



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 103 of 2020

Gemini Developers
(Through its authorized representative
Mr. Deep Malhotra) .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

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- Mr. Anoshak Daver a/w. Ms. Deepa Pahuja i./by J Law Associates, Advocates for Petitioner.
 - Mr. Manish Upadhya, AGP for Respondent No.1 – State of Maharashtra.
 - Mr. Jagdish G. Aradwad (Reddy), Advocate for Respondent No.2 – Apex Grievance Redressal Committee (AGRC).
 - Mr. Vijay Singh i./by Desai Legal, Advocate for Respondent Nos.3 to 5 – Slum Rehabilitation Authority (SRA).
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**CORAM : MILIND N. JADHAV, J.
DATE : DECEMBER 15, 2023**

JUDGMENT:

1. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India seeking to partially challenge order dated 28.06.2019 passed by the Respondent No.2 i.e. Apex Grievance Redressal Committee (for short “AGRC”) in Appeal No.09 of 2015 directing the Petitioner to pay an additional 5% of the land cost as per the annual schedule of rates on account of there being a change in the Developer and in consonance with Slum Rehabilitation Authority (for short “SRA”) office order dated 23.03.2015.

2. By consent of all parties, hearing of this Writ Petition is taken up finally, considering that completion of redevelopment of the subject slum rehabilitation project has been stalled in the meanwhile.

3. Such of the relevant facts necessary for adjudication of the present *lis* are briefly outlined herein under:-

3.1. Petitioner i.e. M/s. Gemini Developers are owners and Developers of private property bearing CTS Nos. 88, 89, 90 of Village Kolekalyan, Santacruz (East), Mumbai – 400 055 (for short “**the said property**”) which has been declared as ‘Slum’ under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short “**the said Act**”). The said property has 172 eligible slum dwellers entitled for rehabilitation. In the year 2003, M/s. Gemini Developers, a sole proprietorship concern of one Mr. Ramesh Malhotra, predecessor of the present Petitioner was appointed as Developer by Respondent No.6 – Society. Between the years 2006 and 2016, series of developments took place whereby ultimately all eligible slum dwellers were either accommodated in the transit accommodation on the said property itself or they accepted transit rent and moved out. Some of the non-cooperative slum dwellers filed proceedings before the Respondent No.4 - Competent Authority which were also disposed. In the year 2015, Writ Petition (L) No.2387 of 2015 was filed by Respondent No.6 - Society in this Court, seeking a stay on the election result confirming the Petitioner as Developer and

the same was also disposed on 26.08.2015. Finally, Respondent No.6 - Society represented by some members from the non co-operative and non-vacating 22 tenements, a miniscule minority, filed Appeal No.09 of 2015 before the High Power Committee (now AGRC) challenging the order dated 20.08.2015 passed by Respondent No.3 – Chief Executive Office, Slum Rehabilitation Authority (for short “**CEO, SRA**”).

3.2. The Petitioner, at the then time was the sole proprietorship concern of one Mr. Ramesh Malhotra. He expired on 08.03.2016, leaving behind his Will dated 18.02.2014 bequeathing the subject slum rehabilitation project undertaken by the proprietary concern in favour of his wife and son. Immediately before his demise, Mr. Ramesh Malhotra formed a partnership firm in the same name i.e. M/s Gemini Developers and converted the original proprietorship concern into a partnership firm by inducting his wife and son (his legal heirs) as the two other partners alongwith him. The reason for doing so was because at the then time in the year 2015-2016, Mr. Ramesh Malhotra suffered from cardiac arrest and renal failure and in order to ensure that the subject slum rehabilitation project was continued and taken to its fruition, he devised this method of converting the sole proprietorship concern into a partnership firm alongwith his own legal heirs. Immediately within 2 months of forming the partnership firm

and converting the sole proprietorship concern into partnership firm, Mr. Ramesh Malhotra expired on 08.03.2016.

3.3. Taking advantage of the situation, Respondent No.6 - Society filed Writ Petition No.70 of 2017, however, in the light of the above development, by order dated 26.07.2018, this Court remanded the case to the Respondent No.2 – AGRC to decide on the said issue and the grievance raised by the Respondent No.6 - Society in the light of the demise of Mr. Ramesh Malhotra.

3.4. By order dated 28.06.2019, the Appeal filed by Respondent No.6 – Society, was rejected by Respondent No.2 – AGRC thereby upholding the appointment of Petitioner as the Developer of the subject slum rehabilitation project. However, in furtherance of dismissing the Appeal and upholding the appointment of Petitioner as Developer, the Respondent No.2 - AGRC imposed two additional conditions viz. directing the Petitioner to pay fees / charges (5% of the land cost of said property area) as per CEO, SRA office order / GR dated 23.03.2015, before issuance of further permissions with respect to the subject slum rehabilitation scheme and next, directing the Petitioner to complete the redevelopment project within 24 months from the date of receiving Commencement Certificate.

3.5. Being aggrieved by the imposition of the above stated two conditions, the Petitioner has approached this Court by way of the present Writ Petition.

4. Mr. Daver, learned Advocate appearing for the Petitioner would submit that, Mr. Ramesh Malhotra - sole proprietor of Petitioner - M/s Gemini Developers, was a heart patient and had undergone a bypass surgery in the year 2014 after which he fell seriously ill leading to renal failure. Since his medical condition deteriorated further, he had drawn up a Will bequeathing the slum rehabilitation project to his wife and son. The Will was probated on 06.10.2016 after his demise. He would submit that the reasons for drawing up the Will and the subsequent developments are critical for consideration of the present Writ Petition. Mr. Ramesh Malhotra's son Mr. Deep Malhotra was the person who was in-charge of the entire slum rehabilitation project since Mr. Ramesh Malhotra's health deteriorated and on multiple occasions he was hospitalised. Therefore in order to ensure that the subject slum rehabilitation project was taken to its fruition, Mr Ramesh Malhotra alongwith his wife and son Mr.Deep Malhotra formed a partnership firm and converted the sole proprietorship concern of M/s. Gemini Developers into the said partnership firm w.e.f. 01.01.2016. However, within two and half months from the said date i.e. on on 08.03.2016, Mr. Ramesh Malhotra expired.

4.1. He would submit that in the interregnum, the partnership firm ensured that the slum rehabilitation project and the beneficiaries to the project i.e. eligible slum dwellers did not suffer; that they received their regular rentals / transit rent and the maintenance of the

transit accommodation where the slum dwellers were moved temporarily was done by the Petitioner.

4.2. He would submit that conversion of the proprietorship concern into partnership firm was solely with the objective to pass on the work of completion of the slum rehabilitation project to his legal heirs and not to induct any third party Developer / new Developer whatsoever or change hands from one Developer to another. He would therefore submit that the SRA office order / GR dated 23.03.2015 cannot apply to the facts of the present case, since it applies only in the context of change of Developer / appointment of new Developer and in fact it categorically exempts payment of the additional fees / charges of 5% land cost if any change has occurred in the nomenclature of the Developer on account of his death and the fees cannot be foisted on his legal heirs. He would submit that clause (iii) of the SRA office order dated 23.03.2015 emphasises that the charges to be recovered from the new Developer and the said office order thereafter refers to the newly appointed Developer who would be liable to pay the said 5% charges. He has referred to the said SRA office order which is appended at page No.99 - Exhibit I to the Petition and would submit that the Petitioner's case is squarely covered under the exemption provided in the office order itself and therefore the direction to pay the charges of 5% of land cost is contradictory to the conditions stated in the office order dated 23.03.2015. He would

submit that in the facts of the present case, conversion of the sole proprietorship concern of Ramesh Malhotra into partnership firm comprising of his legal heirs i.e. wife and son, who would otherwise also have been entitled to the same as his legal heirs, was not with the intent of inducting a new Developer. He would submit that the Respondent No.2 - AGRC has failed to consider the aspect and interpretation and has passed the impugned directions mechanically which are challenged. That apart, in any event the wife and son of deceased Mr. Ramesh Malhotra being his legal heirs have already committed themselves to carry out and complete the pending slum rehabilitation project and therefore their case is clearly covered by the exemption clause (ix) of the SRA office order dated 23.03.2015. He would therefore submit that the directions contained in paragraph Nos. 8(a) and 8(f) of the impugned order dated 28.06.2019 deserve to be set aside, with a direction to the Petitioner to complete the project in a reasonable time span and strictly in accordance with law.

5. *PER CONTRA*, Respondent No.2 - AGRC represented by Mr. Aradwad, learned Advocate would submit that, the AGRC is a statutory body constituted under Section 35 of the said Act; that under Sections 3A, 3B and 3V of the said Act, the SRA has powers to make regulations consistent with the said Act and Rules thereunder and in view of the said powers, the CEO, SRA issued the office order dated 23.03.2015 providing for the fees payable after change of Director /

Partner / Developers implementing the slum rehabilitation scheme. He would submit that sometimes the partnership firms, joint ventures, companies, etc. are totally replaced or taken over by new partners/directors etc. and SRA had not formulated any procedure to recognize such changes and in view of the said fact the CEO, SRA issued office order dated 23.03.2015 in respect of fees payable after change of developers / partners / directors etc. while implementing the slum rehabilitation schemes. He would submit that the said office order / Circular dated 23.03.2015 is made applicable in the following three contingencies:-

- (a) Change in the developer under Section 13 (2) of the Slum Act;
- (b) Change in the Director/Partner in the company / partnership firms or the joint ventures etc;
- (c) Changes effected on account of death of sole developer, partner or director, etc.

5.1. Next, he would submit that admittedly the slum rehabilitation scheme on the said property was submitted in the year 2007 by M/s. Gemini Developers, a proprietary firm of deceased Mr. Ramesh Amarnath Malhotra; that on 01.01.2016, the 2nd contingency mentioned above occurred when the proprietorship concern of Mr. Ramesh Amarnath Malhotra was converted into a partnership firm by inducting two partners viz. his wife Smt. Sangeeta Ramesh Malhotra

and his son Deep Ramesh Malhotra; that on 08.03.2016, Mr. Ramesh Amarnath Malhotra expired and thereafter the 3rd contingency mentioned above occurred since the shares / shareholding of the deceased Mr. Ramesh Amarnath Malhotra were transferred in favour of the remaining two partners of the firm M/s. Gemini Developers viz. Mrs. Sangeeta Ramesh Malhotra and Mr. Deep Ramesh Malhotra.

5.2. Next, he would submit that in view of applicability of the above office order dated 23.03.2015 to the facts in the present case, partners of M/s. Gemini Developers were liable to pay the fees for change of partner/s and conversion of the proprietorship firm into a partnership firm w.e.f. 01.01.2016 in view of various clauses i.e. clause (i) to (viii) therein, since admittedly there is a change of partners of the firm and infact in the present case the proprietorship firm is converted into a partnership firm.

5.3. He would submit that the 3rd contingency in respect of transfer of shares / shareholding occurred in the present case after the demise of Mr. Ramesh Amarnath Malhotra. Though the Petitioner in that context would not be liable to pay any fees in view of clause (ix) of the office order, but for the change from proprietorship concern to a partnership firm on 01.01.2016, the Petitioner - Developer is liable to pay the fees / charges as specifically stated in the office order dated 23.03.2015 and the AGRC in the impugned order dated 28.06.2019 has in paragraph No. 8(a) therein rightly directed the firm to pay the

same as per office order dated 23.03.2015 and there is no any illegality or irregularity in such a direction.

5.4. He would submit that admittedly the office order dated 23.03.2015 is not applicable only for change of Developer, as is contended by the Petitioner but the said office order is applicable for the above mentioned 3 contingencies. He has referred to the decision of this Court in the case of *New Janta SRA CHS Ltd. Vs. State of Maharashtra*¹ and has drawn my attention to paragraph Nos. 202 to 204 of the said judgment which are reproduced herein under:

"202. On the reading of the aforesaid office order issued by the SRA as also from the statutory scheme, it is clear that SRA acknowledges that sometimes "Partnership Firms", "Joint Ventures" or "Company" is replaced or taken over by new partners or directors. The office order also identifies in clauses (II to IV) the nature of changes that may take place in the Partnership Firm/company undertaking the Slum Rehabilitation Schemes. It also requires the developer to intimate the changes to SRA and make payment of fees for carrying out the same. This office order also prescribes for imposition of fine on account of failure to intimate the said changes within the prescribed time.

203. Clause 4 of the Office Order provides for intimation and payment of fees on account of retirement of any partner/director proportionate to the share of the incoming partners when the developer is a partnership firm or a private limited company/LLP Clause 4 therefore permits change in the shareholding of the developer if it is a private limited company incorporated under the Companies Act, on payment of charges as per clause 1, and that such changes to be intimated to SRA within 30 days of making formal change failing which a fine equal to 5 times shall be charged.

204. This office order as issued under the Slums Act, therefore does not prohibit any change in the shareholding of a company appointed as a developer. The petitioners have not challenged the legality of this office order. The sole purpose of the office order is to regulate the change in partnership/directorship/shareholding of the developer. In any case the legal and/or juristic identity of the developer as an artificial person, when it is a company incorporated under

1 Decided on 26.09.2021 passed in Writ Petition No.2349 of 2018.

the Companies Act, does not change on account of change in shareholding and even when the shareholding is of such a nature that it becomes a controlling shareholding in a company so appointed. It is well settled that a company which is an artificial person with a common seal and perpetual succession has a identity distinct from its shareholders and the transaction between the company and third parties are not transactions between the shareholders and third parties.”

5.5. In view of the above, he would submit that the Petitioner - Developer has not made out any case for grant of any relief as prayed for in the Petition and therefore this Court be pleased to dismiss the Petition filed by the Petitioner and uphold the order dated 28.06.2019 passed by the AGRC in Appeal No.09 of 2015.

6. Mr. Singh, learned Advocate representing Respondent Nos.3 to 5 - SRA adopts the submissions advanced by Mr. Aradwad and would submit that the impugned directions contained in paragraph Nos.8(a) and 8(f) of the order dated 28.06.2019 have been correctly passed by the Respondent No.2 - AGRC in the facts and circumstances of the present case, considering that there has been a change of hands from a proprietorship concern to a partnership firm of the Petitioner – Developer. He would therefore submit that, this Court be pleased to dismiss the Petition and uphold the order dated 28.06.2019 passed by Respondent No.2 – AGRC.

7. I have heard Mr. Daver - learned Advocate for the Petitioner, Mr. Upadhye – learned AGP for State, Mr. Aradwad -

learned Advocate for Respondent No.2 – AGRC and Mr. Singh - learned Advocate for Respondent Nos. 3 to 5 – SRA and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

8. In the present case it is seen that, the issue at hand is a challenge to only a part of order dated 28.06.2019 passed by the Respondent No.2 – AGRC being clauses 8(a) and 8(f) which are summarized in precis as under:-

“8(a). Gemini Developer to pay the charges as per CEO, SRA office order / GR dated 23.03.2015 (“said GR”) before the issuance of further permissions with respect to the subject SR Scheme;

8(f). To complete the project within 2 years from the date of receiving Commencement Certificate.”

9. It is seen that the said direction in clause 8(a) to pay the fees / charges is issued on the ground that the Petitioner has changed constitution of Gemini Developers from ‘proprietorship’ to a ‘partnership firm’.

10. In so far as the SRA office order dated 23.03.2015 is concerned, it is seen that the intent behind issuance of the said office order was primarily because SRA noticed some instances wherein after submission of the slum rehabilitation schemes by a Developer / partnership firm / company / joint venture etc., changes were effected by these entities in the shares / stock of

their respective Partner / Director at different stages of the scheme. Sometimes, the partnership firm, joint venture or company was totally replaced or taken over by a set of third parties i.e. new partners or directors under the same entity. The SRA office order dated 23.03.2015 is therefore issued in order to formulate a procedure to recognize such changes and make accountable implementation of the slum rehabilitation schemes and to make the SRA aware of such changes immediately so as to effectively supervise the redevelopment work. Accordingly, a 5% premium / fees / charge is levied qualifying such changes in the constitution of the Developer / entity as a 'change of Developer' / 'new Developer'.

11. The sequitor of the above is that the intent behind issuance of the SRA office order dated 23.03.2015 was to charge 5% premium / fees / charges for third party induction and the same cannot be applied to cases where change is occurred on account of death of the sole Developer, as can be seen in the present case. It is pertinent to note that, an exemption to that effect has been specifically provided for in the same SRA office order and the same is reproduced herein under for reference:-

“ix) The charges mentioned in clause (i) and (ii) shall not be payable if the changes are effected on account of the death of sole Developer or Partner or Director, etc. towards legal heir(s) of the same.”

12. In the facts of the present case, it is seen that Mr. Ramesh Malhotra was the sole proprietor of M/s. Gemini Developers since its inception. However sometime in the year 2014, Mr. Ramesh Malhotra who was a heart patient and had already undergone a by-pass surgery and seriously fell ill leading to renal failure and needed regular dialysis. He then drew up a Will bequeathing his entire estate to his legal heirs i.e. wife and son. Further, he also decided to convert M/s. Gemini Developers – a proprietorship firm into a partnership firm w.e.f. 01.01.2016, comprising of himself, his wife and son, with the sole intent to ensure that the project is completed by the said firm without hinderance due to his ill-health and /or demise. Therefore, under no circumstances was there any intention on this part either to induct or transfer the subject slum rehabilitation project to any outside third party and change the constitution of the firm. Rather it was undertaken only to ensure smooth transition and completion of the redevelopment project by his own legal heirs.

13. Further, it is seen that eventuality did occur within two (2) months of the formation of the firm on 01.01.2016 and Mr. Ramesh Malhotra expired on 08.03.2016. His Will was probated only on 06.10.2016 which took about 7 months from the date of his death. The Petitioner herein being M/s. Gemini Developer is being run by Mr. Deep Malhotra one of the partner

alongwith his mother, who is son of Mr. Ramesh Malhotra and it comprised of 2 partners who are the legal heirs being wife and son of Mr. Ramesh Malhotra.

14. In the light of aforesaid facts and circumstances leading to the conversion of M/s. Gemini Developers from proprietorship firm to partnership firm, it is crystal clear that the exemption provided in clause (ix) of the SRA office order dated 23.03.2015 is applicable to the facts of the Petitioner's case as the conversion of the proprietorship firm into partnership firm was never intended to induct any third party but only the legal heirs, which even otherwise eventually would have taken place after the demise of Mr. Ramesh Malhotra.

15. In view of the above observations and findings, it is seen that the case of the Petitioner – Developer is clearly covered by the exemption clause (ix) provided in the SRA office order dated 23.03.2015 and it cannot be deemed to be a change of Developer or appointment of a new Developer for foisting liability of payment of the additional 5% fees / charges. Hence, the direction contained in clause 8(a) of the impugned order dated 28.06.2019 is required to be interfered with and is quashed and set aside and it is held that the Petitioner – Developer is not liable to pay the additional fees / charges as sought to be levied by the Respondent No.2 – AGRC.

16. That apart, Respondents / Stautory Authoroties shall therefore immediately proceed with grant of all necessary permissions to the Petitioner – Developer for effective completion of the subject slum rehabilitation project / scheme strictly in accordance with law and without any further delay.

17. So far as direction contained in clause 8(f) is concerned, it shall be open to the Respondents / Stautory Authorities to consider the Petitioner’s application for any further extension beyond the period of 2 years depending upon the timeline and any such case made out by the Petitioner and in the event if any such application seeking extension is made, the same shall be dealt with on its own merits by the Respondents / Stautory Authorities.

18. It is clarified that the remaining order dated 28.06.2019 passed by the AGRC in Appeal No.09 of 2015 is upheld and confirmed save and except as held above.

19. All parties are directed to act on an authenticated copy of this judgment and order.

20. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]