.in/public/website/home.

[12] *See* Office of United Nations High Commissioner for Human Rights, Who will be Accountable? Human Rights and the Post-2015 Development Agenda, available from http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf

The CEO reports to the SRA, the duty of which is defined under Section 3B of the Act. One of the most important duties of the SRA is to ensure that the Slum Rehabilitation Scheme is implemented.

14.1. The primary responsibility to implement Section 13 of the Act and allied provisions and to monitor compliances of schemes and agreements vests with the CEO. If the actions of CEO are based on the directions of the SRA, then the SRA must equally bear the responsibility. The CEO and/or the SRA must explain the delay in implementation, failing which, the consequences as determined by the court will follow.

PART-II

IV. *Submissions and Analysis:*

15. Returning to facts of the case, Mr. Kapil Sibal, learned senior counsel, appearing on behalf of the appellant, articulated the allegation of delay into six parts and in his inimitable style proceeded to explain how in each part, the appellant had no role and not at all responsible. We will deal with each phase of delay in the same manner as Mr. Sibal has presented the case before us.

16. *(i) The first phase of delay is between 2003 and 2011*. The relevant facts are as follows.

16.1. The appellant was appointed by respondent no.1 to develop the Project under a development agreement dated 20.08.2003, following which the appellant made a proposal for development on 11.12.2003. The Municipal Corporation of Greater Mumbai, however, assigned the re-development to a rival society, namely Omkareshwar Co-Operative Housing Society[13] and a developer, namely Siddhivinayak Developers[14] on 06.05.2004. Pursuant to this, on 07.09.2004, the SRA accepted the proposal given by Omkareshwar and Siddhivinayak for the development of the Property. After a long-drawn litigation between the appellant and respondent no. 1 on one side, and Omkareshwar and Siddhivinayak on the other, the CEO, SRA finally settled the dispute by its order dated 07.06.2011 and held that the appellant had the required 70% consent of individual slum dwellers to implement the project and also that the proposal of Omkareshwar was not valid as it was made after the proposal of respondent no.1. Dealing with the period, Mr. Sibal has submitted that multiple proceedings

[13] Hereinafter, referred to as "Omkareshwar".
[14] Hereinafter, referred to as "Siddhivinayak".

between the appellant and respondent no. 1 on one side and Omkareshwar and Siddhivinayak on the other consumed lot of time. While the High Court initially disposed of a writ petition recording a settlement that appellant and respondent no.1 are entitled to develop the Property, Omkareshwar challenged it leading to several rounds of litigation before the High-Powered Committee[15] and the High Court. The issue was laid to rest only on 07.06.2011 by an order of the CEO, SRA holding that the appellant enjoyed the consent of 70% of eligible slum dwellers and hence was qualified to be the developer. Mr. Sibal has submitted that the consequence of this litigation is that the LOI could be issued in favour of the appellant only on 29.06.2011, i.e. after this dispute was settled. The eight years' delay in obtaining the LOI was inevitable and was not due to any fault of the appellant.

16.2. Per *contra*, Mr. C A Sundaram, learned senior counsel, appearing for the respondent no.6-Veena Developers, has submitted that the appellant did not have the financial capacity or the technical expertise to complete the project within the prescribed time of 3 years. It is due to this reason that the appellant was unable to commence construction even when all the

[15] Hereinafter, referred to as the "HPC".

requisite permissions and approvals had been obtained. Further, Mr. Huzefa Ahmadi, learned senior counsel, appearing for respondent nos.8-48, who are some of the slum dwellers, has submitted that the delay in the construction is entirely attributable to the appellant. He submitted that the appellant did not take any action to obtain the LOI anytime between 2003-2011.

16.3. While adjudicating on the delay in implementation of the project during 2003-2011, the AGRC relied on clause 11 of the development agreement dated 20.08.2003 requiring the appellant to complete the development of the project within three years from the issuance of the Commencement Certificate dated 14.07.2014.

16.4. On the issue of delay from 2003 to 2011, the High Court examined the facts independently and upheld the findings of the AGRC. The High Court held that a delay cannot be viewed as reasonable. Further, the High Court held that the litigation with Omkareshwar did not prevent the appellant from starting the project, especially when the appellant had the consent of more than 70% of the slum dwellers at all material

times. The High Court also observed that the appellant was not diligent in procuring the LOI.

17. *(ii) The second phase relates to the delay in obtaining necessary permissions, approvals and environmental clearances from 2011 to 2014.* The SRA issued Annexure-III, certifying the financial capability of a developer on 21.06.2011 and this was followed by issuance of LOI dated 29.06.2011. The appellant applied for Environmental Clearance[16] on 15.12.2011 and obtained it only on 28.04.2014. The Commencement Certificate for the construction of the rehabilitation building and the high-rise clearance by the Municipal Corporation of Greater Mumbai were issued to the appellant on 14.07.2014 and 09.10.2014, respectively.

17.1. In the above referred background, Mr. Sibal submitted that the EC had to be obtained before the Commencement Certificate could be issued for the construction of the rehabilitation building. For on-site construction of more than 20,000 square meters, EC is required and for this, he relied on condition no. 51 of the LOI dated 29.06.2011 and condition no. 38 of the intimation of approval dated 21.04.2012. While the

[16] Hereinafter, referred to as "EC".

appellant made an application for EC in the year 2011, it was granted only on 28.04.2014. He has submitted that the delay between 2011-2014 was again unavoidable as certain mandatory permissions were required. Per *contra*, Mr. Ahmadi submitted that an EC was not required to commence construction of the rehabilitation building as the on-site construction did not exceed 20,000 square meters.

17.2. Upon perusing the record, the AGRC found that the delay was indeed attributable to the appellant. The High Court also noticed that the appellant did not commence the construction after getting the necessary approvals but waited for the EC. The High Court also noted that some parts of the project like the rehabilitation building did not require an EC for commencing construction.

18. *(iii) The third phase of delay relates to the alleged non-cooperation of certain slum dwellers leading to the stalling of the project from 2014 to 2019.* Mr. Sibal submitted that as some of the slum dwellers were not cooperative, applications under Sections 33 and 38 of the Act for eviction were made to the Assistant Municipal Commissioner, MCGM. Initially, the Deputy Collector passed orders on 05.11.2020 observing that

the eviction proceedings can be taken forward only after directions from the High Court and in the meanwhile directed the appellant to deposit 11 months rent concerning 30 non-cooperating slum dwellers. These applications under Sections 33 and 38 of the Act came to be decided only in 2021, and that is how, it is submitted, the project got delayed for reasons beyond the control of the appellant.

18.1. Mr. Ahmadi submitted that the pendency of the eviction applications does not justify the extraordinary delay of 5 years on the part of the appellant. Mr. Sundaram submitted that the mere filing of applications under Sections 33 and 38 of the Act is not sufficient to justify the delay. It is submitted that the appellant has failed to take active steps in getting the applications disposed of. This inaction suited the appellant as it did not have the capacity or the capability to complete the project.

18.2. Affirming the findings of the AGRC, the High Court observed that the appellant went into deep slumber after filing applications for eviction of non-cooperating slum dwellers between 2014-2015.

18.3. The fact that the appellant had to initiate proceedings against certain non-cooperating members and that the proceedings were pending for a long time, whether justified or not, should not have a bearing on the obligations of the appellant to complete and handover the project as per the development agreement. Under no circumstance, litigation of this nature would justify inaction from 2014 to 2019.

19. *(iv) The next period of inaction is from 2015 to 2017. This is sought to be justified on the ground that the Municipal Corporation sanctioned a road that may pass through the property and published the draft development plan (DP) on 25.02.2015.*

19.1. The objections filed by the appellant on 03.04.2015 eventually came to be disposed of only on 12.11.2018 when the said road was deleted from the development plan. This period, Mr. Sibal submits, must be excluded as no development, much less any construction, is permissible once the draft plan is published.

19.2. Mr. Sundaram submitted that if the appellant had commenced the construction after the commencement certificate dated 14.07.2014, the draft development plan

published in 2015 could never have affected the re-development at all. He further submitted that as LOI and IOA were issued in 2011 and 2012, the so-called draft DP published in 2015 cannot be a justification. Mr. Ahmadi has submitted that except for 2 months between 25.02.2015 and 23.04.2015, there was no proposed development plan road in any of the plans. He would submit that the proposed DP road affected only the proposed sale building, not the entire project. In any event, he would submit that the sale building could not have commenced till substantial progress in rehabilitation building was made.

19.3. The observations of AGRC also go to show that draft DP could justify 2 years' delay and no more. The High Court observed that the notification dated 25.02.2015 under no circumstances precluded the appellant from starting construction of other parts of the Property.

20. *(v) Re: Appellant did not have the financial resources.* Dealing with the findings of the AGRC and the High Court that the appellant did not have the financial resources as evidenced by the agreements that they have executed in favour of third parties, Mr. Sibal submitted that this issue was never raised in the show-cause notice dated 04.12.2020, which initiated the

proceedings leading to the termination of the development agreement of the appellant. The factual background is that from 2017 onwards, the appellant executed certain financial agreements with third parties. On 17.02.2017, an agreement with M/s Rajesh Habitat Private Limited was executed as per which the saleable rights under the project were transferred in favour of Rajesh Habitat in lieu of finance of Rs. 30 crores. Further, Rajesh Habitat mortgaged their rights in favour of M/s Vistra ITCL by a deed dated 22.03.2017, which later came to be cancelled on 08.02.2019 and a deed of reconveyance between the appellant and Vistra was entered into. Later, one M/s Sanghvi Associates provided financial assistance of Rs. 50 crores to the appellant by way of a mortgage deed. In pursuance of these financing arrangements, Sanghvi Associates gave no objection to the appellant entering into an agreement with respondent no.6-Veena Developers. Following this, a joint development agreement dated 18.10.2019 was entered into between the appellant and respondent no. 6.

20.1. Mr. Sibal contended that the appellant has the requisite financial capacity of technical expertise to complete the project. He would submit that these agreements do not

establish that the appellant does not have the financial capacity or the technical expertise to undertake and complete the project. That the appellant had the capacity is evidenced by the deposit of rents due to the slum dwellers and in fact, the SRA has certified the appellant's financial capacity on 21.12.2019.

20.2. Mr. Sundaram submitted that all the documents were before the SRA and that the parties have made submissions on all aspects of the matter. He has taken us through the various findings of the High Court on the finances and the clauses in the agreements entered into with the third parties. The following findings of the High Court were referred to:

> *"57. In any case, the petitioner struggled to avail finance and was facing severe financial crisis, this itself was material for the Chief Executive Officer of the SRA to come to a conclusion that it may not be possible for the petitioner to execute the scheme. The Chief Executive Officer however did not call upon the petitioner to satisfy that it had the appropriate finances to undertake the "entire scheme". The Chief Executive Officer merely asking the petitioner to deposit the arrears of rent, can in no manner, whatsoever, be accepted as a certificate to the petitioner possessing a financial capacity to complete the project.*
>
> *58. It is crystal clear from the petitioner's own showing that the petitioner was required to take the crutches/financial assistance initially from Rajesh Habitat Pvt. Ltd., who in turn looked at Vistra ITCL India Ltd. and thereafter having failed with both these entities, with one M/s Sanghvi Associates, which is not for a small amount but for a substantial amount of Rs. 50 crores. Things however would not stop at this*

and subsequently it appears that now respondent no.6-Veena Developers was roped in, to provide working capital for the entire project described to be the business partners/joint developers of the petitioner as in para 1 of the petition."

20.3. Mr. Sundaram also brought to our notice certain clauses in agreements with third parties and submitted that this amounts to complete subversion of the scheme. High Court has reflected on these clauses. The following findings of the High Court are important:

"73. Certainly, the period of two years as contractually agreed, under the development agreement cannot be stretched to such a long period of almost 17 to 18 years as in the present case, despite these circumstances, an attempt on the part of the petitioner to justify that such delay was not attributable to the petitioner, at least in the facts of the case, is wholly untenable. The AGRC examined the case of the petitioner and of the society and the situation persisting at the ground level. The AGRC however not agreeing with the findings of the Chief Executive Officer-SRA, has reached a conclusion that the petitioner could not take the project forward for reasons which were borne out by the record.

74. In these circumstances to upset the decision of the AGRC would amount to rewarding the petitioner of its defaults and the breaches committed by it, not only of the very terms and conditions of the Development Agreement, but also, the clear statutory mandate in undertaking Slums Rehabilitation Schemes. In fact, the petitioner has betrayed the trust of the society/slum dwellers. Even otherwise, a closer scrutiny of the petitioner's actions clearly hint of the petitioner's interest not in the rehabilitation of the slum dwellers but in its own private interest, solely in relation to the sale component. There cannot be a

space for a pure commercial greed in taking up such projects which involves the basic rights of the slum dwellers."

21. *(vi) Re: Submission on maintainability of proceedings before AGRC.* Finally, Mr. Sibal submitted that the complaints filed by the 12 members of the managing committee of respondent no.1 on 18.11.2019 were withdrawn by 8 members on 31.12.2019 and by another member on 14.01.2020. Consequently, the show-cause notice dated 04.12.2020, based on these complaints, was rightly withdrawn on 16.03.2021. Secondly, although the managing committee of respondent no. 1 had initially terminated the development agreement on 02.02.2020, this termination was revoked on 28.02.2021. The revocation of termination was because the agreement was terminated by Mr. Rai, who did not have the requisite authorisation. Mr. Sibal has relied on the above to submit that respondent no.1 did not object to the withdrawal of the termination of the development agreement of the appellant, and in fact, wanted the appellant to continue as the developer. He would further submit that Mr. Rai was acting without the authorisation of the other members, and hence, he also could not have filed an appeal before the AGRC on behalf of respondent no.1 against the order of the respondent no. 3 – CEO, SRA dated 16.03.2021 that

dropped the proceedings against the appellant. Mr. Navare, learned senior counsel, appearing for some of the slum dwellers, supported the submissions put forth by Mr. Sibal regarding the lack of authorisation of Mr. Rai to act on behalf of respondent no. 1.

21.1. Mr. Sundaram submitted that the appeal before the AGRC against the order dated 16.03.2021 was maintainable even if some of the complaints filed on 18.11.2019 were withdrawn. He submits that Mr. Rai, who filed the appeal, had the requisite locus because he, along with some others, had also filed complaints that were not withdrawn. It is submitted that Mr. Rai was still a slum dweller and a member of respondent no.1 and hence, was an 'aggrieved person' against the order dated 16.03.2021. There were also, as many as 132 complaints against the appellant by other slum dwellers who filed complaints in January and February, 2021 before the SRA under Section 13(2) of the Act alleging non-payment of rent. Lastly, he submits that in any case, the SRA has the power to *suo moto* proceed against the appellant under Section 13(2) of the Act and therefore the withdrawal of complaints is not fatal to proceeding against the appellant and does not preclude the AGRC from deciding the appeal. Mr. Ahmadi made a submission along the same lines and to the same effect.

21.2. Answering the question regarding the maintainability of the proceedings after the complaints dated 18.11.2019 were withdrawn, the High Court held that even if many complaints before the SRA were withdrawn, the complaint filed by Mr. Rai survived to be adjudicated. Further, the High Court rejected the contention of the appellant that Mr. Rai was not authorised by respondent no. 1 to take any action against the appellant. In order to reach this conclusion, the High Court observed that if the contention of the appellant was true, then respondent no. 1 would have supported the appellant before the High Court; however, this was not the case. The High Court also held that in any case, the SRA and the AGRC have the requisite power under Section 13(2) of the Act to *suo moto* examine the delay caused by the appellant in implementing the project.

22. *(vii) Re: Locus or conflict of respondent no.6:* Mr. Sibal concluded his submissions by arguing that respondent no.6 does not have the locus to take a stand contrary to that of the appellant as it has been involved with the venture from the time of the joint development agreement dated 18.10.2019. For this reason, he would submit that the findings of AGRC and the High Court must apply to respondent no. 6 as well.

22.1. Mr. Dhruv Mehta, learned senior counsel, appearing for the administrator of respondent no.1 has argued that Section 13(2) of the Act empowers and places an obligation upon the SRA to take action against the developer when the project is not being implemented. Therefore, he submits that even if some of the complaints have been withdrawn, the termination of the development agreement is valid.

V. *Findings:*

23. Having considered the findings of the AGRC and the High Court in detail, we have found them to be correct on law and fact. Further, having independently considered the detailed submissions of the appellant and the respondents, on delay as well as on lack of financial and technical capabilities and maintainability of the appeal, we proceed to analyse and discuss them as follows.

24. Admittedly, the delay in executing the project, by the time of the termination order is more than 16 years. This period is sought to be explained by fragmenting it into bits and pieces falling between 2003 to 2011, 2011 to 2014 and 2014 to 2019.

25. What amuses us is that we are called upon to hold that the order of termination for delaying the project for 16 years must

be held to be bad by examining each episode of delay as independent and stand alone. Judicial Review Courts enquiring into these allegations would only examine whether it would be arbitrary and/or unreasonable to exclude the delay caused because of the incidents that occurred from 2003 to 2019. In other words, the inquiry must be to see whether it would be unjust if we do not account for the long-drawn litigation with a competing builder between 2003 to 2011, the delay in obtaining the environmental clearances from 2011 to 2014, or the delay caused due to non-cooperation of certain slum dwellers.

26. Having examined the matter, we are of the opinion that the delay of 8 years in resolving disputes with a competing builder cannot be a justification under any circumstance. The appellant is a developer and fully understands the process of obtaining environmental clearances while other sanctions and permissions are pending, and it is for him to make all the necessary arrangements. To say the least, the non-cooperation of some of the members cannot be a ground for delaying the project from 2014 to 2019. The findings of the AGRC and the High Court are very clear, they have correctly held that the delay caused due to the sanction of the draft DP for the construction

of the road cannot be a justification for delaying the project from 2015 to 2019.

27. In any event, execution of the project under the Slum Rehabilitation Scheme cannot be viewed as a real estate development project. There is a public purpose involved, and that is inextricably connected to the right to life of some of our brother and sister citizens who are living in pathetic conditions. While we reject the justifications given by the appellant for delaying the project, we are fully conscious of the dereliction of the statutory duty of the SRA in ensuring that the project is completed within time. We have already expressed our opinion that the CEO and the SRA are accountable for their actions. While we reject the justification for delay, we record our dissatisfaction about the indifference, amounting to negligence on the part of CEO and the SRA.

28. So far as the submissions relating to the financial resources are concerned, we have seen the number of agreements that the appellants have entered into. We need not examine this aspect independently as the findings are concurrent and thorough. The following findings of the High Court are sufficient for disposing of this issue:

> *"59. The petitioner time and again having approached third parties for financial requirements in the manner as discussed above, in fact was quite fatal and counter productive to the implementation of the slum scheme, for the reason that if any of the financers were to withdraw from their financial support and the commitments as made to the petitioner, the same would leave the petitioner with no remedy but to wander further hunting for fresh finance. Such financial instability of a developer certainly would have a devastating effect on the implementation of the slum scheme which could also result in the total collapse of the slum scheme being implemented and in fact a death knell for the slum scheme. It is for such reason, the real wherewithal and financial stability of a developer plays an extremely pivotal role, as finance is the very lifeline for successful implementation and completion of the slum scheme. The present case is a classic case of how the petitioner is running helter-skelter to secure finance, that too without taking the society into confidence much less the authorities. This on the basis of a solitary clause in the Development Agreement which is being discussed hereafter."*

29. We will now deal with the submission on the maintainability of the appeal before the AGRC and that respondent no. 6 who was the collaborator of the appellant must face the same consequence as that of the appellant. This submission proceeds on the assumption that the statutory power under Section 13(2) of the Act is to be exercised only upon an application made to the authority. This is a complete misconception. We have already dealt with the scope and ambit of Section 13 of the Act, and in particular the duty followed by accountability of the SRA under the said provision. Irrespective of whether anybody applied or not, the

authority is bound to ensure that the project is completed within the time stipulated. In any event, as the dispute before us is confined to the legality and propriety of the termination order, we are not concerned about the relationship of the appellant with respondent no. 6.

VI. *Conclusion:*

30. For the reasons stated above, there is no merit in this appeal, and we dismiss the Civil Appeal arising out of SLP (C) No. 20844 of 2022 with costs quantified at Rs. 1,00,000/- (Rupees One Lakh) payable to Supreme Court Mediation and Conciliation Project Committee. In view of our decision, no further orders are necessary in the Contempt Petition (Civil) No. 217 of 2024.

31. Pending applications, if any, stand disposed of.

VII. *Re : Performance audit of statute:*

32. Though we have disposed of this Civil Appeal by dismissing it, we must record that this case has provoked us to reflect on the working of this Act.

33. The Act came into being in 1971 and since then, for over five decades, the High Court has been exercising judicial review jurisdiction, disposing of Writ Petitions raising claims or challenges to the exercise of powers or dereliction of duties by

Authorities under the Act. Data fetched from National Judicial Data Grid (NJDG) reveals that a total of 1612 cases involving disputes arising under the Act are pending before the Bombay High Court. Of these, 135 cases are more than 10 years old. In the last 20 years, 4488 cases have been filed and disposed of under the said Act. Latest data from the Bombay High Court reveal that about 923 cases on the Appellate side and 738 on the Original Side are pending adjudication. The Act is a beneficial legislation, intended to materialize the Constitutional assurance of dignity of the individual by providing basic housing, so integral to human life. However, the propensity and the proclivity of the statute to generate litigation are worrisome. There seems to be a problem with the statutory framework for realizing the purpose and object of the statute. In *M/s. Galaxy Enterprises* v. *State of Maharashtra* (supra) the Bombay High Court has remarked that:

> "3. …*Nonetheless, considering the volumes of disputes still reaching the Courts, it can certainly be said that time is ripe, if not too late, to ponder, whether things are realistically working in the right direction, to eradicate slums and rehabilitate the slum dwellers, with the desired efficacy and expedition. This not only at the hands of the authorities but also at the hands of the other stake holders. The vital issue which has often led to controversy and disputes, is on the rules permitting, the selection and appointment of developers to undertake a Slum Rehabilitation Scheme, being conferred on the slum dwellers, who are hardly expected to know the nitty-gritty of the slum redevelopment schemes. It is seen that the so called leaders of the slum dwellers who are*

themselves in need to be rehabilitated, are often lured by developers and their agents, and once a developer is appointed, what normally prevails is a constant fear of incertitude and scepticism amongst the slum dwellers, leading to disputes on variety of issues affecting their final rehabilitation. Such issues not only frustrate the very object of a speedy slum redevelopment but completely derail the slum schemes. It can be seen that scores of slum schemes have remained incomplete for years together and are languishing on such issues, either in litigation before Courts and/or before the authorities. These schemes need not face such ordeal, including of an unending litigation. To change the developer is no answer as even this process involves dispute resolution and ultimately lengthy litigation from one forum to another."

33.1. Further, referring to the statutory scheme, as per which development is possible only when the slum dwellers feel the need and seek development, the High Court pointed out yet another problem about the statutory framework in the following terms;

"*…It cannot be countenanced that the slums be redeveloped only when the slum dwellers feel the need of a redevelopment and the Government Authorities cannot initiate redevelopment and cannot initiate a suo motu action in that behalf. It is hence, for the Government and the Slum Authority to give its anxious consideration to these issues and in its wisdom to device a substantial, nay a full proof mechanism, by undertaking a study and identify these grey areas, so that the helping hand as extended by the legislature in providing this beneficial law as far back in 1971 that is almost 50 years back is held strongly and firmly by all concerned. It is never too late.*"

34. The exasperation of the High Court about working of the Act is understandable. The present appeal is a classic example of why the High Court's concern is genuine. It has been noticed that the

statutory scheme is problematic with respect to: i) Identification and declaration of land as a slum. This problem involves an examination of the role of authorities in giving such recognition, insidious intervention of builders in the said process cast doubts on the independence and integrity in the decision-making process; ii) Identification of slum dwellers: This involves a complicated process of proof of such a status, the attendant problem of groupism, giving rise to competing claims inevitably leading to litigation; iii) Selection of a developer: The Act leaves this decision to the cooperative society of slum dwellers and the majority decision is manipulated by competing and rival developers; iv) Apportionment of the slum land between redevelopment area and sale area: This is yet another area where court has witnessed developers seeking to increase the proportion of the sale area, leading to contestation; v) Obligation to provide transit accommodation for the slum dwellers pending redevelopment: Invariably, we see instances where the developer does not provide transit accommodation within time or provides an inadequate alternative in the form of a quantified amount towards rent, On the other hand, there are instances where some slum dwellers refuse to vacate the premises on the ground that the transit

accommodation is either inconvenient or the amount offered is insufficient; vi) There are also issues of lack of independence and objectivity in the functioning of statutory authorities: This is a matter of serious concern. Courts have witnesses that the authorities have no independence and, their tenure is also short. Additionally, the functioning of these statutory authorities gives an indication that there could be a regulatory capture; vii) Another concern which exists is about the effectiveness of statutory remedies: Statutory remedies are ineffective and at the same time, lacking in accountability and vii) Judicial review proceedings under Art. 226 cannot be a long-term solution: We have given details of the number of writ petitions pending before the High Court in Para 33.

35. The above-referred problems arising out of the statutory scheme and policy framework should have come under review by the State of Maharashtra. Assessment of the working of the statute to realise if its purpose and objective achieved or not is the implied duty of the executive government. Reviewing and assessing the implementation of a statute is an integral part of Rule of Law. It is in recognition of this obligation of the executive government that

the constitutional courts have directed governments to carry performance audit of statutes.

36. Four aspects for achieving justice are well founded and articulated as, i) distribution of advantages and disadvantages of society, ii) curbing the abuse of power and liberty, iii) deciding disputes and, iv) adapting to change[17]. Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power. In fact, the issue is not one of change or not to change, but of the direction and the speed of change and such a change may come in various ways, and most effectively through legislation. Legal reform through legislative correction improves the legal system and it would require assessment of the working of the law, its accessibility, utility and abuse as well. The Executive branch has a constitutional duty to ensure that the purpose and object of a statute is accomplished while implementing it. It has the additional duty to closely monitor the working of a statute and must have a continuous and a real time assessment of the impact that the statute is having. As stated above, reviewing and

[17] *See*: *Justice in Adapting to Change,* in R.W.M. Dias, JURISPRUDENCE, 305-327 (5th edn., 2013).

assessing the implementation of a statute is an integral part of Rule of Law. The purpose of such review is to ensure that *a law is working out in practice as it was intended. If not, to understand the reason and address it quickly*. It is in this perspective that this court has, in a number of cases, directed the Executive to carry a performance/assessment audit of a statute or has suggested amendments to the provisions of a particular enactment so as to remove perceived infirmities in its working.[18]

37. Constitutional courts are fully justified in giving such directions as they are in a unique position of perceiving the working of a statute while exercising judicial review, during which they could identify the fault-lines in the implementation of a statute. This extraordinary capacity to assess the working of a statute is available to the judicial institution because of its unique position where, i) disputes, based on the statutory provisions unfold before it, ii) claims of rights or allegations of dereliction of duties are raised with varied, and sometimes, contradictory interpretations of the same text of the statute, iii) submissions of lawyers opens up a debate and as officers of the

[18] *State of Haryana* v. *Mukesh Kumar*, (2011) 10 SCC 404; *Pravin Electricals (P) Ltd.* v. *Galaxy Infra & Engineering (P) Ltd.* (2021) 5 SCC 671; *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667; *Arif Azim Co. Ltd.* v. *Aptech Ltd.*, (2024) 5 SCC 313; *Public Interest Foundation* v. *Union of India*, (2019) 3 SCC 224.

Court experienced lawyers would lay bare the fault-lines in the statutory scheme, iv) many a times court silently witnesses the play of statutory power relegating the deserving to the backseat, and the undeserving taking away all the benefits.

38. Laws that are made by Parliament or the legislative assemblies create rights, entitlements, duties or liabilities. Application of such empowerments or disabilities gives rise to competing claims or conflicting interests. For resolution of these disputes, constitutional courts provide public law remedies[19] where claims and contestations are decided by High Courts on a case by case basis. Judicial review is generally episodic, and is intended to resolve the *lis* on a case-to-case basis. Though cases are decided on their own merit and the *lis* disposed of, what is left behind is the institutional memory of the Court about the working of the statute and its interpretation preserved as precedents. Over a period of time, a critical mass of adjudicatory determinations on the working of the statute is

[19] Judicial control of administrative action in our country, the effective and the most prolific, has evolved from its classical scrutiny of ultra vires exercise of power, to a whole set of procedural and substantive principles, such as: legality, procedural propriety, reasonableness, legitimate expectation, proportionality, transparency, legal certainty, accountability, level playing field, consultation or participation etc. These principles are now well entrenched in our judicial review processes and are part of our administrative law. In fact, bulk of judicial review proceedings initiate before the High Courts examine if the power exercised is with its bounds.

built. This critical mass, coupled with the experiences gained by the Judges and the Court on the working of the statute, is of immense value for auditing the working of the legislation. It enables the court to assess whether the purpose and object of the Act is being achieved or not.

39. The traditional perception of the constitutional role of writ courts was confined to judicial review of executive and legislative action. In that role, the courts were to decide the vires of the legislative and executive actions based on constitutional parameters. Not only have the tools of judicial review been reinvented (the rise of the proportionality and arbitrariness doctrines) but also the breadth of the judicial power has substantially expanded to areas that were hitherto forbidden (review of policy decisions, constitutional amendments and continuing mandamus being prime examples). However, even this expansive reading of judicial review does not capture the essence of the judicial branch in its entirety.

40. There is yet another role which the judiciary can and ought to perform- that of facilitator of access to justice and effective functioning of constitutional bodies. In this role, the judiciary does not review executive and legislative actions, but only nudges and

provides impetus to systemic reforms. The statute in question is one which was intended to benefit the marginalised and the impoverished. It is not easy for the intended beneficiaries of this legislation to carry their voice to legislative branch for effective reform. The exercise that this Court intends to direct presently is aimed at facilitating their access to legislative and executive reform, which this court believes is an essential component of constitutional justice. That all justice is to be achieved only through courtroom debates is too myopic an understanding of constitutional justice. The facilitative role is not just inspired from the institutional role that the judiciary perceives for itself, but is also a directive of many of the fundamental rights in Part III and the cherished preambular vision of justice- social, economic and political.

41. A peculiar feature of how our legislative system works is that an overwhelming majority of legislations are introduced and carried through by the Government, with very few private member bills being introduced and debated. In such circumstances, the judicial role does encompass, in this court's understanding, the power, nay the duty to direct the executive branch to review the working of statutes and audit the statutory impact. It is not

possible to exhaustively enlist the circumstances and standards that will trigger such a judicial direction. One can only state that this direction must be predicated on a finding that the statute has through demonstrable judicial data or other cogent material failed to ameliorate the conditions of the beneficiaries. The courts will also do well, to arrive the very least, at a prima facie finding that much statutory schemes and procedures are gridlocked in bureaucratic or judicial quagmires that impede or delay statutory objectives. This facilitative role the judiciary compels audit of the legislation, promote debate and discussion but does not and cannot compel legislative reforms.

42. In light of the foregoing, considering that the Act is a state-legislation, implementation of which lies with the State of Maharashtra, and till date no comprehensive statutory audit has been undertaken, we request the Ld. Chief Justice of the Bombay High Court to constitute a bench to initiate *suo motu* proceedings for reviewing the working of the statute to identify the cause of the problems indicated in Paragraph 34. The concerned bench will hear the government, the statutory authorities, the necessary stakeholders including intended beneficiaries and perhaps take the assistance of some senior members of the bar specialising in

this area as *amici curae*. We leave it to the High Court to devise such methods as it deems fit and appropriate. Having examined the matter, the bench may consider directing the government to constitute a committee for performance audit of the Act. The court's jurisdiction extends only to that extent, and no further. The law-making, including amendments, is the exclusive domain of the legislature.

.....J.
[**PAMIDIGHANTAM SRI NARASIMHA**]

.....J.
[**ARAVIND KUMAR**]

NEW DELHI;
JULY 30, 2024.