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BEFORE THE NATIONAL GREEN TRIBUNAL
NEW DELHI,
(PRINCIPAL BENCH)

MISCELLANEOUS APPLICATION NO. 20/2012
ARISING OUT OF
APPEAL No. 35 of 2011

Suresh Banjan

Applicant/Petitioner

Versus

State of Maharashtra & Ors.

Respondents

Counsel for Appellant:

Ms. Anubha Rastogi &
Mr. Anuj Castelno

Counsel for Respondents:

Mr. Mukesh Verma for R-1,2 & 3
Mr. Kannan Kapur for R-4 (Appellant)

ORDER

PRESENT:

Justice A.S. Naidu (Acting Chairperson)
Dr. G.K. Pandey (Expert Member)

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Dated 27th March, 2012
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JUDGMENT BY THE BENCH

1. The State Environment Impact Assessment Authority (SEIAA), vide order dated 14th October, 2011, granted Environment Clearance (EC) to a project of Slum

Rehabilitation, or Indira Nagar Hutment Dwellers CHS Ltd., situated at Jai Shanker Yagnik Marg, Mumbai in favour of Ms Harekrishna Builders. The said order was assailed by Shri Suresh Banjan in Appeal No. 35/2011. After hearing Learned Counsel for the parties by judgment dated 31st January, 2012, the Appeal was disposed of by a mutually agreed order imposing following directions:-

- i) M/s Harekrishna Builders (Respondent No.4) shall adhere to the sanctioned plan and shall not deviate,
- ii) Respondent No.4 shall take immediate steps to complete the entire construction, as per the plan and Environmental Clearance within a period of three & half years from today.
- iii) The project being a time bound one, any delay caused should be seriously viewed and the authorities, like Maharashtra Pollution Control Board (MPCB) and Town Planning Authorities to initiate appropriate action in accordance with law, if the project is not completed within Three & half Years from today as undertaken by Respondent No.4.
- iv) Respondent No. 4 shall provide all amenities as per the approved plan and agreement entered *interse* between the Society & and Builder.

- v) Respondent No.4 shall further ensure that till all the members who have been found eligible for allotment of flats and staying in transit accommodation are provided with flats, it shall not sell any flat to outsiders.
- vi) To facilitate expeditious completion of the work, Shri Suresh Banjan, the appellant shall vacate the slum which he is occupying within a period of One Month, failing which necessary steps shall be taken to demolish the same."

2. The present Misc. Application has been filed on behalf of Respondent No.4 (Ms. Harekrishna Builders) for modification of condition No. (V) quoted above mainly on the ground that unless the builder is permitted to sell the flats constructed under the scheme, it shall not be viable for it to construct further. In short Respondent No.4 seeks permission to sell the flats to outsiders, before allotment of the same to members.

3. A detailed counter affidavit has been filed by the Appellant repudiating the stand taken by Respondent No.4. In course of hearing, the prayer for modification is strongly opposed mainly on the ground that 260 slum dwellers are still residing in transit accommodation and are leading miserable life in as much as neither there are any sanitary facilities nor other infrastructural facilities for comfortable human like

survival. It is further submitted that Respondent No.4 without allotting quarters to the slum dwellers, is trying to sell away the flats to outsiders thereby causing unsurmountable hardship and immense difficulties to the slum dwellers, who are residing in transit accommodation for years.

4. Learned Counsel appearing for Respondent No 4 on the other hand submitted that unless Respondent No.4 is permitted to sell the flats to outsiders, he cannot generate enough funds to complete the project and in all fitness, he should be permitted to sell a portion of the flats to outsiders.

5. Heard Learned Counsel for the parties at length. The original appeal was about correctness or otherwise of the EC granted by SEIAA in favour of Respondent No-4 for aforesaid construction project. After considering the pros and cons of the arguments, and in order to curtail the span of pollution created by the construction work which was prolonging for years together, by consent of parties, we disposed of the appeal without interfering with the EC, but then directing the parties to abide by the conditions imposed in the judgment, and protect the environment.

6. After giving our censuses thought to the facts and circumstances and the arguments advanced before us, we feel that the conditions imposed being on the basis of consent given before us, there is no reason to modify the same. It

appears that the liability of the parties flows from an agreement mutually entered *interse* between the Builder and Indira Nagar Hutment Dwellers Cooperative Housing Society Ltd. Therefore, while not interfering with the other conditions, stipulated in our judgment, we modify Condition No. IV to the extent that Respondent No.4 shall ensure that all the members who have been found eligible for flats and are staying in transit accommodation are provided with flats as early as possible. He is, permitted to sell the flats to outsiders strictly in accordance with the terms of the agreement entered *interse* between Respondent No.4, and the Society as well as conditions imposed by the Slum Rehabilitation Authority and not otherwise. With the aforesaid calcifications/modifications this case is disposed of.

Dr. G.K Pandey
Expert Member

Justice A.S. Naidu
Acting Chairperson

Durga Malhotra
27th March, 2012

