

Competition Commission of India

31 May 2012

Case No. 18/2012

In re:

Mr. Hemant Jayanti Shah
A-208, Parijat, Behind HSBC Bank,
Corner of factory Road & LT Road,
Borivali (W), Mumbai, Maharashtra,
Pin - 400092

Informant

Vs.

Managing Committee of
Borivali Nandkuvar Co-operative Housing Society
Plot No. 45/46, Final Plot bearing No. 154,
T.P.S. – III, Factory Lane, Near Ambaji Mandir,
Borivali (W), Mumbai - 400092

Opposite Party

ORDER UNDER SECTION 26(2) OF THE ACT

The present information has been filed by Mr. Hemant Jayanti Shah, a member of Borivali Nandkuvar Co-operative Housing Society Ltd ('the informant') under section 19 (1) of the Competition Act, 2002 ('the Act') against the Managing Committee of Borivali Nandkuvar Co-operative Society Ltd. ('Opposite Party') alleging *inter alia* an abuse of its dominant position by the society in contravention of the provisions of section 4 of the Competition Act, 2002 ('the Act') on 28.03.2012.

2. The informant submitted that the OP had failed to address the housing society members concerns and did not take into account their suggestions while awarding the contract of redevelopment to M/s Aditya Developers. By this contract the developer stood to gain Rs. 25 crores while the members of the housing society got only 18% increase in the occupiable area.

3. The informant claimed that the redevelopment bargain could have been even better for the housing society members but for non consideration of more beneficial redevelopment proposals and non solicitation of more proposals by the OP.



4. The informant contended that the alleged comparison of redevelopment proposals of other contracts was dubious as proposals received earlier were compared with those proposal received 18 months later. The OP ignored the suggestion, made by some housing society members of inviting sealed tenders as recommended in the Govt. of Maharashtra's GR dated 03.01.2009.

5. Another issue raised by the informant was of short period of 13 days taken by OP to complete the process of inviting redevelopment offers, making their compilation/evaluation and convening of special AGM by giving short notice when the redevelopment matter had dragged for last two years.

6. The informant also alleged that MOU with the developer was fabricated and non unanimous and the development agreement with M/s Aditya Developers on 24.12.2009 did not confirm to the Government of Maharashtra (GoM) GR dated 03.01.2009.

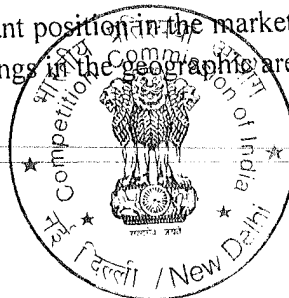
7. The Informant grudged the non transparent way of awarding the redevelopment contract and suggested gains to OP from the developer while on the other hand M/s. Aditya Developers benefited (a) by providing a bank guarantee, a condition prior to vacating the existing premise, for only a partial value with a delay of more than a year and (b) by allotting redevelopment space to Diagnostic Centre which was an expressly barred usage of such redeveloped space.

8. The informant alleged that OP, the managing committee of Borivali Nandkuvar Co-operative Housing Society, had abused the dominant position and promoted unfair trade practice and prayed that the Commission should initiate an enquiry against OP under the Act at the earliest.

9. The Commission considered the matter in its Ordinary meeting held on 03.04.2012 and decided to grant opportunity to the informant to explain the case before the Commission on 25.04.2012. The informant however did not appear in person before the Commission on 25.04.2012 and made written submissions vide letter dated 18.04.2012.

10. The Commission carefully perused the information and the material available on record and found that although, the informant has claimed that the OP was a dominant enterprise but there is no mention about relevant market nor there any averment to show that the OP enjoyed a position of strength in the relevant market to enable it to abuse it.

11. From the material available on record, the Opposite Party does not appear to be in a dominant position in the market of providing services relating to redevelopment of buildings in the geographic area of Mumbai. Thus, the question



of abuse in terms of Section 4 of the Act does not arise. The averments made by the informant make it clear that the informant was a member of the Opposite party (Cooperative Society) and the Management of the Cooperative Society had awarded a contract for redevelopment of the property of the society. If the informant was aggrieved by the mode of working of the Management Committee of the Society, the remedy available to the informant lied elsewhere. The action of a cooperative society giving contract for redevelopment of its property, under no circumstances can be regulated by the provisions of the Competition Act. Based on perusal of material on record, and facts and circumstances brought to our notice, the Commission is of the view that there exists no *prima facie* case of violation of any provision of the Act. Since there exist no *prima facie* case, the matter is closed under Section 26(2) of the Act.

12. It is ordered accordingly.

13. The Secretary is directed to inform the parties accordingly.

Sd/-
Member

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AO)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy

