SUPREME COURT OF INDIA

Shankar Hiranna Rajanna

Vs.

Maharashtra Housing & Area Development Authority & Ors.

C.A.No.9877 of 2016

(Kurian Joseph and R.F.Nariman,JJ.,)

29.09.2016

JUDGMENT

R.F.Nariman,J.,

SLP(Civil)No.11675 of 2016

1. Leave granted.

2. These appeals have come to us after a chequered history, which has begun at least four decades ago. Initially, a certain building, which would be referred to as 102 D of property, admeasuring 2807 sq. meters belonging to MHADA was said to be dilapidated and in dangerous condition beyond economic repair. A notice to this effect had been issued by MHADA dated 23.03.1982. Subsequently, buildings 102 A, B and C were also declared as being beyond economic repair under Section 88 of the MHADA Act in the year 1989. Acquisition of the said four buildings took place under Section 93 of the said Act on 23.08.1990 and physical possession of the land was taken by the Board on 11.12.1990. This acquisition was challenged in a writ petition filed before the High Court. The High Court, by a Judgment dated 04.08.1994, dismissed the said writ petition, as a result of which, the proceedings for acquisition came to a finality.

3. Sometime after 1989, we have been informed that buildings 102 D and 102 B and C have since been demolished and all the persons residing therein are in transit camps that have been provided for by MHADA. Building 102 A continues and the tenants continue to live therein. Various proceedings took place, which it is not necessary for us to go into in view of the fact that by an order dated 10.05.2002 in SLP (C) No. 6991 of 2002, this Court directed MHADA to take a decision on the appellants' proposal - i.e. proposal submitted by tenants, uninfluenced by the decision of the High Court, which was impugned in that case, and to bring the decision to the notice of the Court.

4. Pursuant to the aforesaid direction, a meeting was held on 02.08.2004, by which, under the auspices of the Chief Minister, it was decided that the entire land under the four buildings

aforestated would be returned to the developers i.e. M/s Raj Doshi Exports Pvt. Ltd. (in short, "M/s Raj Doshi") for carrying out the development project under Regulations 33(7) and 33(9). Permission for the same had to be accorded by MHADA under the aforesaid Regulations. All expenses required to be incurred by MHADA were to be recovered from the developers. The most important thing in the said decision was that the consent letter of 70% of the occupants should be given to the said builder and it ought to be confirmed that at least 70% have so done. Rehabilitation of the occupants was to be in a minimum built up area of 30.65 Sq. meters. Armed with this proposal, the tenants and the developers came back to this Court and this Court, by an order dated 18.04.2005, had the entire matter sent back to the High Court. On the belief that the necessary NOC/clearance would be given by MHADA within a reasonable time, M/s Raj Doshi withdrew their writ petition on 07.07.2005.

5. Unfortunately, this did not end the matter, which had been hanging fire for a long time. No NOC/clearance was forthcoming from MHADA in the light of the decision taken dated 02.08.2004. This being the case, the tenants again approached the High Court in Writ Petition (C) No. 2545 of 2006. It took 10 years for this writ petition, in turn, to be disposed of by the High Court by the impugned Judgment dated 20.01.2016. In a nutshell, after reciting the chequered history of this case, the High Court ultimately disposed of the writ petition by asking both M/s Raj Doshi and another developer, who had entered the fray in 2010, namely, M/s Matoshree Infrastructure Pvt. Ltd. to prove that either one of them had the requisite 70% consent of the occupants of these structures, as required by Regulation 33(7). It was further directed that MHADA was to undertake this exercise and if it was found that neither of the developers had the requisite 70% consent, MHADA would then undertake the construction itself. With these directions, the matter was listed again on 29.04.2016.

6. In the meanwhile, in compliance with the directions contained in the impugned Judgment, an exercise was carried out on 05.04.2016, by which MHADA came back to the Court stating that neither of the developers had the requisite 70% consent. It is at this stage that various Special Leave Petitions have been filed and which are the subject matter for decision before us.

7. This Court, in order to ascertain whether the original developer, namely, M/s Raj Doshi had the requisite 70% consent, ordered that, without prejudice to the contentions available to all the parties, the matter, being an old one, the Chief Officer of the MBRRB was to call a meeting of the tenants/occupants to ascertain whether M/s Raj Doshi had the requisite 70% consent from the tenants/occupants. This was to be done within a period of four weeks. The matter then came up before us on 05.08.2016, 08.08.2016 and 29.09.2016 and thereafter, has come up before us today. We have been given a copy of the report that was asked for by our order dated 12.07.2016.

8. By the report dated 03.09.2016, the Chief Officer of the MBRRB has since ascertained that M/s Raj Doshi commands 78.89% of the consent of eligible tenants/occupants.

9. Regard being had to the fact that even the impugned Judgment directed that it must first be ascertained whether either private developer had the requisite 70% consent, and regard

being had to the fact that the terms offered to the tenants in terms of the carpet area of the tenement offered to them are more favourable - M/s Raj Doshi offering 400 Sq. ft. as against MHADA which offers a little above 300 Sq. ft., we are of the view that this litigation should be put an end to.

10. We have also noticed that M/s Matoshree Infrastructure Pvt. Ltd., i.e. the other developer, who has come into the fray only in the year 2010, has offered a higher area of 425 sq. ft. In addition, it has also offered a sum of Rs. 25,000/- (Rupees Twenty Five Thousand) per month to be paid to each tenant/occupant so that they can be accommodated in transit camps or otherwise, until the requisite structures are put up by the developer. On a query made by the Court to M/s Raj Doshi, we were informed that they would match these figures, i.e. they would give each tenant/occupant 425 sq. ft. carpet area. Also, Rs. 25,000/- (Rupees Twenty Five Thousand) per month to each tenant/occupant of the one building which remains, would be given after which the said building would have to be demolished in order that the construction/development under Regulations 33(7) and 33(9) takes place. We, therefore, direct the tenants/occupants to vacate the said building within a period of eight weeks from today. We also direct MHADA and all Government and Municipal Authorities to give the necessary NOC/clearances within the same period i.e. eight weeks in accordance with law. We have been assured by M/s. Raj Doshi that on and from the expiry of these eight weeks, development will take place within a period of 42 months thereafter. We record this undertaking from the developer.

11. We hasten to add that the development spoken of means that not only the construction will be completed, but would be ready for occupation within the aforesaid period.

12. Given the peculiar facts of this case, we make it clear that the order made by us today will not in any manner hinder MHADA from carrying out its statutory obligations and other duties in other cases.

13. Mr. M.L. Varma, learned senior counsel appearing for MHADA, has expressed an apprehension that all the dues statutorily payable by the developer to MHADA, as per the policy and rules, must be paid in due course by the developer. On a query made by the Court, Mr.Dushyant Dave, learned senior counsel appearing on behalf of M/s Raj Doshi, has assured us that the same will be done.

14. With the aforesaid directions, these appeals are disposed of. No costs.